

**INTER-AMERICAN COURT OF HUMAN RIGHTS\***  
**CASE OF WOMEN VICTIMS OF SEXUAL TORTURE IN ATENCO V. MEXICO**  
**JUDGMENT OF NOVEMBER 28, 2018**  
***(Preliminary objection, merits, reparations and costs)***

In the case of *Women Victims of Sexual Torture in Atenco*,\*\*

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

Eduardo Vio Grossi, acting President  
Humberto Antonio Sierra Porto, Judge  
Elizabeth Odio Benito, Judge  
Eugenio Raúl Zaffaroni, Judge, and  
L. Patricio Pazmiño Freire, Judge

also present,

Pablo Saavedra Alessandri, Secretary,

Pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31, 32, 42, 62, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure” or “the Court’s Rules of Procedure”), delivers this judgment structured as follows:

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\* Judge Eduardo Ferrer Mac-Gregor Poisot, a Mexican national, did not take part in the deliberation of this judgment, in accordance with the provisions of Articles 19(2) of the Court’s Statute and 19(1) of its Rules of Procedure.

\*\* The case was processed before the Inter-American Commission on Human Rights, as well as during the proceedings in the contentious case before the Inter-American Court of Human Rights, under the title “*Selvas Gómez et al. v. Mexico*.” At the request of the representatives of the victims and by a decision of the full Court, this judgment is handed down with the name *Women Victims of Sexual Torture in Atenco v. Mexico*.

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**I**

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

1. *The case submitted to the Court.* On September 17, 2016, under the provisions of Articles 51 and 61 of the American Convention and Article 35 of the Court's Rules of Procedure, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted the case of *Women Victims of Sexual Torture in Atenco against the United Mexican States* (hereinafter "the State," "the Mexican State" or "Mexico") to the jurisdiction of the Inter-American Court. According to the Commission, the case relates to a series of violations committed against Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, María Patricia Romero Hernández, Norma Aidé Jiménez Osorio, Claudia Hernández Martínez<sup>1</sup>, Bárbara Italia Méndez Moreno, Ana María Velasco Rodríguez, Yolanda Muñoz Diosdada, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Suhelen Gabriela Cuevas Jaramillo, in the context of their arrest and transfer by police agents in the municipalities of Texcoco and San Salvador Atenco on May 3 and 4, 2006, respectively. The Commission determined that the detention of these eleven women on the days mentioned was illegal and arbitrary; that they had not been informed of the reasons for their arrest or the respective charges, and that this situation persisted when they gave their first statement, without legal assistance. The Commission also determined that the eleven women were victims of different forms of physical, psychological and sexual torture in the course of their arrest, transfer and arrival at the detention center, and that the State failed to comply with its obligation to investigate these facts with due diligence and within a reasonable time. Lastly, the Commission determined that the State had violated the mental and moral integrity of the next of kin of these eleven women. The presumed victims in this case are the eleven women mentioned above and their family groups described in Chapter IX-4 *infra*.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

- a) *Petition.* On April 29, 2008, the *Centro de los Derechos Humanos Miguel Agustín Pro Juárez A.C.* (PRODH) and the Center for Justice and International Law (CEJIL), (hereinafter "the representatives") lodged the initial petition in representation of the eleven women presumed victims named above.
- b) *Admissibility Report.* On November 2, 2011, the Commission adopted Admissibility Report No. 158/11.<sup>2</sup>
- c) *Merits Report.* On October 28, 2015, the Commission adopted Merits Report No. 74/15, in which it reached a series of conclusions<sup>3</sup> and made various recommendations<sup>4</sup> to the State.

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<sup>1</sup> The Court notes that some documents refer to "Claudia Hernández Martínez." While others refer to "Claudia Hernández García." The Court also notes that there is no dispute between the parties that both names refer to the same person and it will refer to her as "Claudia Hernández Martínez" because this is the name that appears on the birth certificate presented, in the Commission's report, and in the brief with motions, pleadings and evidence.

<sup>2</sup> IACHR, Report No. 158/11, Petition 512-08, Admissibility, Mariana Selvas Gómez et al., Mexico, November 2, 2011.

<sup>3</sup> The Commission concluded that the State was responsible for:

1. The violation of the rights to personal liberty and judicial guarantees established in Articles 7(1), 7(2), 7(3), 7(4), 8(2)(b), 8(2)(d) and 8(2)(e) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, María Patricia Romero Hernández, Norma Aidé Jiménez Osorio, Claudia Hernández Martínez, Bárbara Italia Méndez Moreno, Ana María Velasco Rodríguez, Yolanda Muñoz Diosdada, Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Suhelen Gabriela Cuevas Jaramillo.

d) *Notification of the Merits Report.* The Merits Report was notified to the State on December 17, 2015, granting it two months to report on compliance with the recommendations. Mexico provided information on some actions taken and also on the status of the investigations described and analyzed in the Merits Report but, following four extensions, the Commission considered that the State had made no comprehensive and substantive progress in complying with the recommendations.

3. *Submission to the Court.* On September 17, 2016, the Commission submitted this case to the Court "owing to the need to obtain justice for the victims." The Commission designated Commissioner Enrique Gil Botero and Executive Secretary Paulo Abrão as its delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary and Silvia Serrano Guzmán as legal advisers.

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2. The violation of the rights to personal integrity, privacy, autonomy and dignity, equality and non-discrimination, not to be tortured, and to live free of violence established in Articles 5(1), 5(2), 11 and 24 of the American Convention in relation to Article 1(1) of this instrument, Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture and Article 7(a) of the Convention of Belém do Pará to the detriment of Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, María Patricia Romero Hernández, Norma Aidé Jiménez Osorio, Claudia Hernández Martínez, Bárbara Italia Méndez Moreno, Ana María Velasco Rodríguez, Yolanda Muñoz Diosdada, Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Suhelen Gabriela Cuevas Jaramillo.
  3. The violation of the rights to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the American Convention in relation to Article 1(1) of this instrument; the rights established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and 7 of the Convention of Belém do Pará to the detriment of Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, María Patricia Romero Hernández, Norma Aidé Jiménez Osorio, Claudia Hernández Martínez, Bárbara Italia Méndez Moreno, Ana María Velasco Rodríguez, Yolanda Muñoz Diosdada, Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Suhelen Gabriela Cuevas Jaramillo.
  4. The violation of the right to personal integrity established in Article 5(1) of the American Convention in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the eleven women, listed in the annex to the report.

<sup>4</sup> The Commission made the following recommendations to the State:

1. Establish full reparation for Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, María Patricia Romero Hernández, Norma Aidé Jiménez Osorio, Claudia Hernández Martínez, Bárbara Italia Méndez Moreno, Ana María Velasco Rodríguez, Yolanda Muñoz Diosdada, Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Suhelen Gabriela Cuevas Jaramillo, based on the human rights violations declared. This reparation should include both pecuniary and non-pecuniary aspects.
2. Provide, free of charge, immediately and for as long as necessary, the medical and psychological or psychiatric treatment, as appropriate, to the victims of this case who request this and as mutually agreed with them.
3. Continue to conduct an effective investigation, with due diligence and within a reasonable time in order to clarify fully the acts that violated the American Convention and other inter-American instruments, and to identify and punish the different levels of responsibility, ranging from the perpetrators to the possible masterminds and other forms of responsibility, including those derived from the chain of command, the diverse forms of participation of different state and federal law enforcement agencies, as well as possible acts of omission or concealment, while avoiding [in the context of the investigation] any type of re-victimization, and ensuring that the legal definition of the acts accords with the standards described in the [...] report.
4. Order the corresponding administrative, disciplinary or criminal measures for the acts or omissions of the state officials who contributed to the different aspects of the denial of justice identified in the [...] report.
5. Adopt legislative, administrative and any other type of measures to avoid the repetition of human rights violations such as those committed in this case. In particular, the State must adopt measures of non-repetition addressed at training law enforcement personnel at both state and federal level on the absolute prohibition of torture and sexual and other violence against women, and also to send a clear message condemning this type of act. The content of this measure must be extended to medical personnel and any state officials responsible for the different stages of an investigation into events such as those that occurred in this case. Also, the State must reinforce institutional capacity to ensure that investigations into cases of alleged sexual violence, in general, and of sexual torture by state agents, in particular, are compatible with the standards described in the [report].

4. *Requests of the Inter-American Commission.* Based on the foregoing, the Inter-American Commission asked the Court to conclude and declare the international responsibility of the Mexican State for the violations contained in its Merits Report and, as measures of reparation, to require the State to comply with the recommendations made in the said report (*supra* para. 2.c).

## II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representatives.* The representatives of the presumed victims and the State were notified of the submission of the case on November 11 and 14, 2016, respectively.

6. *Brief with motions, pleadings and evidence.* On January 16, 2017, the representatives presented their brief with motions, pleadings and evidence (hereinafter "motions and pleadings brief"), pursuant to Articles 25 and 40 of the Court's Rules of Procedure. The representatives agreed substantially with the allegations of the Commission and asked the Court to declare that the State was internationally responsible for the same articles of the American Convention alleged by the Commission. In addition, they alleged the violation of the obligation to adopt domestic legal provisions (Article 2 of the Convention) for different reasons. Lastly, they asked the Court to require the State to adopt different measures of reparation and to reimburse specific costs and expenses.

7. *Answering brief.* On May 10, 2017, the State submitted to the Court its brief answering the submission of the case by the Commission and with observations on the motions and pleadings brief (hereinafter "answering brief").<sup>5</sup> In this brief, the State filed a preliminary objection, acknowledged some of the alleged violations, although not all the respective facts that were indicated by the representatives and the Commission, and responded to the requests for reparations.

8. *Legal Assistance Fund.* In an order of May 21, 2017, the President of the Court declared admissible the request filed by the presumed victims, through their representatives, to access the Legal Assistance Fund of the Court.<sup>6</sup>

9. *Observations on the preliminary objection and the acknowledgement of responsibility.* On July 27, 2017, the Commission and the representatives presented their observations on the preliminary objection and the acknowledgement of responsibility made by the State.

10. *Public hearing.* On October 18, 2017, the President issued an order calling the State, the representatives and the Inter-American Commission to a public hearing on the preliminary objection and eventual merits, reparations and costs, to receive the final oral arguments of the parties and the final oral observations of the Commission on those issues.<sup>7</sup> Also, in this order, he required that the statements of six presumed victims and eight expert witnesses be received by affidavit. The affidavits were presented by the representatives on November 2, 2017. The

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<sup>5</sup> The State appointed Miguel Ruíz Cabañas Izquierdo, Under-Secretary for Multilateral Affairs and Human Rights; Alejandro Alday González, Legal Consultant; Erasmo Alonso Lara Cabrera, Director General for Human Rights and Democracy, and Fernando Baeza Meléndez, Mexican Ambassador to Costa Rica, as its Agents in this case.

<sup>6</sup> *Cf. Case of Selvas Gómez et al. v. Mexico. Victims' Legal Assistance Fund.* Order of the President of the Inter-American Court of Human Rights of May 21, 2017. Available at: [http://www.corteidh.or.cr/docs/asuntos/selvas\\_fv\\_17.pdf](http://www.corteidh.or.cr/docs/asuntos/selvas_fv_17.pdf)

<sup>7</sup> *Cf. Case of Selvas Gómez et al. v. Mexico. Call to a hearing.* Order of the President of the Inter-American Court of Human Rights of October 18, 2017. Available at: [http://www.corteidh.or.cr/docs/asuntos/selvasgomez\\_18\\_10\\_17.pdf](http://www.corteidh.or.cr/docs/asuntos/selvasgomez_18_10_17.pdf).

Commission withdrew the opinion by affidavit of one proposed expert witness on October 30, 2017. In addition, in the said order, the President called on five presumed victims, one deponent for information purposes, and one expert witness to provide their testimony during the public hearing. The public hearing took place on November 16 and 17, 2017, during the 120<sup>th</sup> regular session of the Court, held at its seat.<sup>8</sup> During this hearing, the Court's judges asked the parties and the Commission to provide certain information and explanations.

11. *Amicus curiae*. The Court received 16 *amicus curiae* briefs submitted by: 1) Women's Link Worldwide;<sup>9</sup> 2) Silvina Álvarez Medina, professor, Department of Public Law and Legal Philosophy at the Universidad Autónoma de Madrid, and Tania Sordo Ruz, lawyer specialized in violence against women and discrimination;<sup>10</sup> 3) the Due Process of Law Foundation (DPLF);<sup>11</sup> 4) ARTICLE 19, Office for Mexico and Central America;<sup>12</sup> 5) FUNDAR, Centro de Análisis e Investigación;<sup>13</sup> 6) ELEMENTA, Consultoría en Derechos;<sup>14</sup> 7) the Human Rights Program and the Gender Affairs Program at the Universidad Iberoamericana, Mexico City, and Concordia, Consultoría en Derechos Humanos<sup>15</sup>; 8) the Centro de Estudios Legales and Sociales (CELS);<sup>16</sup> 9) the Washington Office on

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<sup>8</sup> At this hearing, there appeared: (a) for the Inter-American Commission: Margarette May Macaulay, First Vice President of the Inter-American Commission; Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, Legal Adviser; (b) for the representatives of the presumed victims: from Center Prodh: Stephanie Erin Brewer, Araceli Olivos Portugal, Mario Ernesto Patrón Sánchez, and Sofía de Robina Castro; from CEJIL: Marcela Martino, Florencia Reggiardo, Gisela De León, Marcia Aguiluz, and Francisca Stuardo; (c) for the Mexican State: Miguel Ruíz Cabañas Izquierdo, Under-Secretary for Multilateral Affairs and Human Rights of the Ministry of Foreign Affairs; Melquiades Morales Flores, Mexican Ambassador to Costa Rica; Erasmo Alonso Lara Cabrera, Director General for Human Rights and Democracy of the Ministry of Foreign Affairs; Alejandro Jaime Gómez Sánchez, Prosecutor General of the state of Mexico; Germán Castillo Banuet, Chief Prosecutor of the state of Mexico; Luis Francisco Fierro Sosa, Head of the Human Rights Unit of the Office of the Prosecutor General of the state of Mexico; Patricia Colchero, Head of the Unit for the Defense of Human Rights of the Ministry of the Interior; María Isabel Sánchez Holguín, Head of the Executive Commission for Victims' Support of the state of Mexico; Rosalinda Salinas, Deputy Director General of the Unit for the Defense of Human Rights of the Ministry of the Interior; Miriam Heredia, Deputy Director General for International Affairs of the Office of the Attorney General of the Republic; Norma Elvia Trejo Luna, Agent of the Public Prosecution Service of the state of Mexico; Carlos Uriel Salas Segovia, Director of the Cases Department, of the Human Rights and Democracy General Directorate of the Ministry of Foreign Affairs; Karla Victoria Jones Anaya, Director of International Law of the Legal Adviser's Office of the Ministry of Foreign Affairs; José Ignacio Michaus Fernández, Department Head of the Human Rights and Democracy General Directorate of the Ministry of Foreign Affairs, and Óscar Francisco Holguín González, Responsible for legal, political and media affairs at the Mexican Embassy in Costa Rica.

<sup>9</sup> The brief, signed by Carmen Cecilia Martínez López, Cristina Rosero Arteaga e Isabel Barbosa, refers to the Mexican national context and background, institutional violence against women, the intersectional nature of the multiple factors of vulnerability, sexual violence as a form of torture, and the obligation of due diligence.

<sup>10</sup> The brief refers to gender stereotypes, their analysis under the European, inter-American and universal system, and the extent of gender stereotyping in this case.

<sup>11</sup> The brief, signed by Katya Salazar as Executive Director, refers to the sexual violence and torture suffered by the victims and the obligation to investigate, prosecute and punish those responsible.

<sup>12</sup> The brief, signed by Ana Cristina Ruelas Serna as Regional Director, refers to international standards in relation to protests and the use of force, and the problems and patterns that have been documented with regard to protests in Mexico.

<sup>13</sup> The brief, signed by Haydeé M. Pérez Garrido as Executive Director, relates to the perpetration of serious human rights violations owing to the inadequate use of law enforcement personnel in situations of social conflict in Mexico.

<sup>14</sup> The brief, signed by Adriana Muro Polo, Manuela Piza Caballero, Paula Aguirre Ospina, Daniela Parra Álvarez, Laura Rojas Acosta, María Camila Vega Salazar, Nora Robledo Frías, Ángela Quintero Bohórquez and Mariana Reyes Múnera, refers to the context of the case in relation to the general situation of the repression of social protest in Mexico and the situation of gender-based violence in the state of Mexico at the time of the facts, as well as unwarranted use of force and its differentiated impact on women victims.

<sup>15</sup> The brief, signed by Denise González Núñez as Coordinator of the Human Rights Program; Elvia González del Pliego Dorantes, as Coordinator of the Gender Program, and Renata Demichelis Ávila, as Founding member of Concordia, refers

Latin America (WOLA);<sup>17</sup> 10) the Human Rights Department at the Universidad Iberoamericana, Mexico City;<sup>18</sup> 11) Ernesto Mendieta Jiménez, lawyer and professor on issues of public and private security;<sup>19</sup> 12) Moisés Moreno Hernández, professor of Criminal Law and Policy;<sup>20</sup> 13) Amnesty International;<sup>21</sup> 14) the Director of the International Criminal Law Research Group at the Universidad Santo Tomás;<sup>22</sup> 15) the Asociación Alto al Secuestro, A.C.,<sup>23</sup> and 16) the Federal District Human Rights Commission.<sup>24</sup>

12. *Final written arguments and observations.* On December 17, 18 and 20, 2017, the representatives and the State forwarded their final written arguments, together with certain annexes, and the Commission presented its final written observations.

13. *Disbursements in application of the Legal Assistance Fund.* On January 15, 2018, the report on the disbursements made from the Court's Legal Assistance Fund in this case with its annexes was forwarded to the State. On January 25, 2018, the State advised that it had no observations to make on the said report.

14. *Helpful information and evidence.* The parties presented the helpful information and evidence requested by the judges during the public hearing with their final written arguments. In addition, on August 24 and 31, 2018, the acting President of the Court for this case asked the State to present information and another item of helpful evidence. The State presented this on September 12, 2018.

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to the State's international obligations in relation to sexual torture and violence against women, and also the insufficiency of the actions taken by the Mexican State in relation to the facts suffered by the eleven victims in this case.

<sup>16</sup> The brief, signed by Gastón Chillier as Executive Director, refers to the State's obligation to protect and ensure human rights in the context of social protests, especially to prevent the use of force resulting in acts of sexual torture.

<sup>17</sup> The brief, signed by Maureen Meyer as Director for Mexico and Migrant Rights, refers to abuses and repression perpetrated by the Mexican police, incomplete reforms of the police force in Mexico, police internal controls and their effectiveness, and also the deficiencies in the Mexican legal framework in relation to the use of force.

<sup>18</sup> The brief, signed by José Luis Caballero Ochoa, as Director of Law at the Universidad Iberoamericana; Juan Carlos Arjona Estévez, Professor of the Master's program on human rights at the Universidad Iberoamericana; Michelle Guerra, Human Rights Defender, and Ximena Jiménez, law student at the Universidad Iberoamericana, refers to the situation of social protest in Mexico and the State's position towards this, the participation of women in this context, and torture used as a punishment for participation.

<sup>19</sup> The brief refers to the differentiation between the rights, obligations and responsibilities of the agents who use force and those of their superiors, as well as to the circumstances in which force is used.

<sup>20</sup> The brief refers to the regulations concerning perpetrators and masterminds of crimes in the laws of Mexico to affirm that, based on criminal law, the attribution of individual criminal responsibility corresponds to the Mexican courts.

<sup>21</sup> The brief, signed by Carolina Jiménez as Deputy Director of Research for the Americas, and Ashfaq Khalfan, as Director of the Legal Program, refers to the absolute prohibition of torture and other ill-treatment such as sexual violence, and the obligation of the State to investigate such acts with a gender perspective.

<sup>22</sup> The brief refers to the complementary competence of the jurisdiction of the States Parties to the International Criminal Court, the scope of the control of conventionality of that Court, the definition of command responsibility in international criminal law, and its exclusion from the domestic criminal legislations.

<sup>23</sup> The brief, signed by María Isabel Miranda Torres de Wallace as President of Alto al Secuestro, A.C., reiterates that, in Mexico, torture, in addition to being a crime, is a violation of human rights. It also analyzes the effectiveness of Mexican practice in relation to investigating and documenting torture, and the rule of exclusion of evidence.

<sup>24</sup> The brief, signed by Nashieli Ramírez Hernández as President of the Federal District Human Rights Commission, refers to the situation of social protest in Mexico, the attribution of responsibility through the chain of command, and sexual violence in the context of social conflicts.

15. *Observations on the helpful information and evidence and the supervening evidence on expenses.* On January 18 and 19, 2018, the representatives and the State, respectively, presented their observations on the documentation submitted by the other party together with their final written arguments. In addition, on September 21 and October 3, 2018, the representatives and the Commission, respectively, presented their observations on the documentation presented by the State on September 12, 2018.

16. *Deliberation of the case.* The Court began to deliberate this judgment on November 26, 2018.

### **III JURISDICTION**

17. The Court has jurisdiction to hear this case pursuant to Article 62(3) of the Convention because Mexico has been a State Party to the Convention since March 24, 1981, and accepted the contentious jurisdiction of this Court on December 16, 1998. Furthermore, the State deposited the instruments ratifying the Inter-American Convention to Prevent and Punish Torture on June 22, 1987, and the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women on November 12, 1998.

### **IV PRELIMINARY OBJECTION**

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

18. The **State** filed a preliminary objection arguing that the Commission had committed a serious error that violated its right to defend itself because, during the processing of the case before that organ, it failed to respect the guarantee of procedural balance between the parties, the principle of legal certainty, and the principle of complementarity. It explained that the State's preliminary objection was based on the serious error committed by the Commission owing to: (i) "the inappropriate way in which it submitted the case to the Court, disregarding the strict and essential application of the principle of complementarity required by the American Convention; (ii) its failure to rule on the measures of reparation adopted by the State, and (iii) the granting of extremely brief extensions to the State to comply with recommendations aimed at producing structural changes." Mexico indicated that the Commission had not provided "a reasoned reply" to its arguments, or "at least, made its recommendations on a gradual basis" that would reflect the State's adoption of certain measures; rather "it merely mentioned that the State had not complied with the reparations" while, at the same time, it did respond to the representatives' arguments in violation of the procedural balance between the parties. Therefore, the State indicated that the Commission's failure to rule on the principle of complementarity constituted an error the gravity of which was "sufficient to determine the inadmissibility of the case." The State also indicated that it was not asking the Court to exercise a control of the legality of the Commission's actions merely for declarative purposes, but rather "the purpose of its preliminary objection [was] for the [...] Court to declare the case inadmissible, in light of the legal possibilities available."

19. The **Commission** indicated that the State's allegations were not of the nature of a preliminary objection and were, therefore, manifestly inadmissible. It argued that: (i) the grounds for the preliminary objection were that the State did not agree with its assessment of the reparations offered and of the status of compliance with the recommendations made in the Merits Report, and (ii) the Mexican State had not satisfied the burden of proof and argument required by the Court to execute a control of the legality of the Commission's actions, because it had not

proved the existence of an error and had not been able to indicate the specific prejudice suffered. The Commission emphasized that the State's arguments on the principle of complementarity were related to the merits stage and the stage of transition prior to the case being submitted to the Court. In addition, it underlined that, over and above whether Mexico considered the extensions to be very brief, it had been given the opportunity to report substantive and concrete progress in relation to all the recommendations, and "the very act of continuing to grant extensions to the State signified an assessment of the information provided by Mexico in its periodic reports." The Commission also indicated that "the reasons why, after granting four extensions, the Commission decided to submit the case to the Inter-American Court, are clearly indicated in the submission note of September 17, 2016." Consequently, it asked the Court to reject the preliminary objection filed by the State.

20. The **representatives** argued that the Commission "had not committed any error, because it assessed the State's non-compliance and acted within its terms of reference" and "the State failed to prove that the [Commission's] actions prejudiced its right of defense." In particular, they indicated that the preliminary objection was "based precisely on the Mexican State's discrepancy with the [Commission's] assessment of the failure to comply with the recommendations made in the Merits Report" and that a difference of opinion did "not prove that there had been an error of any kind in the [Commission's] actions." Thus, they alleged that, in essence, the State was requesting a control of legality with declarative effects, which was inadmissible pursuant to the Court's case law. They also alleged that "the Commission had ruled clearly in both the Merits Report and in the note submitting the case that the proceedings underway did not comply with the obligation to clarify and punish the facts, and that the State had not taken any significant steps to comply with this item in the nine-month period between the notification of the Merits Report and the submission of the case to the Court."

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

21. The Court, interpreting Article 42 of its Rules of Procedure, which regulates preliminary objections, considers that such objections are so called precisely because they are of a preliminary nature and, therefore, tend to prevent the analysis of the merits of the matter in dispute, by objecting to the admissibility of a case or to the Court's jurisdiction to hear a specific case or any of its aspects, based on either the person, matter, time or place, provided that the issues are of a preliminary nature.<sup>25</sup> If it is not possible to consider the issues without a prior analysis of the merits of a case, they cannot be analyzed by means of a preliminary objection.<sup>26</sup>

22. In this case, the Court notes that the State has argued that the Commission committed a serious error that affected its right of defense, because it allegedly failed to assess or give fair consideration to the information provided during the procedure before that organ on the actions undertaken by the State, before and after the issue of the Merits Report, in relation to the investigation of the facts of this case and other forms of reparation.

23. In this regard, the Court recalls that when a party justifies that a serious error has been committed that violates its right of defense, the Court is authorized to execute a control of the

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<sup>25</sup> Cf. *Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000. Series C No. 67, para. 34, and *Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of February 5, 2018. Series C No. 346, para. 20.

<sup>26</sup> Cf. *Case of Castañeda Gutman v. United Mexican States. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 39, and *Case of Herzog v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of March 15, 2018. Series C No. 353, para. 80.

legality of the Commission's actions in relation to the matters that it is examining.<sup>27</sup> Thus, it has been the Court's consistent case law that the party affirming that an action by the Commission during the procedure before it has been irregular, affecting its right of defense, must provide effective proof of the said prejudice. In this regard, a mere complaint or difference of opinion regarding the Inter-American Commission's actions is not sufficient.<sup>28</sup>

24. In the instant case, the Court finds that, what the State considered a serious error that prejudiced it, is, in fact, a difference of opinion concerning the value that, according to the State, the Commission should have accorded to its actions before and after the issue of the Merits Report. The Court notes that the Commission referred to and ruled on the information provided by the State, both in the Merits Report and in the brief submitting the case to the Court; therefore, the Court considers that the Commission did not commit an error in the processing of the case before it for the reasons alleged by the State.

25. Additionally, the Court notes that the State has not demonstrated the specific prejudice resulting from the Commission's failure to rule on the principle of complementarity, because assessment of the measures implemented by the State is a matter that can still be argued and proved before the Court. That said, the State's allegations regarding the measures taken following the Merits Report are matters that it is for this Court to decide when analyzing the merits of the case and any possible reparations.

26. Consequently, the Court concludes that the State's allegations regarding the supposed violation of the principles of legal certainty and procedural balance and its right of defense constitute a difference of opinion with regard to what the Commission substantiated and decided, and this should be analyzed when examining the merits of the case and not as a preliminary objection.

27. Based on the foregoing, the Court rejects the preliminary objection filed by the State.

## V

### THE STATE'S ACKNOWLEDGEMENT OF RESPONSIBILITY

#### ***A. The State's acknowledgement of responsibility and observations of the Commission and the representatives***

28. The **State** made an acknowledgment of responsibility indicating that it did not question or doubt "the human rights violations committed against the victims, and that it had not done so during the merits stage of the procedure before the Inter-American Commission on Human Rights."<sup>29</sup> However, regarding the context in which the facts took place, the State limited its

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<sup>27</sup> Cf. *Control of Due Process in the Exercise of the Powers of the Inter-American Commission on Human Rights (Arts. 41 and 44 of the American Convention on Human Rights)*. Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, first and third operative paragraphs, and *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of April 25, 2018. Series C No. 354, para. 68.

<sup>28</sup> Cf. *Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2007. Series C No. 172, para. 32, and *Case of the Dismissed PetroPeru Workers et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2017. Series C No. 344, para. 51.

<sup>29</sup> The State acknowledged its international responsibility for the violations committed in this case for the first time and in more general terms before the Inter-American Commission on March 14, 2013, during a public hearing held before the Commission during its 147<sup>th</sup> regular session. Cf. Video of the State's intervention during the public hearing held before the Inter-American Commission on March 14, 2013 (evidence file, file of audiovisual material); communication of the State of

acknowledgement to the factual determinations reached by the Supreme Court of Justice of the Nation (hereinafter, "the Supreme Court" or the SCJN") in its analysis of the events that occurred on May 3 and 4, 2006. Mexico acknowledged the violation of the following rights of the eleven women:

- a) Violation of the right to personal liberty and judicial guarantees recognized in Articles 7(1), 7(2), 7(3), 7(4), 8(2)(b), 8(2)(d) and 8(2)(e) of the Convention, owing to the deprivation of their liberty accompanied by the failure to notify the reasons of their detention and to provide appropriate defense counsel.
- b) Violation of the right to personal integrity, privacy, autonomy and dignity, equality and non-discrimination recognized in Articles 5(1), 5(2), 11 and 24 in relation to Article 1(1) of the Convention; the right not to be tortured recognized in Articles 1 and 6<sup>30</sup> of the Inter-American Convention to Prevent and Punish Torture (hereinafter "the Inter-American Convention against Torture"), and the right to live a life free of violence recognized in Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (hereinafter "the Convention of Belém do Pará"), owing to the "physical, psychological and sexual abuse, including acts of sexual torture," and also the denigrating treatment and invasion of their privacy, the lack of adequate medical care, and the effects on their health.
- c) Violation of judicial guarantees and judicial protection and equality before the law recognized in Articles 8, 24 and 25 in relation to 1(1) of the Convention, and the obligation to investigate violence against women recognized in Articles 1, 6 and 8 of the Inter-American Convention against Torture and Article 7 of the Convention of Belém do Pará, owing to the lack of an investigation *ex officio* at the outset and following the events addressed at clarifying the facts and identifying those responsible, and also owing to the inaccurate classification of the offenses at the start. The State underlined that, "despite the foregoing, [...] the investigations conducted by the Attorney General's Office (PGR) at the federal level were implemented diligently and without delay; therefore, the State does not acknowledge any alleged violation with regard to the investigations conducted at the federal level."
- d) Violation of its obligation to adopt domestic legal provisions to implement the exercise of the rights and freedoms recognized in the Convention, the Inter-American Convention against Torture, and the Convention of Belém do Pará recognized in Articles 1(1) and 2 of the American Convention, Articles 1, 6 and 8 of the Inter-American Convention against Torture and Articles 7(c), (e) and (h) of the Convention of Belém do Pará, owing to the absence of a domestic legal framework on the use of force and torture at the time of the facts.

29. The State also acknowledged the violation of the right to personal integrity recognized in Article 5(1) in relation to 1(1) of the Convention, "to the detriment of the victims' next of kin as a result of their suffering."

30. Regarding the facts, the State specified that its acknowledgement was "based on the determinations reached by the SCJN in its analysis of the events that occurred on May 3 and 4,

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April 8, 2013 (evidence file, folios 11618 and 11619), and Merits Report No. 74/15, paras. 9, 10, 58, 59 and 63 to 69 (merits file, folios 12 and 20 to 22).

<sup>30</sup> In both its answering brief and in its final arguments, the State indicated that it acknowledged the violation of "Articles 1 and 86" of the Inter-American Convention against Torture. The Court understands that this was an error and that the State was referring to Articles "1 and 6" of that treaty, which were the articles that the Commission and the representatives alleged had been violated.

2006," in light of which it made a series of clarifications on the context in which the facts of the case occurred.<sup>31</sup> Subsequently, in its final written arguments, the State indicated that it acknowledged "the facts included in paragraphs 112 to 307 of the Merits Report prepared by the Commission" and that, "with regard to the lack of investigation, [...] reiterates that its acknowledgment only covers the local investigations." It added that "regarding the investigation of the [...] facts, [...] it acknowledged paragraphs 372 to 386, and also paragraphs 405, 406 and 411 of the said Merits Report," insofar as, following the "initial shortcomings" at the local level and, particularly, starting in September 2010 when the "Atenco Group" was created to investigate the facts of this case, the State had conducted its investigations diligently, seeking to eliminate the obstacles that were generated initially.

31. Regarding the requests for reparation, as indicated in the chapter on the preliminary objection, the State alleged that it had taken various actions aimed at making full reparation to the victims. It therefore asked the Court that: "(a) in light of the principle of complementarity, [...] it consider the reparations already implemented by the State; (b) [that it consider] the measures taken by the Mexican State to comply with the Commission's Merits Report [...]; and (c) [that it assess the fact that], given the measures of reparation already implemented in this case, the measures requested by the [victims'] representatives are not viable."

32. The **Commission** assessed the acknowledgment made by the State positively, but considered that it was only partial. It stressed that, the State had provided more information to the Court than it had during the procedure before the Commission. Nevertheless, it considered that the State had been ambiguous as regards the facts that it was actually acknowledging and that most of the violations arising from the domestic investigations and proceedings remained in dispute.

33. The **representatives** alleged that, although the State had acknowledged the violation of all the articles and instruments cited, "it did so based on a different and much more limited factual framework than the facts determined by the Commission in the Merits Report and referred to [in their motions and pleadings brief]." They argued that there was no dispute regarding the fact that the State had violated all the rights that had been alleged; however, the dispute subsisted with regard to most of the facts, because the factual framework of the case was not limited to the findings of the SCJN. Despite this, they emphasized that, by indicating that the facts documented by the SCJN were true, the State was also acknowledging the facts included in that decision that constituted human rights violations. They also stressed that since the dispute subsisted with regard to most of the facts described, the dispute also subsisted with regard to the nature and content of the human rights violations committed because, although the State had acknowledged all the articles violated, it had not acknowledged many of the facts that gave rise to the violations, or all the claims for reparation.

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

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<sup>31</sup> Specifically, the State clarified: (i) the actions prior to the confrontations; (ii) the events that took place on May 3, 2006, namely: (a) the confrontation in Fray Pedro de Gante Street; (b) the blockade of the Texcoco-Lechería highway; (c) the transfer and the confinement of those detained in the "Santiaguito" prison; (d) the complaints filed by the detainees, and (e) the reasons why the events occurred that day; (iii) the events that took place on May 4, 2006, namely: (a) actions prior to the operation on May 4, 2006; (b) the operation on the blockade of the Texcoco-Lechería highway; (c) the advance towards San Salvador Atenco; (d) the transfer and the confinement of those detained in the "Santiaguito" prison, and (e) the complaints of police abuse and sexual violence.

34. Pursuant to Articles 62 and 64 of the Rules of Procedure<sup>32</sup> and in exercise of its powers concerning the international judicial protection of human rights, a matter of international public order, it is incumbent on this Court to ensure that acts of acknowledgement of responsibility are acceptable for the purposes sought by the inter-American system. This task is not limited to observing, recording or taking note of the acknowledgment made, or its formal conditions; rather the Court must compare these with the nature and gravity of the violations that have been alleged, the requirements and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties,<sup>33</sup> so that it is able to clarify, insofar as possible and in the exercise of its jurisdiction, the judicial truth of the events.<sup>34</sup> Thus, the acknowledgement cannot have the consequence of limiting, either directly or indirectly, the exercise of the Court's authority to hear the case that has been submitted to it<sup>35</sup> and to decide whether there has been a violation of a right or freedom protected by the Convention.<sup>36</sup> To this end, the Court analyzes the situation presented in each specific case.<sup>37</sup>

### **B.1 Regarding the facts**

35. The Court notes that, in the instant case, the State expressly acknowledged the facts described in paragraphs 112 to 307 of the Commission's Merits Report, These correspond to the individual facts with regard to the eleven women presumed victims in this case and to their next of kin, and to the criminal proceedings related to the facts denounced in the case. Although the State added that it also acknowledged paragraphs 372 to 386 and 405, 406 and 411, the Court notes that those paragraphs do not correspond to the description of the facts of the case, but are transcriptions of articles of the American Convention and establish standards for the investigation of human rights violations. Consequently, the Court understands that Mexico has acknowledged: (i) the individual acts that befell Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, María Patricia Romero Hernández, Norma Aidé Jiménez Osorio, Claudia Hernández Martínez, Bárbara Italia Méndez Moreno, Ana María Velasco Rodríguez, Yolanda Muñoz Diosdada, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Suhelen Gabriela Cuevas Jaramillo,

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<sup>32</sup> Articles 62 and 64 of the Rules of Procedure of the Court establish: "Article 62. Acquiescence: If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects. [...] Article 64. Continuation of the case: Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding Articles.

<sup>33</sup> Cf. *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs*. Judgment of March 9, 2018. Series C No. 351, para. 27.

<sup>34</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs*. Judgment of March 9, 2018. Series C No. 351, para. 27.

<sup>35</sup> Article 62(3) of the Convention establishes: "[t]he jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."

<sup>36</sup> Article 63(1) of the Convention stipulates: "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

<sup>37</sup> Cf. *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 105, and *Case of Munárriz Escobar et al. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of August 20, 2018. Series C No. 355, para. 24.

described in paragraphs 112 to 246 of the Merits Report, and (ii) the facts relating to the investigations into the acts denounced in this case, including the investigations conducted by the National Human Rights Commission (hereinafter "the CNDH"), by the SCJN, and by the local and federal penal authorities, described in paragraphs 247 to 307 of the Merits Report. To the contrary, the dispute subsists with regard to the context in which these facts occurred; in other words, the general background, the operations of May 3 and 4, 2006, and the reports of the police abuse committed during those operations.

## **B.2 Regarding the legal claims**

36. Mexico acknowledged, clearly and expressly, its international responsibility for the violation of all the rights that were alleged, but not for all the reasons indicated by the Commission and the representatives in this case. Consequently, the Court considers that the dispute has ceased in relation to the violation of the rights of the eleven women to: (i) personal liberty and judicial guarantees (Articles 7(1), 7(2), 7(3), 7(4), 8(2)(b), 8(2)(d) and 8(2)(e) of the Convention), owing to the deprivation of liberty, the failure to notify the reasons for the detention and the lack of adequate defense counsel; (ii) personal integrity, privacy, the principle of equality, and the prohibition of discrimination and torture (Articles 5(1), 5(2), 11, 24 and 1(1) of the American Convention, 1 and 6 of the Inter-American Convention against Torture, and 7 of the Convention of Belém do Pará), owing to the physical, psychological and sexual abuse, including acts of torture, suffered by the eleven women victims in this case, as well as the lack of adequate medical care and the effects on their health; (iii) judicial guarantees, judicial protection and equality before the law (Articles 8, 24 and 25 of the Convention) and the obligation to investigate acts of torture and violence against women (Articles 1, 6 and 8 of the Inter-American Convention against Torture and 7 of the Convention of Belém do Pará), owing to the initial failure to investigate the facts *ex officio* and the inaccurate classification of the offenses made initially, and (iv) the obligation to adopt domestic legal provisions (Article 2 of the American Convention, 1, 6 and 8 of the Inter-American Convention against Torture, and 7(c), (e) and (h) of the Convention of Belém do Pará), owing to the lack of a domestic legal framework on the use of force and torture at the time of the facts. In addition, the dispute has ceased with regard to the violation of personal integrity (Article 5(1) of the Convention) of the next of kin of the eleven women.

37. Furthermore, the Court notes that the dispute persists with regard to the violations of: (i) the obligation to adopt domestic legal provisions to criminalize torture appropriately, which continues up until the present time according to the representatives, and not just when the facts took place; (ii) the obligation to adopt domestic legal provisions for the effective investigation of violence against women, and (iii) judicial guarantees, judicial protection, equality before the law, and the obligation to investigate acts of torture and acts of violence against women, owing to the investigations and judicial actions of the federal authorities, as well as the investigations and judicial proceedings following the "initial stages." In this regard, the Court notes that, before this Court, the State placed a temporal limitation on its acknowledgement of responsibility for those violations up to September 2010 when the "Atenco Group" was created to investigate the facts of the case. Meanwhile, the representatives alleged that, based on the position expressed by Mexico before the Commission, the said acknowledgement of international responsibility encompassed the State's actions in relation to the investigations up until March 14, 2013, the date on which the State acquiesced to the claims of the representatives before the Commission. In this regard, the Court recalls that, in order to consider an act of the State an acquiescence or acknowledgement

of responsibility, its intention must be clear.<sup>38</sup> Contrary to the representatives' allegation, this Court does not consider that the State's interventions and briefs before the Commission reveal a clear intention to acknowledge its international responsibility for all the facts that have occurred in the context of the investigations and judicial actions up until March 14, 2013.<sup>39</sup> Consequently, the Court will take the date of September 2010 as the temporal limit for the acknowledgement of international responsibility for these violations, which was the date that the State expressly and clearly indicated should be used for this purpose. Therefore, the Court concludes that the dispute persists for the deficiencies and delays in the investigation after that date.

### **B.3 Regarding the reparations**

38. This Court notes that the dispute subsists in relation to the determination of possible reparations, costs and expenses. Therefore, in the corresponding chapter (*infra* Chapter X), it will determine the corresponding measures of reparation, taking into account the requests of the Commission and the representatives, the case law of the Court on this matter, and the respective arguments and requests of the State.

### **B.4 Assessment of the acquiescence**

39. The Court appreciates the partial acknowledgement of international responsibility made by the State. This action makes a positive contribution to the development of this process, to the principles that inspire the Convention<sup>40</sup> and, in part, to satisfying the need for reparation of the victims of human rights violations.<sup>41</sup>

40. As in other cases,<sup>42</sup> the Court considers that the acknowledgement made by the State has full legal effects pursuant to Articles 62 and 64 of the Court's Rules of Procedure mentioned previously, and has an important symbolic value to ensure that similar facts are not repeated. In addition, the Court notes that the acknowledgment of specific facts and violations may have

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<sup>38</sup> Cf. *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011 Series C No.221, para. 28, and *Munárriz Escobar et al. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of August 20, 2018. Series C No. 355, para. 24.

<sup>39</sup> The acknowledgment of international responsibility made by the State before the Commission was in general terms, without specifying dates. As mentioned by the Commission in its Merits Report and as it appears in the corresponding briefs, the reference to March 14, 2013, as "the critical date" was used by the State as a reference for the start of the "evaluation of the appropriateness of the investigations as a measure of reparation." The Court considers that the statements made by the State concerning its obligation to make reparation do not necessarily entail an acknowledgement of international responsibility for the deficiencies in the investigation up until that date. See, *inter alia*, video of the State's intervention during the public hearing held before the Inter-American Commission on March 14, 2013 (evidence file, folder of audiovisual material); communication of the State of April 8, 2013 (evidence file, folios 11618 and 11619); brief of the State of March 24, 2015 (evidence file, folio 11360); brief of the State of June 2, 2016 (evidence file, folio 11944), and Merits Report No. 74/15, paras. 9, 10, 58, 59 and 63 to 69 (merits file, folios 12 and 20 to 22).

<sup>40</sup> Cf. *Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs*. Judgment of June 19, 1998. Series C No. 38, para. 57, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs*. Judgment of March 9, 2018. Series C No. 351, para. 34.

<sup>41</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia, Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 18, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs*. Judgment of March 9, 2018. Series C No. 351, para. 34.

<sup>42</sup> Cf. *inter alia*, *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs*. Judgment of August 26, 2011. Series C No. 229, para. 37, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 39.

effects and consequences on this Court's analysis of the other alleged facts and violations, insofar as they all form part of the same set of circumstances.<sup>43</sup>

41. Based on the foregoing and its attributes as an international organ for the protection of human rights, the Court finds it necessary, in light of the characteristics of the facts of this case, to deliver a judgment in which it determines the facts that occurred based on the evidence submitted in the proceedings before this Court, because this will contribute to making reparation to the victims, avoiding a repetition of similar facts and, in sum, satisfying the purposes of the inter-American jurisdiction over human rights.

42. Furthermore, and to ensure a better understanding of the international responsibility of States, and the causal nexus between the violations found and the reparations ordered, the Court considers it pertinent to describe the human rights violations committed in this case.

## VI PRELIMINARY CONSIDERATIONS

### **A. The factual framework of the case**

43. The **State** asserted that, in their motions and pleadings brief, the representatives had added new facts with regard to the context that the Commission had not included in its Merits Report. Thus, the State asked the Court, when considering the context of the case, not to take into account the new allegations of the victims' representatives concerning "supposed practices related to the use of force, torture and violence against women, which the Commission had not referred to in its Merits Report."

44. The **representatives** argued that the purpose of the said facts was to explain, provide context to, and clarify the facts mentioned by the Commission in the Merits Report, and that they also referred to the claims of the State or to facts that form part of the State's acknowledgement of responsibility.

45. This Court recalls that the factual framework of the proceedings before it is constituted by the facts contained in the Merits Report submitted to its consideration. Consequently, it is not admissible for the parties to allege new facts that differ from those included in the said report, without prejudice to presenting those that explain, clarify or reject the facts mentioned in the report and that have been submitted to the Court's consideration.<sup>44</sup> The exception to this principle are facts that are classified as supervening or when facts become known subsequently, or access to evidence about them becomes available, provided that such facts are related to the facts of the proceedings. Ultimately, in each case, it is for the Court to decide on the admissibility of arguments relating to the factual framework in order to safeguard the procedural balance between the parties.<sup>45</sup>

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<sup>43</sup> Cf. *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 14, 2014. Series C No. 287, para. 27, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs.* Judgment of March 9, 2018. Series C No. 351, para. 35.

<sup>44</sup> Cf. *Case of the "Five Pensioners" v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359, para. 152.

<sup>45</sup> Cf. *Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 58, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359, para. 152.

46. In this regard, the Court notes that, in general, the facts described by the representatives as part of the context refer to: (i) the repression of social protest in Mexico, and (ii) the generalized use of torture and sexual violence against women, and this includes references to: (a) the generalized use of torture in Mexico and the absence of documentation on its aftereffects; (b) sexual violence, discrimination and lack of access to justice for women in Mexico, and (c) sexual torture against women in Mexico. Thus, they go far beyond the factual framework included by the Commission in the Merits Report and, therefore, their purpose is not to explain or clarify the facts included therein, but to present a different context. Consequently, the Court will not incorporate them into the analysis of the context of this case.

### ***B. The presumed victims in this case***

47. In their motions and pleadings brief, the representatives added Bertha Rosales Gutiérrez, the sister of Georgina Edith Rosales Gutiérrez, as a presumed victim.<sup>46</sup> According to the representatives, owing to a “transcription error in the annex to the Merits Report [her name] was omitted,” but she had been included in the brief on merits submitted to the Commission in which the next of kin of the eleven women presumed victims in this case were identified. Neither the Commission nor the State referred to this factor.

48. Article 35(1) of the Court’s Rules of Procedure establishes that the Merits Report must identify the presumed victims, with the exception of the cases established in Article 35(2) of this instrument. In this case, this Court notes that the representatives informed the Commission of the identity of all the presumed victims, including Bertha Rosales Gutiérrez at the proper opportunity during the procedure before that organ, prior to the issue of the said Merits Report.<sup>47</sup> Accordingly, the Court notes that the failure to include her in the Merits Report, without the Commission justifying the reasons for her exclusions, would appear to be a clerical error that should not prevent the Court from considering her a presumed victim. Therefore, as it has proceeded in another recent case,<sup>48</sup> the Court will include her as a presumed victim in this case.

## **VII EVIDENCE**

### ***A. Admission of the documentary evidence***

49. In this case, as in others, the Court admits those documents presented at the proper time by the parties and the Commission or requested by the Court or its President as helpful evidence, the admissibility of which has not been contested or challenged (*supra* paras. 1, 6, 7 and 12).

50. Both the State and the representatives presented certain documents with their final written arguments. In this regard, the representatives asked the Court not to admit three of the annexes presented by the State.<sup>49</sup> The representatives argued that the State had not presented this

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<sup>46</sup> Cf. Birth certificate of Bertha Rosales Gutiérrez (evidence file, folio 14180).

<sup>47</sup> Cf. The representatives’ brief with observations on the merits in the procedure before the Commission of March 6, 2013 (evidence file, folio 14264).

<sup>48</sup> Cf. *Case of the Dismissed PetroPeru Workers et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344, paras. 53 and 55.

<sup>49</sup> Specifically, the representatives asked that the following annexes to the State’s final written arguments be excluded: Annex 1 (videos of the events that occurred on May 3 and 4, 2006, in San Salvador Atenco), Annex 2 (copy of criminal

evidence with its answering brief or alleged valid circumstances that would justify the late presentation of the documents identified as Annexes 1<sup>50</sup> and 2 and the second document provided in Annex 5 to its final written arguments and, furthermore, that these documents did not contribute to clarification of the facts of the case and did not prove what the State claimed. Regarding Annex 2 and the second document of Annex 5, the Court notes that the State submitted them to substantiate its comments on the statements of two presumed victims. The final written arguments provide the procedural opportunity to submit observations on the statements received in the case.<sup>51</sup> Therefore, the Court admits both items of evidence, without prejudice to taking into account the representatives' arguments concerning their content and assessment. Regarding Annex 1, consisting in videos of selected scenes of the events of May 3 and 4, 2006, the Court considers that, contrary to the State's claims, these videos and the information that can be inferred from them were not requested by the judges during the public hearing before the Court or by its President; accordingly, the State has not provided adequate justification for submitting them after the proper procedural moment – that is, with the answering brief. Consequently, the Court considers that this evidence is time-barred and, pursuant to Article 57(2) of the Rules of Procedure, its incorporation into the body of evidence in this case is inadmissible.

51. Lastly, regarding the evidence on expenditure forwarded by the representatives with their final written arguments, the Court will only consider those documents that refer to new costs and expenses incurred by the representatives due to the proceedings before this Court; in other words, those incurred following the presentation of the motions and pleadings brief.<sup>52</sup>

### ***B. Admission of the testimonial and expert evidence***

52. The Court also finds it pertinent to admit the statements of the presumed victims, the deponent for information purposes, and the expert opinions provided during the public hearing<sup>53</sup> and by affidavit,<sup>54</sup> insofar as they are in keeping with the purpose defined by the President in the order requiring them and the purpose of this case.

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case 79/2006 opened against Ana María Velasco Rodríguez for the offense of lewd conduct) and Annex 5(2) (brief filed by the victims in the context of criminal cases 55/2013 and 166/2014).

<sup>50</sup> Regarding Annex 1, the representatives argued that, although the State indicated that it had been forwarded in answer to questions posed by the judges regarding the number of police agents and protestors, "the videos do not help determine the total number of police agents and protestors that were present, [and] the State [would appear to be] trying [...] to justify submitting extracts of videos that show moments in which the protestors committed wrongful and/or violent acts," while those scenes "cannot be considered to show the actions of all the protestors." They indicated that the fact that some groups of protestors committed wrongful and/or violent acts was not in dispute, but this was documented in evidence that had already been incorporated into the body of evidence in the case, and the videos provided by the State "tend to distort rather than clarify certain aspects of the operation."

<sup>51</sup> Cf. *Case of Selvas Gómez et al. v. Mexico. Call to a hearing*. Order of the President of the Inter-American Court of Human Rights of October 18, 2017, eighth operative paragraph.

<sup>52</sup> Cf. *Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 22, 2016. Series C No. 314, para. 41, and *Case of Vereda La Esperanza v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 341, para. 47.

<sup>53</sup> At the public hearing, the Court received the statement of the victims, Norma Aidé Jiménez Osorio, Claudia Hernández Martínez, Bárbara Italia Méndez Moreno, Angélica Patricia Torres Linares and Suhelen Gabriela Cuevas Jaramillo, as well as the deponent for information purposes, Ernesto López Portillo, and the expert opinion of Julissa Mantilla. The Court also received written versions of the last two statements.

<sup>54</sup> The Court received affidavits from the presumed victims, María Patricia Romero Hernández, Georgina Edith Rosales Gutiérrez, Mariana Selvas Gómez, Ana María Velasco Rodríguez, Yolanda Muñoz Diosdada and Cristina Sánchez Hernández, and with the expert opinions of Regina Tames, Duarte Nuno Pessoa Vieira, Ximena Antillón, Rob Varenik, Susana SáCouto, Maina Kiai and Daniela Kravetz.

## VIII FACTS

53. In this chapter, the Court will set out the relevant facts concerning: (A) the context in which the facts occurred; (B) the individual facts relating to the eleven women presumed victims in this case, and (C) the facts relating to the investigations conducted as a result of those facts.

### A. Context

#### A.1 Preliminary considerations

54. Before analyzing the context, the Court wishes to emphasize that the facts of this case occurred in a democratic State. In this regard, the Court stresses that representative democracy is one of the pillars of the whole system of which the Convention forms part, and a principle reaffirmed by the States of the Americas in the OAS Charter, a fundamental instrument of the inter-American system.<sup>55</sup> The OAS Charter, the constituent treaty of the organization of which Mexico is a State Party since November 23, 1948, establishes as one of its essential purposes "[t]o promote and consolidate representative democracy, with due respect for the principle of non-intervention."<sup>56</sup>

55. The Court also considers it necessary to emphasize that, according to Article 28 of the American Convention, the so-called "Federal Clause," "where a States Party is constituted as a federal state [...] it shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction." In this regard, the Court has established clearly that "according to century-old case law, which has not varied to date, a State cannot argue its federal structure to cease to comply with an international obligation,"<sup>57</sup> and that "international provisions that concern the protection of human rights in the States of the Americas, [...] must be respected by the States of the Americas that are parties to the respective conventions, regardless of whether theirs is a federal or unitary structure."<sup>58</sup> Thus, the Court considers that the States Parties must respect and ensure all the rights recognized in the American Convention to all persons subject to their jurisdiction, without any limitations or

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<sup>55</sup> Cf. *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 34, and *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 302, para. 149.

<sup>56</sup> Article 2(b) of the Charter of the Organization of American States. Under the inter-American system, the relationship between human rights, representative democracy and political rights, in particular, is reflected in the Inter-American Democratic Charter, adopted in the first plenary session on September 11, 2001, during the Twenty-eighth OAS General Assembly. Articles 1, 2 and 3 of this instrument indicate: "Article 1: The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. Democracy is essential for the social, political, and economic development of the peoples of the Americas. Article 2: The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the Organization of American States. Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order. Article 3: Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government."

<sup>57</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 46, and *Case of Garibaldi v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of September 23, 2009. Series C No. 203, para. 146.

<sup>58</sup> *The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 140, and *Case of Garibaldi v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of September 23, 2009. Series C No. 203, para. 146.

exceptions based on their internal organization. The legal system and practices of the entities that form part of a federal state that is a party to the Convention must abide by the American Convention.<sup>59</sup>

## **A.2 Background to the operation conducted on May 3 and 4, 2006, in the municipalities of Texcoco and San Salvador Atenco, state of Mexico**

56. According to the SCJN judgment of February 12, 2009, in 2001, the *Frente de Pueblos en Defensa de la Tierra* [Peoples' Front in Defense of Land] was created (hereinafter "FPDT") with the "initial purpose of opposing the expropriation of their land on which there was a proposal to construct the Mexico City airport." The judgment stressed that "they were successful in blocking the construction of the airport on their land and obtaining the reversal of the expropriations that had been decreed by the Federal Executive. Once this goal had been achieved, they continued as a social organization, pursuing their own claims and supporting the causes of other social movements. Shortly afterwards, they joined 17 social organizations."<sup>60</sup>

57. In the said judgment, the SCJN indicated that one of the objectives of the 2003-2006 Texcoco municipal development plan was "the relocation of informal commerce located in the municipal capital in order to recover the areas for general use and to improve the urban image."<sup>61</sup> Accordingly, on October 21, 2005, an agreement was signed between the local government and four leaders who said they were the "factual and legal representatives" of the flower-sellers who traded in front of the Belisario Domínguez market. In this agreement, it was decided that the flower-sellers would be relocated to the Texcoco Agricultural Products and Flowers Market, where the municipality gave them a space where each florist would be allocated a stall. On April 3, 2006, the Director for Trade Regulation of the Texcoco municipality opened an administrative inquiry claiming that eight flower-sellers had not relocated and continued trading in front of the Belisario Domínguez market; the following day, he requested the support of the Head of the Public Roads and Inspectors Department in this regard.<sup>62</sup>

58. The SCJN also emphasized that, on April 11, 2006, personnel of the Trade Regulation Directorate and agents of the municipal police force tried to prevent the flower-sellers from setting up their stalls. However, the authorities underscored that, shortly afterwards, between 30 and 40 individuals armed with machetes – including Texcoco flower-sellers, but also members of the FPDT – arrived and this gave rise to a confrontation in which some Directorate vehicles were damaged. The deputy Municipal President informed the Commissioner of the state Security Agency that "groups organized by informal traders were trying to threaten the stability of the municipal government," because "they were threatening to take over the offices of the City Hall [...with] the support of the [FPDT] from the municipality of Atenco" and requested that members of the Support and Reaction Force be sent.<sup>63</sup>

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<sup>59</sup> Cf. *Case of Escher et al. v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of July 6, 2009. Series C No. 200, para. 219, and *Case of Garibaldi v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of September 23, 2009. Series C No. 203, para. 146.

<sup>60</sup> SCJN judgment of February 12, 2009 (evidence file, folio 261).

<sup>61</sup> SCJN judgment of February 12, 2009 (evidence file, folios 30678 and 30679). See, also, Preliminary report on the events of Atenco, Mexico, of the International Civil Commission for Human Rights, May 15, 2006, p. 19 (evidence file, folio 503).

<sup>62</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30679 to 30680).

<sup>63</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30681 and 30682).

59. According to the information contained in the SCJN judgment, starting on April 12, 2006, security measures were put in place in the City Hall, as well as on Fray Pedro de Gante Street, in front of the market, with municipal and state police,<sup>64</sup> and this was reinforced on April 24, 2006, to prevent the flower-sellers from setting up their stalls there. However, the florists and the members of the FPDT set up stalls in front of the Belisario Domínguez market and, although they held meetings with officials from the Office of the Attorney General of the state of Mexico (PGJEM), they failed to reach an agreement.<sup>65</sup> On May 2, 2006, during another meeting, attended by Patricia Romero Hernández (leader of the flower-sellers), Ignacio del Valle Medina (leader of the FPDT) and authorities of the state of Mexico, but without the presence of any authority from the municipality of Texcoco, the Director General for Governance gave his assent to the request to withdraw the law enforcement personnel from around the market, "so that they could set up their stalls there the following day when the Day of the Holy Cross was celebrated."<sup>66</sup> However, that same day, the Texcoco municipal police force reinforced the security measures that had been set up on April 12, 2006.<sup>67</sup> Municipal, state and federal police agents took part in the operations on May 3 and 4, 2006.<sup>68</sup>

### **A.3 The operation of May 3, 2006**

60. At approximately 4 a.m., members of the municipal police force were deployed in front of the Belisario Domínguez market to avoid the flower-sellers setting up their stalls, while around 320 state police agents were deployed nearby as "dissuasive on-site support." At around 7 a.m. more municipal agents arrived. Then, at around 7.10 a.m., the Texcoco flower-sellers and the members of the FPDT, who were carrying machetes, clubs, stones and explosive material, began to approach the Belisario Domínguez market.<sup>69</sup>

61. At around 7.25 a.m., a group of flower-sellers and their supporters tried to set up stalls to sell flowers in front of the market, but this was prevented by the Trade Regulation Directorate personnel. Consequently, the group retreated to the corner of Fray Pedro de Gante Street and Manuel González Street where they met up with a second group. A confrontation occurred between the police and the group of flower-sellers and FPDT members because, when trying to make them "retreat, the said police and Trade Regulation Directorate personnel beat them with batons and clubs, and [the flower-sellers and FPDT members], to avoid retreating, hit back at

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<sup>64</sup> For the purposes of this judgment, the Court will understand by "state" everything that relates to the authorities of the state of Mexico, as an entity that forms part of the Mexican State, and by "federal" everything that relates to the authorities of the Mexican State. Furthermore, the reference to "State" authorities or organs refers to authorities or organs of the Mexican State as an international legal entity.

<sup>65</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30683 and 30684).

<sup>66</sup> SCJN judgment of February 12, 2009 (evidence file, folios 30685 and 30686), and cf. Preliminary report on the events of Atenco, Mexico, of the International Civil Commission for Human Rights of May 15, 2006, p. 22 (evidence file, folio 503), and *Violencia de Estado contra las mujeres en México, el Caso San Salvador Atenco*, p. 16 (evidence file, folio 508). However, according to the Deputy Secretary of Governance of the state of Mexico, "although, during the meeting of May 2, 2006..., (*sic*) the Director General for Governance was asked to withdraw the state police from around the Belisario Domínguez market, the withdrawal did not signify, as has been stated, an authorization to set up the flower stalls [...] because only the Texcoco Municipality was empowered to authorize sales outside that market and not an official of the state government." SCJN judgment of February 12, 2009 (evidence file, folio 30686).

<sup>67</sup> According to the SCJN, the contingent of municipal police agents around the market increased from 20 to 57, and even more joined them on May 3, 2006, although it is not possible to determine the exact number. Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30686 to 30688).

<sup>68</sup> Cf. CNDH Recommendation No. 38/2006 of October 16, 2006, p. 37 (evidence file, folio 28552).

<sup>69</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30689, 30691 and 30692).

them with machetes, clubs and stones." This confrontation lasted several minutes and, as a result, both police agents and civilians were injured, and three people were detained by the law enforcement agents.<sup>70</sup>

62. Some people withdrew and entered a private building located around 500 meters from the place where the conflict had started, but others continued throwing stones and rockets at the police and the personnel of the Trade Regulation Directorate.<sup>71</sup>

63. Following this confrontation, the state police, members of the Support and Reaction Forces, began to intervene. As this group of police agents advanced, the civilians who had remained on Manuel González Street also took refuge inside the private property. At approximately 7.50 a.m., members of the said police unit set up a security cordon around the building preventing other FPDT members from entering or leaving.<sup>72</sup> About an hour and a half after the security cordon had been set up around the said private property, a group of about 200 people blocked both lanes of the Los Reyes-Lechería highway in front of the main entrance to the municipality of San Salvador Atenco to protest the events that had occurred in front of the Belisario Domínguez market.<sup>73</sup>

64. The people who blocked the highway set fire to tires there; some of them carried machetes, they had Molotov cocktails, rockets, a large number of stones, clubs and a home-made canon, and they "placed a pipeline transporting ammonia" in front of their blockade.<sup>74</sup> In addition, during the blockade, FPDT members retained several police agents and took away their weapons, and detained an official van carrying a prisoner, and two police patrol cars. Consequently, the state Security Agency and the Federal Preventive Police coordinated the concentration of approximately 194 state police and 154 federal police on the premises of the Federal Preventive Police. At around 1.30 p.m., they advanced along the Texcoco-Lechería highway forming two compact units. As they advanced, an intense confrontation arose started by Molotov cocktails, stones and rockets launched at the police by the protestors. The two units of police agents began to break ranks and to separate because the Molotov cocktails set fire to the ground; then, they began to retreat in a disorderly manner owing to the intensity of the stones and rockets launched at them, as well as the projectiles fired from the home-made canon. Some of the police who lagged behind were surrounded and beaten. The confrontation lasted about 30 minutes, during which some police agents gathered together and advanced, and some of them tried to liberate their companions who were surrounded by the protestors, but they then backed off again. At about 2.45 p.m. the contingents from the state Security Agency and the Federal Preventive Police reassembled and once again advanced, but without forming compact units, and a second confrontation began. As they advanced in this second confrontation, they arrested some individuals who were on the highway.<sup>75</sup>

65. Owing to these confrontations, the state Security Agency implemented a police operation involving between 320 and 420 state police agents to arrest the people who were inside the

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<sup>70</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30692 and 30693).

<sup>71</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folio 30694).

<sup>72</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30695 and 30696).

<sup>73</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folio 30698).

<sup>74</sup> SCJN judgment of February 12, 2009 (evidence file, folio 30699).

<sup>75</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30699 to 30704). According to the state Security Agency, around 800 protestors and 345 police agents (from the state Security Agency and the Federal Preventive Police) took part in these confrontation. However, the SCJN indicated that "it is not certain how many police agents or how many civilians intervened in this event." SCJN judgment of February 12, 2009 (evidence file, folio 30705).

private property on Manuel González Street (*supra* paras. 62 and 63). Members of the municipal police force also detained other individuals who were in the market at the time of the operation.<sup>76</sup> At approximately 5.30 p.m. members of the state police force entered the building and detained those who were inside, many of whom were beaten and assaulted by the police, even though they had already been subdued.<sup>77</sup> The operation ended at around 5.50 p.m.<sup>78</sup> and resulted in the detention of 84 people inside the building and two in the market.<sup>79</sup>

66. At about 5.40 p.m., the police began to transfer those who had been detained to the “Santiaguito” Social Rehabilitation Center (hereinafter “CEPRESO”), either as people who had been captured or who were “being held.” When they were arrested, these people were bundled into vans that, in some cases, took them first to the offices of the Texcoco Assistant Attorney General of the PGJEM, and from there to buses that would take them to the prison; while, in other cases, they were transferred directly to the CEPRESO in vans. The transfers were carried out by the judicial police and the state police.<sup>80</sup>

#### **A.4 The operation of May 4, 2006**

67. According to information in the SCJN judgment, during the evening of May 3, 2006, around 1,815 state police and 628 federal police – some of whom had taken part in that day’s operation – assembled in different points of the municipality of Texcoco.<sup>81</sup> That night, a meeting was held attended by different state and federal authorities, including the Governor of the state of Mexico, during which it was decided to use law enforcement personnel to unblock the Texcoco-Lechería highway, liberate the public servants who had been retained, recover the equipment, weapons and patrol cars that had been seized, bring before the authorities those who had been detained *in flagrante delicto* and “re-establish the rule of law” in San Salvador Atenco. The Governor, the Secretary for Public Security and the National Coordinator of the Public Security Council withdrew “[w]hen it was agreed to use law enforcement personnel.” The specific strategy of the police operation was defined in a second meeting, without the Governor and the Secretary for Public Security, but with the other state and federal authorities and Staff Officers of the Federal Preventive Police and this ended in the early morning hours of May 4, 2006.<sup>82</sup>

68. As previously mentioned, on May 3, 2006, the protestors had blocked the Texcoco-Lechería highway in two places, one at the entrance to the village of Acuexcómac, and the other at San Salvador Atenco.<sup>83</sup> At approximately 6.30 a.m. on May 4, 2006, members of the state and federal

<sup>76</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30708 and 30709).

<sup>77</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30711 and 30712).

<sup>78</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folio 30712).

<sup>79</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folio 30713).

<sup>80</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30714 to 30716).

<sup>81</sup> Members of the Special Operations Group also intervened in order to deactivate dangerous artifacts that could explode. Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30721, 30723 and 30724 and 30732).

<sup>82</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30724 to 30727 and 30730). According to statements made by the Governor of the state of Mexico to the SCJN Commission of Inquiry, “[p]ursuant to [his] governing policy, [... he had] given instructions that the operation be conducted abiding strictly by the constitutional framework of the state of Mexico and with absolute respect for human rights. [...] On becoming aware of the excesses committed by public servants of the state of Mexico, [he had] immediately instructed the Secretary General for Governance to conduct the corresponding investigations in accordance with the law, and the same instruction was given to the Attorney General of the state of Mexico, so that the corresponding preliminary inquiries could be undertaken.” Brief of the Governor of the state of Mexico in relation to the preliminary report of the SCJN Commission of Inquiry (evidence file, folio 31665).

<sup>83</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folio 30734).

police advanced along the public highway and liberated the blockade at the entrance to Acuexcómac without the protestors opposing resistance.<sup>84</sup> In the case of the blockade at San Salvador Atenco, there was a confrontation between the protestors and the police that ended with the retreat of the protestors and the unblocking of the Texcoco-Lechería highway at around 7.10 a.m.<sup>85</sup> The police agents who had been retained were liberated or escaped during the day.<sup>86</sup>

69. Police were deployed in the main square of San Salvador Atenco, where they arrested some individuals and took control of the installations of the municipal auditorium and *ejidal* offices.<sup>87</sup> Also, after taking control of the main square of San Salvador Atenco, members of the Federal Preventive Police and of the state Security Agency deployed on various streets of the town where they arrested several people. Also, during the operation, members of both the state Security Agency and the Federal Preventive Police entered private homes, without a court order, with the justification that they were pursuing individuals *in flagrante delicto*. In this regard, 72 of the 106 individuals detained on May 4, 2006, stated that they had been arrested inside private homes.<sup>88</sup> According to the National Human Rights Commission, "several arrests were made when the protestors were forced to retreat with tear gas; this possibly caused confusion and allowed the members of the state Security Agency and the Federal Preventive Police to detain several people who had not taken part in the events or committed the violent acts of which they were accused."<sup>89</sup> Those detained on May 4, 2006, were taken, first, on foot and, then, in pick-ups (some of them private vehicles and others police vehicles) to the buses in which they were transferred to the CEPRESO.<sup>90</sup>

#### **A.5 Reports of police abuse during the operations on May 3 and 4, 2006, in Texcoco and San Salvador Atenco, state of Mexico**

70. Most of the people detained during the operations on May 3 and 4, 2006, reported police abuse including physical assault, death threats, kicks, blows with clubs, and insults, and having their possessions taken, either during the confrontations, or on being arrested, or in the offices of the Federal Preventive Police or during their transfer to, or entry into, the Office of the Texcoco Assistant Attorney General and/or the CEPRESO.<sup>91</sup> Some individuals were referred to a hospital

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<sup>84</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folio 30735).

<sup>85</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30735 and 30736).

<sup>86</sup> According to the SCJN, on May 4, 2006, the police who had been retained the previous day were released. However, it stressed that "the information gathered during the inquiry reveals that this release was not executed by the police agents who intervened in the operation; nevertheless, the time and manner of their release reveal that the police operations influenced and promoted the conditions for those who had been retained to recover their freedom." Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30743 a 30746).

<sup>87</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folio 30739).

<sup>88</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30742 and 30743), and CNDH Recommendation No. 38/2006 of October 16, 2006, pp. 42 and 43, 46 to 49 (evidence file, folios 28557, 28558, 28561 to 28564).

<sup>89</sup> CNDH Recommendation No. 38/2006 of October 16, 2006, pp. 42 and 43, 46 to 49 (evidence file, folio 28557).

<sup>90</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folio 30741).

<sup>91</sup> SCJN judgment of February 12, 2009 (evidence file, folios 30693, 30755 to 30759, 30706, 30764, 30720 and 30721), and CNDH Recommendation No. 38/2006 of October 16, 2006, pp. 44 to 46 and 50 to 60 (evidence file, folios 28559 to 28569 and 28565 to 2875).

owing to the severity of their injuries,<sup>92</sup> and several of the women detained reported having been subjected to sexual abuse.<sup>93</sup>

71. In this regard, the SCJN determined<sup>94</sup> that fifty (50) women had been detained on May 3 and 4, 2006, and, of these, thirty-one (31) stated that they had been sexually assaulted in different ways by police at the time of their arrest, in the vans or vehicles in which they were taken to the buses, entering or while in the buses used for their transfer to the CEPRESO, and on entering the prison.<sup>95</sup>

72. According to the SCJN and the CNDH, the abuse reported consisted in: groping, touching, squeezing and pinching breasts, nipples, legs, pubic area, buttocks, anus and vagina, in some cases on top of clothing and, in others, establishing direct contact with the skin; introduction of fingers and tongue in the mouth; placing a baton between the legs; rubbing the penis against the body; obligation to perform "oral sex" by the introduction of the penis into the mouth; vaginal penetration with the fingers, and introduction of foreign objects into the vagina. According to the complaints, these acts were accompanied by obscene words, threats, blows and tearing at their underclothes.<sup>96</sup> Most women stated that, using blows and threats, they were obliged to remain with their heads down, their eyes closed and, in some cases, their faces were covered with their own clothing.<sup>97</sup>

#### **A.6 Initial statements of senior state officials on the report of sexual violence in the context of the operations of May 3 and 4, 2006**

73. Based on statements made in a newspaper article published on May 12, 2006, the Governor of the state of Mexico declared that, on "the issue of the individuals supposedly raped, no accusations have been made; no one has filed a report; none of the women filed a report before the judicial authority that they had been raped."<sup>98</sup> Subsequently, on May 17, 2006, the newspapers published a report that the said Governor, following a meeting with the CNDH, had acknowledged that the information received could prove that some police agents had committed excesses.<sup>99</sup> However, on the same date, information was published that the Secretary General for Governance of the state of Mexico had indicated that "the government of the state of Mexico was

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<sup>92</sup> SCJN judgment of February 12, 2009 (evidence file, folios 30720, 30749, 30792 and 30794), and CNDH Recommendation No. 38/2006 of October 16, 2006, pp. 44 to 46 and 50 to 60 (evidence file 28559 to 28569 and 28565 to 2875).

<sup>93</sup> SCJN judgment of February 12, 2009 (evidence file, folios 30713 to 30714), and CNDH Recommendation No. 38/2006 of October 16, 2006, pp. 12 to 13 and 61 to 64 (evidence file, folios 28527 and 28528 and 28576 to 28579).

<sup>94</sup> The SCJN based itself on "the statements and reports presented by the women before prosecutorial and judicial authorities, and before the National Human Rights Commission; what they stated directly to the Commission of Inquiry, as well as the evidence gathered in the preliminary inquiries and in the criminal proceedings instituted in relation to some of these reports." SCJN judgment of February 12, 2009 (evidence file, folio 30866).

<sup>95</sup> SCJN judgment of February 12, 2009 (evidence file, folios 30873, and 30868 and 30869). See also, CNDH Recommendation No. 38/2006 of October 16, 2006, pp. 12 and 13 and 61 to 64 (evidence file, folios 28527, 28528 and 28576 to 28579).

<sup>96</sup> SCJN judgment of February 12, 2009 (evidence file, folios 30869 to 30872), and CNDH Recommendation No. 38/2006 of October 16, 2006, pp. 61 to 67 (evidence file, folios 28576 to 28579).

<sup>97</sup> SCJN judgment of February 12, 2009 (evidence file, folio 30953).

<sup>98</sup> Newspaper article published in "*Reforma*" on May 12, 2006, entitled "*Niega Peña violaciones*" [Peña denies violations] (evidence file, folio 516).

<sup>99</sup> Newspaper article published in "*Excelsior de Mexico*" on May 17, 2006, entitled "*Reconoce Peña abuso policiaco*" [Peña acknowledges police abuse] (evidence file, folio 514).

unable to open an investigation into the presumed rape perpetrated against women by the police as there were no legal grounds for this, because there had been no gynecological examinations and no specific criminal accusations had been filed."<sup>100</sup>

74. Subsequently, on June 16, 2006, a newspaper published that the Governor of the State had declared that "it is a well-known fact that, in the manual for insurgent groups, radical groups, the first thing the manual advises is that women should denounce that they have been raped."<sup>101</sup> In addition, it appears that he also stated that, if those who had committed offenses were identified, they would be punished pursuant to the law.<sup>102</sup> Then, on June 27, 2006, the declarations of the Commissioner of the state Security Agency were published, in which he attributed the supposed police abuse to "high levels of stress," and indicated that "if the women, for reasons of modesty, had not let doctors examine them, it was because no one had done anything to them."<sup>103</sup>

## ***B. The facts with regard to the eleven women***<sup>104</sup>

### **B.1 The initial detentions**

75. On May 3, 2006, Yolanda Muñoz Diosdada,<sup>105</sup> Ana María Velasco Rodríguez,<sup>106</sup> Angélica Patricia Torres Linares,<sup>107</sup> María Patricia Romero Hernández<sup>108</sup> and María Cristina Sánchez Hernández<sup>109</sup> were detained.

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<sup>100</sup> Newspaper article published in "El Universal" on May 17, 2006, entitled "Wilfrido Robledo declara sobre los acontecimientos en Atenco" [Wilfrido Robledo speaks out about the events in Atenco] (evidence file, folio 522).

<sup>101</sup> Newspaper article published in "Reforma" on June 16, 2006, entitled "Desestima Peña abusos en Atenco" [Peña rejects abuses in Atenco] (evidence file, folio 529).

<sup>102</sup> Newspaper article published in "Reforma" on June 16, 2006, entitled "Desestima Peña abusos en Atenco" (evidence file, folio 529).

<sup>103</sup> Newspaper article published in "La Jornada" on June 26, 2006, entitled "La actuación de los policías, por alto nivel de estrés: Robledo" [Police actions due to high level of stress: Robledo] (evidence file, folios 524 and 525). In addition, the May 17, 2016, report presented by the state Security Agency also discredits the accusations of the women, affirming that the FPDT leaders "tr[ie]d to suggest the conclusions that the Public Prosecution Service, and the judicial authority could reach, [by] asserting that the police who intervened in the operation and detained the activists and the members of the Front had committed unlawful acts because, without producing evidence, they have been affirming – as if they were certain of the facts – the supposed violations, ill-treatment and sexual abuse of the women, even going so far as to declare that, in order to commit violent rape, the police agents used "condoms" so as not to leave evidence of the crime committed, ignoring the fact that a possible victim of a violent rape would have injuries that could endanger her life and mental capacity and also that it would take 15 days for the injuries to heal and, therefore, she would have to be hospitalized." Activity report of the General Inspectorate of the state Security Agency of May 17, 2016 (evidence file, folio 21743).

<sup>104</sup> Unless otherwise indicated, the description of what happened to the eleven women victims in this case can be found in the evidence listed in Annex 1 to this judgment.

<sup>105</sup> Yolanda Muñoz Diosdada was 46 years of age at the time of the facts and worked in a shop. Her family consists of her children, Cesar Adrián Pomposo Muñoz, Eduardo Pomposo Muñoz, José Guadalupe Pomposo Muñoz, Gregorio Pomposo Muñoz and Jennifer Pomposo Muñoz, and her siblings, Emma Muñoz Diosdada, Gloria Muñoz Diosdada, Jesús Muñoz Diosdada, Juana Muñoz Diosdada and Fernando Muñoz Diosdada.

<sup>106</sup> Ana María Velasco Rodríguez was 32 years of age at the time of the facts and, at that time, was employed in a tortilla store. Her family consists of her sons, Gustavo and Arturo Alberto Hernández Velasco.

<sup>107</sup> Angélica Patricia Torres Linares was 23 years of age at the time of the facts and was studying political science at the Universidad Nacional Autónoma de México. Her family consists of her father, Genaro Torres Lagar, her mother, Concepción Linares Olivos, and her siblings Miguel Ángel Torres Linares, Laura Isela Torres Linares and Jorge Torres Linares.

<sup>108</sup> María Patricia Romero Hernández was 38 years of age at the time of the facts and was a trader. Her family consists of her father, Raúl Romero Macías, her mother, Hilda Hernández Ramírez, her children, Arturo Adali Sánchez Romero and

76. Regarding the circumstances of their detention: Yolanda Muñoz Diosdada was on her way to the market to sell denim articles accompanied by her son aged 17; Ana María Velasco Rodríguez had gone shopping for the Day of the Holy Cross with her brother and sister-in-law, and Angélica Patricia Torres Linares was in San Salvador Atenco gathering information for her thesis with a friend. María Patricia Romero Hernández and María Cristina Sánchez Hernández, by chance, were nearby where the protest took place; the former was on her way to open the family's butcher's shop in the market, together with her father and her son, while the latter was walking with her husband along the street with the flower warehouse, when they encountered the police operation.

77. Regarding the first three women, they all reported that, on encountering police agents who were attacking people and firing tear gas, they took refuge inside a private home, where the police entered and arrested them. They reported that "once they had been subdued, they were put on the floor," one on top of another. The police also fired tear gas and pulled them out onto the street by the hair, hitting them and insulting them.

78. In particular, *Yolanda Muñoz Diosdada* indicated that she was "hit on the head and kicked." Specifically, she recalled that a state police agent hit her left cheek with his closed fist, stating that they were all "whores, bitches, now you're fucked" and that "while the truck came, the state police continued to hit us. One of the police agents who was in the street said: 'stop hitting them because we're going to get them out and the media are here.'" She indicated that "finally, they lifted her up, covered her face with her clothes, asking her not to lift up her head, and put her in the truck." She stated that the police told them loudly that, since no one knew the exact number of people who had been detained, they "were going to set fire to them or throw them in the river." She added that, at some point, she lost sight of her son, and only saw him again in the prison, injured.

79. *Ana María Velasco Rodríguez* indicated that she had been beaten with batons and kicked on different part of her body and that a woman from the state police took her belongings and slapped her. In particular, she recalled that they asked her who Ignacio del Valle was and, when she said she did not know him, they hit her and ranted at her with "words such as 'bitch' and 'whore.'" In addition, she reported that, seeing that she was not bleeding, "they used more force and said: 'this bitch is clean, hit her more,' while they continued to kick her and beat her with batons."

80. *Angélica Patricia Torres Linares* reported that the police placed her against a wall and beat her with a baton while they questioned her. She stressed that this interrogation was filmed and that, after she had answered the questions, the police threatened her, saying: "now we've got your name and address, you and your family are fucked." She indicated that in addition to the death threats, the police agents threatened to rape her; in particular, she underscored that a female police agent "seeing the fear in [her] face as [she ...] looked at the police agent who was giving orders, said to [her]: 'what, you liked it? Well, soon they're all going to rape you, bitch.'" She added that, while she was being beaten, they asked her what she was doing there and said, "women are only useful for making tortillas, that [she] should be at home; that this was happening to [her] because [she] was not at home." After questioning her, they pushed her

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Ariadna Sánchez Romero, her siblings, Ascención Raúl Romero Hernández and Leticia Romero Hernández, and her husband, Rubén Constantino Díaz.

<sup>109</sup> María Cristina Sánchez Hernández was 39 years of age at the time of the facts and was a trader. Her family consists of her companion, José Alfredo Cadena Hernández, and her children Lucía Bautista Sánchez, Pedro Jesús Bautista Sánchez, Hugo Alfredo Cadena Sánchez and Karen Leticia Cadena Sánchez.

against the wall, took away her belongings, the sweater she was wearing and her blouse, leaving her in her brassiere, and giving back some of her clothes later. She reported that they were taken out into the street, where the police began to hit their heads, arms, shoulders and backs with something hard. The police continued to beat them while taking them to a bus in which there were other detainees and they were piled on top of the others.

81. In the case of the last two women who were detained on May 3, they were both carrying out their normal activities when they encountered the police. *María Patricia Romero Hernández* was detained near her family's butcher's shop in the Belisario Domínguez market, together with her son and her father, after approaching one of the agents to ask why they were attacking the flower sellers. She recalled that, on seeing that her son was filming what was happening, the police began to hit him viciously and the Assistant Chief of Police ordered: "hit him, the son of a bitch." She reported that, on seeing this, she tried to approach her son in order to shield him, but three female police agents subdued her and she was then arrested by the municipal agents. She narrated that she was handcuffed and beaten, and her personal belongings and money were taken. Then, she was forcibly transferred to a municipal police van and pushed in face down. *María Cristina Sánchez Hernández* was detained when she was walking with her husband by the flower warehouse, when the police entered using tear gas, and hitting all those present viciously. She indicated that the police put her in a truck, saying that they were going to kill them and throw them in the river.

82. On May 4, 2006, Norma Aidé Jiménez Osorio,<sup>110</sup> Claudia Hernández Martínez,<sup>111</sup> Mariana Selvas Gómez,<sup>112</sup> Georgina Edith Rosales Gutiérrez,<sup>113</sup> Suhelen Gabriela Cuevas Jaramillo<sup>114</sup> and Bárbara Italia Méndez Moreno were detained.<sup>115</sup>

83. Regarding the circumstances of their detention, Norma Aidé Jiménez Osorio and Claudia Hernández Martínez were walking along a street in San Salvador Atenco. The former was going to catch a bus to school after finishing a job covering a news item, while the latter was doing research for her thesis. They both reported that, while walking along the street, police agents

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<sup>110</sup> Norma Aidé Jiménez Osorio was 23 years of age at the time of the facts and was studying plastic arts at the Instituto Nacional de Bellas Artes, photography at the FARO de Oriente, lithography at the Escuela Nacional de San Carlos and chemical engineering at the Universidad Nacional Autónoma de México. She also worked as a photographer and reporter for a magazine of alternative forms of communication. Her family consists of her mother, María Félix Osorio Lira.

<sup>111</sup> Claudia Hernández Martínez was 24 years of age at the time of the facts and was studying political science and working at the Universidad Nacional Autónoma de México. Her family consists of her father, Juan Hernández Rivera, her mother, María Victoria Martínez Flórez, her siblings, Anatalia Hernández Martínez, Amelia Hernández Martínez, Rosa Gloria Hernández Martínez and Artemio Hernández Martínez, and her nephews and nieces, Aarón Jiménez Hernández, Agustín Jiménez Hernández, Karina Guadalupe Nonato Hernández and Israel Nonato Hernández.

<sup>112</sup> Mariana Selvas Gómez was 22 years of age at the time of the facts and, at the time, was studying ethnology at the Escuela Nacional de Antropología e Historia (ENAH). Her family consists of her father, Guillermo Selvas Pineda, and her mother, Rosalba Gómez Rivera.

<sup>113</sup> Georgina Edith Rosales Gutiérrez was 52 years of age at the time of the facts and, at the time, was employed by the Mexican Social Security Institute. Her family consists of her daughters, Adail Adriana Porcayo Rosales and Ameyatzin María de Jesús Antunez Rosales, her sisters, Irasema Patricia Rosales Gutiérrez and Bertha Rosales Gutiérrez, and her mother, Socorro Gutiérrez Almaraz, who died after the events.

<sup>114</sup> Suhelen Gabriela Cuevas Jaramillo was 19 years of age at the time of the facts and, at the time, was studying journalism at the Universidad del Valle de Mexico, and doing temporary work. Her family consists of her mother, Laura Elena Jaramillo Calvo, her father, Arturo Cuevas Ledesma, and her brother, Carlos Enrique Cuevas Jaramillo.

<sup>115</sup> Bárbara Italia Méndez Moreno was 29 years of age at the time of the facts and, at the time, was a student of Latin American studies at the Universidad Nacional Autónoma de México. Her family consists of her partner, Iván Artión Torres Urbina.

attacked them and pushed them into a vehicle. In particular, *Norma Aidé Jiménez Osorio* recounted that “the police blocked the street; we heard cries, people were running and I received a blow to the back of my neck and fell down; they pulled my sweater over my head and continued to hit me.” She stated that the police lifted her up with the sweater over her head, gripped her tightly, beat her stomach, arms and legs, touched her buttocks, took away her backpack and made her get into a bus. She added that she told the police that she was on a reporting assignment, and they mocked her and continued to beat her for several minutes. They also took away her camera and asked for her personal data and that of her family, threatening her and saying things such as that her mother would also “be fucked” and that “soon, we’re going to rape you and then we’re going to make you disappear.” She recounted that they told her that this was happening to her “because [she] was not at home washing dishes” and that she was a whore. *Claudia Hernández Martínez* described how, on being detained, she was beaten on different parts of her body and, with her head covered by her sweater, was taken somewhere in a pick-up. They took her into the yard of a house where they beat her head against a wall, beat her knees so that she would open her legs, then beat her between her legs and touched her genitalia, breasts and buttocks. She indicated that she could see the badge of the “PFP” and was filmed while they were asking for her personal data. She also recounted that she “was taken, bent over, by the hair and trouser belt through a line of police agents who, kicked [her] as [she] went by,” and that then she “was told to sit down on a bench looking at the floor, where [her] back and head were beaten with a baton and the police kicked” her. Lastly, she was put into a truck.

84. Mariana Selvas Gómez and Georgina Edith Rosales Gutiérrez were detained while they were providing medical care in San Salvador Atenco. In particular, *Mariana Selvas Gómez* indicated that she had accompanied her father to San Salvador Atenco that day in order to provide medical care to one of his patients, when around 50 police agents arrived and told them to line up against a wall; they were told to put their hands on their necks and they were beaten until they fell down; the beatings and kicks continued until they were pulled up and put into a pick-up truck. She added that, while she was being beaten, they yelled insults at her such as “fucking whore, piece of shit.” Meanwhile, *Georgina Edith Rosales Gutiérrez* was taking part in a health brigade in San Salvador Atenco and, while providing medical care to a man affected by tear gas, a police agent took her by the hair and beat her repeatedly with his baton while threatening to kill her if she lifted her head. She indicated that they insulted her, saying “whore, bitch, you’ll soon see what’s coming to you.” She also recounted that she was able to see that “the agents trousers were blue-grey, [...] this was not from the state of Mexico; rather they were federal police [PFP grenadiers], and they were wearing boots; it was those police agents who were kicking [her].”

85. Meanwhile, Suhelen Gabriela Cuevas Jaramillo had arrived at the scene, together with her partner, to take photographs and do interviews on behalf of the magazine she worked for. Bárbara Italia Méndez Moreno was taking photographs for her thesis. They were both detained on private property, where they had taken refuge to protect themselves from tear gas fired by the police. *Suhelen Gabriela Cuevas Jaramillo* indicated that the police who entered the home “hit [her] and touched [her] indecently”; they asked her why she was not studying; they told her that she “was a whore” and each time they asked her name they hit her in the ribs. She recalled that, “at one moment, they pushed us against a wall and we heard them handling their weapons and they hit us on the head with their weapons,” while threatening to kill them. She described how she was taken out into the street while they “hit [her] with a baton,” and that, when she was sitting down in the street, “they lifted up [her] blouse, undid [her] brassiere, tried to feel [her], touched [her] buttocks and pinched [her] breasts.” She recounted that she had her jacket over her head so that she could not see, that they “pulled at [her] trousers,” and said something like “open your legs, whore’ [...] and began to try and touch [her] with their hands [...] [so she] closed her legs and they seized [her] and opened [her] legs with their boots and kicked [her] vagina.” She added that they pulled her hair and said: “bitch, now you’re really fucked, you’re

going to die like the bitch you are"; they continued to hit her and then they put her in a truck with her face covered. *Bárbara Italia Méndez Moreno* recalled that the Federal Preventive Police raided the building where she was, took all her belongings, filmed her while they questioned her, threw her on the floor and took her out into the street where they beat her whole body viciously with a baton, injuring her head which began to bleed. She also recounted that, on uncovering her head, one of them said: "Have you seen who this bitch is?" to which the other replied "Yes, this is the whore we're looking for, she's the one that killed the police agent." Then, they covered her face again, and she heard someone yell: "it's her, this is the bitch, mark her!" following which they beat her on the back, ribs and buttocks, while they yelled: "Bitch! What are you feeling? I'm going to kill you; I'll rape you and then I'll kill you!"

## **B.2 The transfers**

86. Regarding the transfers to the detention center on May 3, *Yolanda Muñoz Diosdada* indicated that the journey took approximately five hours and that "we were ordered to sit with our heads down so we were unable to get up or look around; our valuables were taken from us; [...] they asked for our personal data." She stated that, even though she was ordered to keep her eyes closed, she "could see someone dressed in black trousers and boots, who lifted up my blouse and put a hand on my breasts and another on my back; then he pulled down my underpants, touched me and rubbed my vagina; while, with the other hand, he gripped me and pinched my nipples." In addition, she recounted that during the journey she was the victim of "perverse games, mockery, indecent language. They even took out something like a grenade, saying that it was going to explode."

87. *Ana María Velasco Rodríguez* described how they put her in a truck "by kicking" her; they sat her down by the window and began to touch her breast, vagina and buttocks, telling her that she "was a bitch, a whore, and that they were going to fuck her brains out." She recounted that "they made me sit somewhere else, surrounded by about five police agents who touched my breasts and put their fingers in my vagina," and that "one of them said to her 'bitch, how many position do you know? Answer me, whore,' [...] 'how do you perform oral sex?'" Then, "the police agent grabbed[her] hair and put his penis in [her] face," forcing her to perform oral sex on him. She recounted that "since he was unable to ejaculate, he ordered 'do it with your hand, whore.'" She explained that "when he was about to ejaculate, he obliged me to open my mouth and introduced his penis in it and ejaculated, which revolted me and I spit out the semen, staining my trousers," and all this time another agent was touching her breasts and a third was touching her vagina. Then a second agent "forced [her] to perform oral sex and to swallow the seminal liquid," and another two agents continued to fondle her, putting their fingers in her vagina; suddenly they lifted her up and shouted: 'now we're going to fuck you.'" She reported that she told them that she had her period, but "a police agent put his hand in and grabbed the towel and continued to penetrate [her] vagina, tearing [her] brassiere and panties." She recounted that a third police agent approached to force her to perform oral sex, but the other one yelled at him to leave her in peace and, for the rest of the journey, which lasted about five hours, she was forced to remain with her head down. She also stated that, during the journey they received death threats. She wanted to defend herself, but was afraid they would kill her.

88. *Angélica Patricia Torres Linares* indicated that she was put into a truck by someone who "gripped [her] left breast very hard and twisted [her] right hand back," while they insulted her. She recounted that they ordered her to put her hands behind her back and, as she had a sweater covering her head, her back, ribs and part of her left breast were left exposed, "a situation they took advantage of to continue hitting that part of [her] body with the end of a baton." She described how the bus "had curtains that they closed so that from the outside no one could see that the bus contained detainees" and that the journey lasted about five hours. Regarding what

happened during the journey, she recounted that she was beaten with batons, "they groped [her] whole body; they touched [her] breasts and buttocks and genitalia on top of [her] clothes," and as she tried to defend herself, they lifted her up and hit her buttocks hard. In addition, she narrated that she could hear the cries and entreaties of women who were being raped, as well as the sound of pornographic films. She recalled that they were told that "if they had one too many, they would make [her] disappear so as not to be accountable to anyone," and that they made several stops on the way, where she thought that some people disembarked from the bus.

89. *María Cristina Sánchez Hernández* indicated that the police placed her face down in the back of a truck and interrogated her while they hit her. She recounted that she was forced to sing and to tell obscene jokes, and was hit if she refused. She recalled that they "threatened" her with a pistol, telling her that when they arrived, "a reception committee was waiting." They also said: "why weren't you [...] at home, 'damn bitch,' and many other obscene things." She narrated that the police "began to grope [her], they put their hands on [her] breasts and between [her] legs," gripping her. In addition, she recounted that they stole her belongings and she saw how they forced another woman to perform oral sex.

90. *María Patricia Romero Hernández* was taken first to the Office of the Texcoco Assistant Attorney General and, during the journey, the police beat her whole body and, hit her back with a hand wrapped in a rag. When they arrived, the forensic physician on duty told her to "get undressed," which she refused to do, so he told her to put her arms and hands out and close her eyes; then a female police agent hit her back with a baton. She explained that the female agent said to her: "this will teach you a lesson, bitch," and that this was happening to her for being "aggressive." She described how, during her time in the Assistant Attorney General's Office, the police threatened her, saying "we're going to fuck you," "you're a bitch and don't deserve to live," "we're going to kill you," "we're going to rape you, you fucking bitch," all of this in the presence of her father and son. She stated that when she went to give her statement, they indicated that she had injured two police agents with a machete, and she responded that this was false. She indicated that, even though they assigned a defense lawyer to her, she had no contact with him, or information on her rights. She added that, they were taken from the Office of the Texcoco Assistant Attorney General to the Office of the Toluca Attorney General in a truck with their hands on their necks and without moving, all the time subjected to threats of being killed or disappeared. She recounted that on the way:

The police agents did whatever they wanted to me, and not just one, but several. Groping me, grasping my breasts, pulling my nipples, putting their hands between my legs, touching my genitalia, all of them abusing me [...]. And, since I was only a few meters from my son and my father, I had to be quiet [...] I thought that they might hear me, I was thinking about this all the time, I did not want my family to realize what was happening.

91. She added that, for a long time, she was unable to speak about what had happened "because [she] felt so ashamed and because [she] felt sullied." She recounted that an hour later they were taken out of the bus and the police continued to hit them until they entered the CEPRESO.

92. With regard to the transfers to the detention center on May 4, *Norma Aidé Jiménez Osorio* recounted that she "was pushed violently to the ground" and she heard the voice of female police agents saying: "hey, they're going to rape you soon, your life's worth nothing," a threat that was repeated several times. She stated that, on getting into the bus, she was forced to lie face down in the central aisle, and the agents kept on walking by and jumping over her back and head, saying that they "should be at home cooking instead of being out and about; that [they] were not thinking of [their] families or [their] children." She recounted that she was afraid that, at any

moment, they would rape her or kill her. She narrated that, later she was obliged to disembark and walk to a pick-up truck with "a white and navy blue image on the side; the kind that doesn't have a roof at the back." When she was in this vehicle, they hit her buttocks with something large and hard, and "the blows covered the whole of [her] buttocks," and, meanwhile, they were saying "whine, bitch, whine!" She recounted that "the person who was hitting [her], put his hand into [her] underwear, squeezed [her] buttocks and touched [her] anus" and that she covered herself with her hands, but the police took her hands away and put their fingers in her vagina, threatening to kill her and disappear her. She stated that, when the pick-up stopped, they put her sweater over her head, ordered her to bend down, pushed and shoved her towards a bus "with other police agents who [wore] a totally different [uniform], that was all black," and they forced her to climb into the bus. She recounted that, in this bus:

"A police agent uncovered the bottom half of my face, gripped my jaw firmly, put his tongue in my mouth and hurt me because he bit the inner part of my lower lip; I cried and some agents put their hands inside my blouse and squeezed my breasts and nipples; they lowered my trousers, they ordered me to take them off [...]; they pulled and tore my underwear and blouse; an agent put his fingers in my vagina and rubbed me, two more men did the same, and they put their fingers in my anus.

93. She recounted that "they took turns to do this and when they had finished, they invited others, and they all did it again." She stated that they took her to the back seat of the bus, ordering her not to get up, to keep her head down on her knees, and hit her on the head and back if she moved. She recalled that those on board the vehicle were piled one on top of the other and that, during the journey, they were beaten every twenty minutes or so, "as if just for amusement." She indicated that she heard men and women moaning, pleading not to be raped. She related that the journey took around three to four hours.

94. *Claudia Hernández Martínez* recounted that, on getting into the truck, she was thrown on a pile of people. They asked her where she lived, and when she said that she was from Tepito, one of the police agents shouted to the others: "hey, look, this bitch is from Tepito, let's warm her up," following which they punched her on the nose and this made her nose bleed. She recalled that one of the agents said: "we've got to give this bitch the wedgie," and "began to pull [her] panties"; on realizing that she was menstruating, he yelled to the others "look, this bitch is bleeding, let's dirty her a little more." She reported that he then introduced his fingers "violently and repeatedly in [her] vagina," and this was repeated by five other agents, while others held her down and took off her brassiere, licking her breasts and pulling her nipples. She recounted that another agent tried again to put his hand in her pants, but could not because she "jammed [herself] between [her] seat and the driver's seat"; consequently, he beat her. She indicated that the journey took around four hours, during which she was beaten and threatened with death and disappearance. Moreover, the women were told that "if we had been at home making tortillas this would not have happened to us; all the time, they made us feel guilty, to feel responsible for what had occurred."

95. *Mariana Selvas Gómez* indicated that, first, she was put into a pick-up where she was made to lie face down. She explained that they piled in more people and that she "was underneath and her body went numb" and she could not breath. As she was unable to move, they pulled her out of the truck and stood her up and continued beating the back of her knees and buttocks. She recounted that she was the last one to get into the truck and that they hit her with batons, they kicked her, pushed her, punched her, insulted her and covered her face with her jacket. She narrated that, when they made her get into the truck, "a police agent pushed [her] in with his hand on [her] buttocks, put his hand between [her] legs and rubbed [her] on top of [her] clothes," he pinched her buttocks, her vagina and even put his fingers in her vagina, causing her

"such irritation in the genital area that it resulted in a feeling of intense itching and burning." She added that, while he was doing this, he tried to undo her trouser, but on receiving a blow from the other agents who had continued to beat her, he withdrew his hand. They made her bend down, and an agent came up behind her and, while asking for her personal data, began to touch her breasts on top of her clothes, then put his hands inside her clothes, tore her brassiere and pinched her nipples, hurting her. She explained that they continued to ask for her personal data while insulting her and that, "as [she] was a woman, throughout the journey, they continually yelled: 'damn whore, bitch, murderer, damn Samaritan, rebel, we're going to fuck you [...], you think that because you're big we're not going to fuck you.'" She also stated that, during the journey "they threatened to disappear [her], to kill [her]."

96. *Georgina Edith Rosales Gutiérrez* indicated that she was taken to a van and, as she was unable to get in, they pushed her, struck her with a baton on the hands, shoulders, stomach, head and buttocks, and threw her in face down. She recounted that "one of the PFP agents [...] took her shoes and socks, and tried to pull her trousers down, but he was unable to do this and he tore them, leaving them on her hips." She heard another agent yelling to him: "fuck these bitches from behind to calm them down!" She added that someone said that more were coming and the agent who had tried to strip her said that "they had spoiled the party." She narrated that this agent "placed his hand between [her] buttocks, squeezed [her] vagina, pinched and hurt [her]; he also squeezed [her] breast under [her] shirt," threatening to kill her if she raised her head. She described how they began to pile people on top of her and that she felt she was suffocating while they continued to beat her legs with batons. Then, they pulled her out of the van, while continuing to hit her, and made her get into a bus, where she was forced to kneel in front of a seat with her head down, and had to travel for about five hours in this forced position. A female police agent asked for her personal data and told her: "you're going to die, slut, bitch, you're going to pay for the death of my companions." On disembarking from the bus, they "hit [her] with a closed fist and kicked [her] legs, thighs and buttocks with their boots."

97. *Suhelen Gabriela Cuevas Jaramillo* described how "the police pinched her whole body," and groped her breasts repeatedly, hurting her. She recalled that, on getting into the truck, "they yanked my trousers, injuring my buttocks"; then, "they piled us in, I was nearly at the bottom of the pile and was almost unable to breathe because I felt so many people on top of me," and then they began to hit us randomly. She recounted that, they sat her down and "yanked at [her] brassier leaving [her] breasts uncovered"; then, they began to pinch and bite her breasts again, yelling that she "was a whore and what was [she] doing there, and that [she] should go back home and make tortillas." She narrated that she felt "many hands trying to put their fingers into [her] vagina; they put their fingers in [her] vagina; they yelled at [her] 'bitch, you should be at home in the kitchen,'" and they repeated this action "numerous times because one group did it and then another." She added that one of the police agents realized that she was with her partner, because she was "trying to hold onto him or embrace him; so the agent said: 'that's how you fuck her, motherfucker?' while slapping her partner. She recounted that, later, they left her "with [her] trousers down," and they made her squat in front of a seat where they beat her "head and back" and, on seeing her tattoo, "they became enraged," saying that she must be a drug addict and hit her even harder. She also recalled that they put a backpack on her back that "felt as if it was full of heavy stones," and they left it there, and told her that they "were going to blow you up," which made her think that the backpack contained dynamite. She indicated that the journey lasted about four or five hours and, for the whole time, they hit her and constantly threatened to rape her and her mother. She also indicated that she could hear other women resisting sexual assaults.

98. *Bárbara Italia Méndez Moreno* indicated that during the transfer, her "hellish experience" began. She described how, when she got into the truck, she saw a large number of people lying

face down on the floor, piled up, that there was a strong smell of blood and that the state police walked on top of the people. She recounted that they put her in the back seat, on top of two other people and, there, with her leaning against the other people, they put their hands under her shirt, they tore off her brassiere, put their hands in her trousers and tore her panties, they broke the zipper and the button while lowering her trousers to her ankles, put her shirt over her head, while beating her body with batons, and pinching her nipples. She narrated that they began "to yell obscene expressions about [her] body, about [her] being a woman; they told [her] that this was happening because [she] had not stayed home to look after [her] children." She indicated that, while they were beating her buttocks, they yelled "whore, say I'm a cowboy, say I can ride you or I'll kill you; go on say it!" When she refused, the agent hit her harder until she said it; he then began to laugh and threatened to kill her.

99. She added that they penetrated her vagina with their fingers, saying, "You like this, whore, don't you? How will you not like it if you are a bitch; as soon as I finish with you, I'm going to kill you, I'm going to fuck your mother and I'll kill her also!" – all of this while she was leaning against two other people. Then, one of the agents turned to another and said: "Come here, shut this whore up; try her, this bitch enjoys it! It's true isn't it, whore, you enjoy it!" She recounted that the other agent approached, "turned her face down, touched [her] clitoris and repeatedly put his fingers in [her] vagina holding [her] by the neck." She recalled that, while this was happening, she could hear another woman crying out and pleading to them to stop assaulting her, because she suffered from asthma and could not breathe; but the police continued insulting and abusing the women. She said that this made her very nervous and she began to tremble, so the agent who was penetrating her yelled "Now you're trembling, bitch!" he turned her face up, hit her breasts with his fists, hit her stomach to make her open her mouth and put his tongue in. He then called a third agent who he referred to as "chief," saying to him: "Come and feel this whore." Two people held her hips and they lifted her to the height of the genitals of a third person who shouted that he knew who she and her family were and that he would kill all of them. That person asked her: "Do you fuck? Of course you fuck, you're a whore, I'm going to fuck you! I'm going to kill you," while the others "urged him on, saying – get it out, fuck her, we're going to kill her anyway!" She added that the agents pushed their genitals against her external genitalia and "they rubbed against [her], first one, then another, and then they repeated this," and in the course of the journey she was penetrated again, "but this time with a small, cold, hard object, with which they penetrated [her] vagina" and that she thought this could have been a key. Then, she was placed, naked, on the seat with her head down, her buttocks up, her back and abdomen against the people under her, and with her legs open in a "V" and forced to travel to the CEPRESO in that position. She recalled that, during the journey, she was "subjected to every type of beating; they also suffocated [her], and sat on [her] neck." She added that she could hear "other women were experiencing what [she] was experiencing," and that "they played with [her] mind" during the journey, because "they told people [...] and then stopped the bus and said that they had dropped off those who were dead," and that each time they made them count the people, the number decreased, which convinced her that they would kill her.

### **B.3 The arrival at CEPRESO**

100. The eleven women entered the CEPRESO on May 4, 2006. The admission records show that Yolanda Muñoz Diosdada entered with contusions to the head and left pelvis and various bruises; Ana María Velasco Rodríguez had pain in her back and the occipital region and it was concluded that she had "contusions"; María Patricia Romero Hernández had muscle and joint pains and indicated that she had been beaten by the municipal police force; María Cristina Sánchez Hernández had "multiple contusions"; Norma Aidé Jiménez Osorio had bruises and scratches; Mariana Selvas Gómez entered with an "injury to the left thigh"; Georgina Edith Rosales Gutiérrez had injuries and bruises; Suhelen Gabriela Cuevas Jaramillo had contusions to the thorax,

abdomen and extremities, and Bárbara Italia Méndez Moreno had “multiple contusions, a head injury and an injury from sexual abuse.” The case file does not contain the admission records of Angélica Patricia Torres Linares and Claudia Hernández Martínez.

101. According to their statements, the eleven women victims in this case were beaten and insulted when they arrived at this establishment. In particular, *Yolanda Muñoz Diosdada* described how one of the police agents said to them, “well, bitches, now you’ve come home, you won’t get out of here, not even in 20 years.”<sup>116</sup> She also recounted that the police pulled them out of the truck, pushed them, seized them by the hair; then, the police formed a barrier and, as the people passed by, they kicked their bodies and hit their heads with their fists, until they entered the prison. *Ana María Velasco Rodríguez* reported that “they pushed [her] head against a wall; they kicked [their] legs and feet and demanded [their] personal data.”<sup>117</sup> *Angélica Patricia Torres Linares* described how she was pulled out of the bus by her hair, and beaten with a baton; she even fainted and had to be carried. *María Patricia Romero Hernández* recounted that, as they passed by the wall of the CEPRESO on their arrival, they “were beaten against the wall,” “they seized [her] by the hair and hit [her] head against the wall.” Upon her arrival at CEPRESO, *María Cristina Sánchez Hernández* indicated that they “were kicked off the bus” and were told that “we had come home and would never leave that place.” *Norma Aidé Jiménez* recounted that, on arriving at the prison, she was pushed and ordered to keep her hands behind her and her head down, and not allowed to go to the bathroom for almost eight hours. *Bárbara Italia Méndez Moreno* indicated that she heard taunts and obscene expressions about her body and condition, which she described as “very hurtful, very painful.” *Mariana Selvas Gómez*, *Georgina Edith Rosales Gutiérrez* and *Suhelen Gabriela Cuevas Jaramillo* recounted how they continued to be beaten and insulted, and this only ceased, according to Mariana, when they reached the waiting room where “there were no more beatings.”

102. Regarding the sexual abuse suffered in the CEPRESO, *Angélica Patricia Torres Linares* recounted that, on entering, they were put into a room where they were ordered to stand against the wall with their arms up. She stated that a police agent who was behind her held her by the waist. She added that she “began to tremble when another agent passed by and yelled at him, ‘Hey, why aren’t you hitting her? Screw her, rape her!’”; so, they hit her in the ribs and the agent “touched [her] genital area and then put his hand inside [her] clothes, and [she] felt him touch her vulva with his fingers and then penetrate [her].” She clarified that she did not report this episode initially “because [she] was afraid and ashamed,” she only reported that she had been touched on top of her trousers, and that “the official who took note of this said that it was not important because it was not rape.” Meanwhile, *Claudia Hernández Martínez* recalled that, on entering the prison, the beatings continued; they were lined up and she was made to turn and see how they raped a male companion who was beside her, telling her that she would be next. She recounted that “a police agent pulled [her] hair and pushed [her] hard against the wall about six times”; he pulled and pinched her breasts, he pressed his hips against her and “placed a pointed object against [her] back,” threatening to kill her. He also tried to pull her trousers down, but stopped when so ordered by another agent.

103. The women were then stripped and examined, in some cases in front of other detainees. *Yolanda Muñoz Diosdada* added that “they entered a room where there were people who were already naked, men and women,” and where they were told to take off all their clothes. She

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<sup>116</sup> Similarly, Angélica Patricia Torres Linares indicated that they were “kicked out of the bus and told that “we had reached home and we would never leave that place.”

<sup>117</sup> In the same way, Bárbara Italia Méndez Moreno recounted that they were beaten while they were asked to provide their personal data.

explained that she "was naked in front of everyone, men, women. Then they examined you rapidly," and she underscored "the impression of seeing us all there together; some who were bleeding a lot, with injuries several centimeters long, their faces full of blood, their clothes also." *Georgina Edith Rosales Gutiérrez* recounted that she was obliged to undress in front of four doctors. *Gabriela Cuevas Jaramillo* narrated that she was told to undress, examined, told that she had no injuries, and taken to the dining hall. *Bárbara Italia Méndez Moreno* recalled that she was taken to a room where she was stripped and then taken to the prison dining hall, where she had to wait a long time for the medical examiner.

104. Regarding the medical care, *María Velasco Rodríguez* recounted that she told the forensic physician what had happened; however, he told her that there was nothing he could do because she had to report this to the Public Prosecution Service; furthermore, he did not perform a gynecological examination. *Angélica Patricia Torres Linares* realized that the forensic physician who examined her did not note down all her injuries, and she did not receive gynecological care. *María Cristina Sánchez Hernández* reported that she was treated by a doctor who sewed up an injury on her head without using anesthesia and gave her a pill for the pain. *Norma Aidé Jiménez Osorio* stated that they could not go to the bathroom for almost eight hours, which caused a strong stinging sensation; at around 11 p.m. she was taken to the prison clinic where a female doctor attended her and told her that she required treatment for her arm, but that they had no bandages and no way of taking x-rays or putting it in plaster. She also reported that she had vaginal irritation, but there were no gynecologists. She indicated that a doctor told her mockingly: "I will examine you, if you want, but I'm not a gynecologist." She added that the forensic physician told her that he could not put on record that she had been raped, because there was no gynecologist to certify this. *Claudia Hernández Martínez* indicated that she was taken to the infirmary in the early morning hours, where one of the doctors mocked and insulted her, saying: "I don't believe they touched you, fucking old radicals! Filth!" She added that the doctor did not perform a clinical examination and refused to give her gynecological treatment. Afterwards, she was taken to a forensic physician, but he did not give her treatment of any kind, even though she complained of a sensation of vaginal burning and itching. *Mariana Selvas Gómez* indicated that, when she was taken for a medical examination, she requested gynecological treatment because she had an itching sensation in her genitalia and irritation owing to the friction that had been applied, but the doctor told her that only general practitioners were present, and merely prescribed painkillers. *Georgina Edith Rosales Gutiérrez* recalled that, following the medical examination, they told her that she needed an x-ray because of the blows to her head, but they never took this. *Suhelen Gabriela Cuevas Jaramillo* recounted that, even though she arrived with bruising over her whole body, the doctor told her that nothing was wrong with her. *Bárbara Italia Méndez Moreno* stated that having to face the "violence of the doctors was truly devastating," because when she told them she needed medical care because of the sexual abuse, they refused to examine her or treat her. She indicated that the doctors put stitches in her head without cleaning it and without an aesthetic, which "really hurt her," and mocked her.

105. Several of the women refused to make a statement when they were taken to the offices of the Public Prosecution Service. *Ana María Velasco Rodríguez* pointed out that she was not told why she had been detained and was being kept incommunicado without being able to call her family or a lawyer. *María Cristina Sánchez Hernández* explained that, when she went before the agent of the Public Prosecution Service, she was not assisted by a public defender, she therefore reserved the right to declare. Similarly, *Norma Aidé Jiménez Osorio* explained that no one informed her why she was in that place and, when she indicated that she could not make a statement because her lawyer was not present, they responded that a public defender was present who would take her case and that she must make a statement, without explaining that she had the right to remain silent. She told them that she had that right and would not make a statement until her lawyer was present. *Claudia Hernández Martínez* indicated that, when they took her to

the offices of the Public Prosecution Service to make her statement, she refused until she had a lawyer; they told her that she had to sign a document saying that she was aware of the charges for which she had been detained. She refused to sign the document, saying that it was not true that she knew the charges, and they responded that, if she did not sign, they would not grant her the right to make a telephone call; so, finally she agreed to sign the document and, despite this, she was unable to make the call. *Mariana Selvas Gómez* also indicated that she reserved the right to make a statement, because the public defender was not advising her correctly. In addition, she explained that she was not allowed to call her family or her personal lawyer; that the representatives of the Public Prosecution Service did not identify themselves as such, and she was never informed of the reasons for her detention. *Georgina Edith Rosales Gutiérrez* indicated that she reserved the right to make a statement before the representatives of the Public Prosecution Service because they did not inform her of the offense she was accused of, and she was not allowed to report the abuse; also, even though she asked, she was not provided with defense counsel or allowed to make a telephone call. She added that, from the time of her detention, she was not given anything to eat or drink and when she tried to report the blows, threats and attempted rape by the police agents who had detained her, she was told that she would have to file that complaint once she had been released from the Center. *Suhelen Gabriela Cuevas Jaramillo* narrated that she had reserved the right to make a statement before the Public Prosecution Service because she had not been informed of the reason for her imprisonment. Lastly, *Bárbara Italia Méndez Moreno* described how she was not informed of the offense she was accused of and denied the presence of a lawyer. She stated that she told the authorities that she wanted to put on record that she had been raped and when they began to take her statement, a man arrived who appeared to be their superior, and seeing that she was making a complaint, he "took the paper out of the typewriter and tore it up," saying "you're going to reserve the right to make a statement like all of them."

#### **B.4 Medical examinations and expert appraisals performed on the women**

106. On May 5 and 6, 2006, ten of the eleven women were interviewed by CNDH personnel. Subsequently, the CNDH issued a medical certificate on the injuries, based on the examination conducted by its own forensic physicians, which recorded the following:

- a. *Yolanda Muñoz Diosdada*: several bruises that "correspond to direct blows delivered by hard blunt objects (batons, clubs, shields); based on the coloring [...] it can be established that they were produced approximately 24 to 48 hours previously, which is compatible with the day of the events";
- b. *Ana María Velasco Rodríguez*: direct blows delivered by hard blunt objects; based on the coloring, it could be established that they were produced approximately 24 to 48 hours previously, which was compatible with the day of the events;
- c. *Angélica Patricia Torres Linares*:<sup>118</sup> bruising consistent with direct blows delivered by hard blunt objects. It was also indicated that, based on the coloring, it could be established that this was produced approximately 24 hours previously, which was compatible with the day of the events. Regarding the indecent touching that she recounted, it was indicated that this "usually does not leave traces on the outside; however, the fact that there were no injuries does not exclude that it occurred." It was

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<sup>118</sup> On May 6, 2006, she was interviewed by CNDH personnel, to whom she initially said that her name was "Marisol Larios Carvajal." On May 12, 2006, she was again interviewed by CNDH personnel and, on that occasion, she identified herself as Angélica Patricia Torres Linares, explaining that she had given another name initially because she was afraid since, at the time of her detention, she had been recorded and photographed while being threatened that members of her family would be killed.

- also indicated that there was just one injury on both breasts "so that these cannot have been produced by squeezing because, if this had been the case, there would be injuries on the upper and lower part of the breasts, a situation that was not observed";
- d. *María Patricia Romero Hernández*: injuries consisting of skin abrasion and back pain produced by the impact of a blunt object on the body in the lumbosacral spine area;
  - e. *María Cristina Sánchez Hernández*: injuries consisting of a wound in the frontal region, diverse bruises and abrasions. It was also concluded that, in general, the bruising corresponded to direct blows delivered by hard blunt objects. Based on the coloring, it could be established that it corresponded to approximately 24 to 48 hours previously, which was compatible with the day of the events. The medical certificate also recorded that the injury to the scalp was the result of a blow with a hard blunt object applied with sufficient force to break the skin. It also indicated that the bruising and abrasions on the back of the right foot were compatible with those produced by pressure and friction by an irregular blunt object (a stamp of the foot), while the abrasion on the ear lobe was compatible with that produced by tearing earrings off violently;
  - f. *Norma Aidé Jiménez Osorio*: diverse abrasions and bruises, and that the injuries had been "produced by the impact of a blunt object on the body on several occasions";
  - g. *Mariana Selvas Gómez*: diverse bruises, consisting of direct blows, delivered by hard blunt objects; based on the coloring, it could be established that they were produced approximately 24 hours previously, which was compatible with the day of the events. Among other matters, the certificate indicated that "regarding finger penetration of the vagina, owing to lack of evidence and a suitable area to examine her, an examination was not performed and it was suggested [...] that if she wanted an inquiry to be opened into sexual abuse, this would require the relevant specialized personnel";
  - h. *Georgina Edith Rosales Gutiérrez*: bruising; it was concluded that this corresponded to direct blows delivered by hard blunt objects that, based on the coloring, had been produced from 24 to 48 hours previously, which was compatible with the day of the events.
  - i. *Suhelen Gabriela Cuevas Jaramillo*: existence of "direct blows, delivered by hard blunt objects" and the certificate indicated that, based on the coloring, it could be established that this corresponded to approximately 24 hours previously, which was compatible with the day of the events. Regarding the indecent touching, the CNDH indicated that, usually, this does not leave traces on the outside; however, she had abrasions on the left nipple and on the right areola, which, with a high degree of probability owing to the location, corresponded to injuries due to indecent touching. Similarly, it indicated that, the dimension of the abrasion on her right buttock could also correspond to same source, and
  - j. *Bárbara Italia Méndez Moreno*: bruising and a wound in the right parieto-occipital region, which corresponded to direct blows, delivered by hard blunt objects and, based on the coloring, it could be established that they corresponded to approximately 24 to 48 hours previously, which was compatible with the day of the events. The certificate added that there was a high degree of probability that, owing to its location and size, the bruising on the right breast, was compatible with "manual pressure." Regarding the finger and object penetration of the vagina, it indicated that, "owing to lack of evidence and a suitable area to examine her, an examination was not performed and it was suggested that if she wanted an inquiry to be opened into sexual abuse, this would require examination by personnel specialized in this area."

107. In addition, on May 4, 2006, the Office of the Attorney General of the state of Mexico (PGR) issued a medical certificate on the mental and physical condition and injuries of *Claudia Hernández Martínez*, in which it indicated that "she had swelling and bruising owing to blows on the left mastoid area; swelling and bruising owing to blows on the nasal dorsum without injury to

the bone; bruising from blows on the back upper third of the left arm; swelling from blows on the back of the upper third of the left arm; swelling owing to blows on the right lumbar region, and swelling owing to blows on the back upper third of the left thigh with surrounding bruising."

108. On May 5, 2006, CNDH personnel, including medical personnel, went to the CEPRESO to perform a gynecological examination of Claudia Hernández Martínez and Bárbara Italia Méndez Moreno. In both cases, it was indicated that "no lacerations or damage of any kind" had been found, and samples were taken to test for semen. That same day, the Office of the Attorney General of the state of Mexico issued a medical certificate with regarding to the examination of Bárbara Italia Méndez Moreno, samples were taken and, the following day, forensic chemistry testing was performed and it was concluded that semen was present.<sup>119</sup> In the case of Claudia Hernández Martínez, the PGR conducted the forensic medical examination on June 14, 2006, and concluded that the origin of the signs found could be due to contamination, and that "she showed no external traces of recent injuries."<sup>120</sup> In addition, on May 12, 2006, Ana María Velasco Rodríguez was again interviewed by CNDH personnel, following which a "chemical-toxicological" test was performed on her clothing by a forensic chemist, with a "negative result for the identification of prostatic acid phosphatase on both pieces of clothing." It was noted that "it was indicated that the clothing had been washed prior to the test."

109. On May 16, the CNDH went to the CEPRESO and documented that Bárbara Italia Méndez Moreno had been on hunger strike for five days, without any medical supervision by the prison authorities. CNDH personnel went to the CEPRESO on May 24, also, and documented that Norma Aidé Jiménez Osorio, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez and Suhelen Gabriela Cuevas Jaramillo had been on hunger strike since May 6 as a means of protest. Among other reasons, they were protesting the lack of medical care, in general, and gynecological care, in particular. They underlined that the CNDH had sent a gynecologist to check Bárbara Italia Méndez and he could have checked them also, but they had never been advised of this possibility.

110. On May 31, 2006, Suhelen Gabriela Cuevas Jaramillo was transferred to the gynecological-obstetric service of the Adolfo López Mateos Hospital in Toluca, where "it was determined that it was impossible to detect whether there had been sexual abuse and/or rape, [among other reasons] because [...] the possible rape [had] occurred 22 days previously."

111. In May and June 2006, the CNDH applied the Istanbul Protocol to seven of the eleven women, with the following conclusions:<sup>121</sup>

- a. *Yolanda Muñoz Diosdada*: signs characteristic of post-traumatic stress disorder, depression and fear were found and it was noted that "it is inferred that the said injuries were caused intentionally by third parties, without resistance by the aggrieved party and, owing to the type and location of the injuries, these are similar to those

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<sup>119</sup> Cf. Order on the constitutional time limit issued by the Fourth Criminal Trial Court of the Toluca Judicial District, of July 20, 2012 (evidence file, folio 10683), and forensic chemistry appraisal of May 6, 2006, performed on Bárbara Italia Méndez Moreno (evidence file, folio 8854).

<sup>120</sup> Also, on June 22, 2006, she had a gynecological appointment at the Sanatorio Vista Alegre. Among the reasons for the appointment, it was indicated that "she recounts that she was assaulted and abused by police on May 4 this year" and "indicates that she has symptoms of problems in the vaginal area, among others." On that occasion, she reported that, as she was menstruating – which lasted ten days – the male doctor refused to perform a gynecological examination and she was referred to a female forensic physician who did not examine her either and prescribed paracetamol. Among the findings, she was diagnosed with bacterial vaginosis, stress-related colitis, eating disorder, and symptoms of depression.

<sup>121</sup> On June 1, 2006, CNDH personnel provided psychological support to Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez and Suhelen Gabriela Cuevas Jaramillo during their gynecological examination.

- caused by acts of torture.”
- b. *Ana María Velasco Rodríguez*: it was concluded that she suffered from post-traumatic stress disorder and psycho-therapeutic treatment was recommended.
  - c. *María Patricia Romero Hernández*: it was concluded that the signs and symptoms were characteristic of post-traumatic stress disorder; therefore, psycho-therapeutic treatment was recommended.
  - d. *Norma Aidé Jiménez Osorio*: it was concluded that she had symptoms characteristic of post-traumatic stress disorder, depression and general anxiety; therefore, psycho-therapeutic treatment was recommended. In addition, at the request of the CNDH, the prison’s medical center performed a gynecological examination on June 1, 2006.
  - e. *Mariana Selvas Gómez*: it was concluded that she revealed a state of emotional stress, moderate depression and symptoms of post-traumatic stress disorder; therefore, psycho-therapeutic treatment was recommended.
  - f. *Georgina Edith Rosales Gutiérrez*: it was concluded that she suffered from post-traumatic stress disorder and psycho-therapeutic treatment was recommended.
  - g. *Suhelen Gabriela Cuevas Jaramillo*: it was concluded that she suffered from post-traumatic stress disorder and psycho-therapeutic treatment was recommended.

112. Similarly, between July and September 2006, the *Colectivo contra la Tortura y la Impunidad* (hereinafter “CCTI”) also examined seven of the eleven women: María Patricia Romero Hernández, Norma Aidé Jiménez Osorio, Claudia Hernández Martínez Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Suhelen Gabriela Cuevas Jaramillo and Bárbara Italia Méndez Moreno. With regard to all of them, it concluded that they suffered from post-traumatic stress, which was chronic in some cases, and also from different degrees of anxiety and/or depression; therefore, it recommended medical and psycho-therapeutic care by trusted professionals. In the case of María Patricia Romero Hernández and Bárbara Italia Méndez Moreno, it also underscored that, regarding the former, she had not had the appropriate medical tests for her initial injuries; while, with regard to Bárbara, it stressed that, although the tests carried out had been positive for semen, DNA testing had not been conducted in order to make the respective comparison.

### **B.5 The proceedings against the women**

113. Following their detention, the eleven women were brought before an agent of the Public Prosecution Service and, as a result, the following preliminary inquiries were opened: (i) preliminary inquiry TOL/MD/I/330/2006, in relation to Yolanda Muñoz Diosdada, Ana María Velasco Rodríguez and María Cristina Sánchez Hernández; (ii) preliminary inquiry TOL/MD/III/332/2006, in relation to Norma Aidé Jiménez Osorio, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, Angélica Patricia Torres Linares and Claudia Hernández Martínez, and (iii) preliminary inquiry TEX/AMOD/III/603/2006, in relation to María Patricia Romero Hernández. In the context of criminal case 96/2006, on May 7, 2006, Yolanda Muñoz Diosdada, Ana María Velasco Rodríguez, María Cristina Sánchez Hernández, Norma Aidé Jiménez Osorio, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, Angélica Patricia Torres Linares and Claudia Hernández Martínez were brought before the Second Criminal Trial Court accused of the offenses of attacks on highways and means of transportation, felony kidnapping, and organized crime. Also, under criminal case 95/2006, on May 4, 2006, María Patricia Romero was brought before the same court for the offenses of bearing a prohibited weapon, insults and malicious injury. On May 10, 2006, the said court issued an order on the constitutional time limit in which the eleven women were ordered to stand trial.

114. The eleven women were released between May 2006 and August 2008.<sup>122</sup> On May 13, 2008, an order to dismiss the proceedings, with the effects of an acquittal, was issued in favor of Yolanda Muñoz Diosdada, Ana María Velasco Rodríguez, María Cristina Sánchez Hernández, Norma Aidé Jiménez Osorio, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, Angélica Patricia Torres Linares and Claudia Hernández Martínez, because the 90-day time limit had passed without the Public Prosecution Service taking any action.<sup>123</sup> Also, on July 17, 2008, an order was issued to release Norma Aidé Jiménez Osorio<sup>124</sup> and Mariana Selvas Gómez<sup>125</sup> because there was no evidence to prosecute them. On May 24, 2011, an order was issued to release Claudia Hernández Martínez based on lack of evidence to prosecute her.<sup>126</sup> On August 27, 2008, an order to dismiss the proceedings, with the effects of an acquittal, was issued in favor Georgina Edith Rosales Gutiérrez, because the 90-day time limit had passed without the Public Prosecution Service taking any action.<sup>127</sup>

115. Meanwhile, on August 21, 2008, María Patricia Romero Hernández was convicted of insults and carrying a prohibited weapon, but was granted the benefit of commutation of her sentence.<sup>128</sup> On August 9, 2017, the conviction was annulled and she was declared to be innocent, after the Attorney General of the state of Mexico had filed a special appeal considering that the violations committed against her “had corrupted the whole proceeding.”<sup>129</sup>

### ***C. The domestic proceedings on the facts alleged to the detriment of the 11 women***

116. Following the events of May 3 and 4, 2006, non-jurisdictional investigations, and also criminal investigations were opened. Specifically, investigations were opened to document the facts by: (i) the National Human Rights Commission (CNDH), and (ii) the Supreme Court of Justice of the Nation (SCJN), and also criminal investigations by: (iii) the state jurisdiction of the state of Mexico, and (iv) the federal jurisdiction, through the Special Prosecutor for Crimes related to Acts of Violence against Women in the country (hereinafter “the FEVIM”).

#### **C.1 Investigation conducted by the CNDH**

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<sup>122</sup> Yolanda Muñoz Diosdada, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Ana María Velasco Rodríguez were released on May 13, 2006; Bárbara Italia Méndez Moreno was released on May 15, 2006; Claudia Hernández Martínez was released on January 26, 2007; Norma Aidé Jiménez Osorio was released on April 16, 2007; Mariana Selvas Gómez was released on April 30, 2007; Suhelen Gabriela Cuevas Jaramillo was released on June 2, 2007; Georgina Edith Rosales Gutiérrez was released on June 4, 2007, and María Patricia Romero Hernández was released on August 29, 2008. Cf. Brief of the State before the IACHR of March 24, 2015 (evidence file, folios 14405 and 14406). See also, Merits Report No. 74/15. Case 12,846. Merits. Mariana Selvas Gómez et al. v. Mexico, October 28, 2015 (merits file, folios 31, 34, 36, 39, 41, 44, 46, 49, 51, 53 and 55).

<sup>123</sup> Cf. Ruling of May 13, 2008, of the First Criminal Trial Court of the Texcoco Judicial District (evidence file, folios 42548 to 42558).

<sup>124</sup> Cf. Ruling of July 17, 2008, of the Texcoco First Collegiate Criminal Chamber (evidence file, folios 41500 to 41521).

<sup>125</sup> Cf. Ruling of July 17, 2008, of the Texcoco First Collegiate Criminal Chamber (evidence file, folios 41500 to 41521).

<sup>126</sup> Cf. Ruling of May 24, 2011, Sixth District Court of the state of Mexico (evidence file, folios 43265 to 43441).

<sup>127</sup> Cf. Ruling of May 13, 2008, of the First Criminal Trial Court of the Texcoco Judicial District (evidence file, folio 42549), and Ruling of August 27, 2008, of the First Criminal Trial Court of the Texcoco Judicial District (evidence file, folio 42601).

<sup>128</sup> Cf. Judgment of August 21, 2008, of the Third Criminal Trial Court of the Texcoco Judicial District (evidence file, folios 41949 to 42335).

<sup>129</sup> Judgment of August 9, 2017, of the First Unitary Criminal Chamber of the Texcoco Judicial Region (evidence file, folios 37594 to 37596).

117. On May 3, 2006, the CNDH<sup>130</sup> decided to open an investigation, *ex officio*, based on newspaper reports indicating "events that presumably violated human rights" during the confrontations in San Salvador Atenco and Texcoco on May 3, and then on May 4, 2006.<sup>131</sup>

118. In the context of this investigation, as of May 3, 2006, deputy inspectors and medical experts attached to the CNDH went to the site of the events, and also to the CEPRESO, to verify the situation and to locate and gather information and statements; they also obtained photographic evidence and video of the aggrieved parties, as well as of the site of the events and the homes that had been affected. The CNDH interviewed individuals who reported that they had been victims of abuse by the authorities, including the women presumed victims in this case. It gathered physical, documentary and expert evidence, and requested information from the public institutions involved (authorities of the government of the state of Mexico and of the federal Government). It documented the cases of 212 individuals affected by the events and found that "numerous acts that violated constitutional guarantees had been committed against 209 persons."<sup>132</sup>

119. On October 16, 2006, the CNDH issued its Recommendation 38/2006 addressed to the Federal Minister of Public Security and the Governor of the state of Mexico, among others.<sup>133</sup> In this Recommendation, the CNDH observed that state and federal authorities had committed a series of human rights violations during the operations.<sup>134</sup> It considered that "207 persons suffered cruel and/or degrading treatment," and some had also been subjected to torture; it also noted the sexual abuse of women, and urged the authorities to open the corresponding investigations in their respective spheres (federal and state). In particular, it noted that "the statements made by 26 women involved in the events reveal the perpetration of presumed conducts that violated their sexual freedom [...], which could constitute offenses such as sexual abuse and rape," and it concluded, based on the evidence gathered, "that such acts were committed systematically against at least 26 women detained and transferred to the [CEPRESO]."<sup>135</sup> In addition, the CNDH concluded that:

The attitude assumed by the authorities of the Federal Preventive Police, the state Security Agency, the Office of the Attorney General and the [CEPRESO], the last three part of the

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<sup>130</sup> The National Human Rights Commission (CNDH) is a State, public, autonomous and non-jurisdictional body for the defense and protection of human rights. Its mission is to protect, observe, promote, research and disseminate the human rights that are protected by the laws of Mexico and international treaties applicable to Mexico. When violations are confirmed, it has the authority to issue recommendations, which can include measures of restitution and, if appropriate, of measures to repair the harm and prejudice caused. These recommendations are not binding for the authorities concerned, which may or may not accept them. If they do not accept them, the authority in question may be held accountable before the Chamber of the Senate or, if this is not sitting, the Permanent Commission, or the legislators of the federative entities, pursuant to Articles 15 (X) and 46.3.a) of the Law on the CNDH, published in the Official Gazette of the Federation on June 29, 1992.

<sup>131</sup> Cf. Decision of the CNDH of May 3, 2006, signed by its President, José Luis Soberanes Fernández (evidence file, folio 1604).

<sup>132</sup> CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 28516, 28517, 28544 to 28549, 28552 and 28606).

<sup>133</sup> Cf. CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 28538 to 28543).

<sup>134</sup> In this regard, the CNDH indicated that: "the practices adopted during the operation implemented by the police units involved violated the fundamental rights of the persons detained owing to the acts of violence that took place on May 3 and 4, 2006. This, in itself, represents a violation of the State's obligation to ensure respect for the rights of everyone, and refers to the illegal detention, incommunicado, cruel, inhuman and/or degrading treatment, and torture to which they were subjected." CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folio 28574).

<sup>135</sup> CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 28527, 28561, 28576 and 28577).

government of the state of Mexico, by subverting the historical truth of the facts and, in some cases, denying this [...] entails an evasive and obstructive conduct by the personnel of the said authorities.<sup>136</sup>

120. With regard to the specific facts relating to the women in this case, the CNDH concluded that "it is presumed that the public servants of the municipal and state police forces, as well as of the Office of the Attorney General and of the Office of Public Defense in the state of Mexico violated the rights to physical integrity and personal safety, personal liberty, and legality and legal protection to the detriment of [Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Ana María Velasco Rodríguez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, María Cristina Sánchez Hernández and Angélica Patricia Torres Linares]."<sup>137</sup> The CNDH also concluded that, owing to the injuries suffered on being detained or during the transfer, "it is presumed that they were subjected to cruel and degrading treatment,"<sup>138</sup> and it also referred to the sexual abuse committed against them, indicating that "it is presumed that their sexual freedom [...] was violated."<sup>139</sup> Additionally, in the cases of Norma Aidé Jiménez Osorio and Bárbara Italia Méndez Moreno, the CNDH concluded, expressly, that it "presumes that rape occurred [...] by the police agents who were guarding them on board the truck when they were transferred from San Salvador Atenco."<sup>140</sup> Also, with regard to some of the women, the CNDH expressly indicated that, given the absence of an order from a competent authority, the detentions had been arbitrary.<sup>141</sup> Lastly, it also determined that a series of irregularities were committed in the preliminary inquiry opened against the women victims in this case.<sup>142</sup>

121. On October 26, 2006, Recommendation 38/2006 was sent to the First Criminal Trial Judge of the Tenango del Valle Judicial District and to the Second Criminal Trial Judge of the Toluca Judicial District, both of the state of Mexico, for incorporation into criminal cases 59/2006, 79/2006, 95/2006 and 96/2006.<sup>143</sup>

## **C.2 Investigation conducted by the SCJN**

122. On February 6, 2007, the SCJN decided to exercise its non-jurisdictional authority to investigate, granted by the Federal Constitution,<sup>144</sup> in relation to the events that had occurred on

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<sup>136</sup> CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 28538, 28605 and 28606).

<sup>137</sup> Cf. CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 29456, 29201, 29763, 29761, 29922, 29781, 30078, 30079, 28923, 29389, 29852 and 29996).

<sup>138</sup> Cf. CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 29458, 29203, 29763, 29923, 29783, 30081, 28925, 29391, 29853 and 29998).

<sup>139</sup> CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 29459, 29203, 29783, 30080, 30081, 28926, 29391 and 29998).

<sup>140</sup> Cf. CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 29203 and 29391).

<sup>141</sup> CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 29457, 30079, 28924, 29390, 29852 and 29997).

<sup>142</sup> Cf. CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 29459 to 29461, 29204 to 29206, 29764, 29924 to 29926, 29784, 29785, 30081 to 30083, 28926 to 28928, 29392 to 29394, 29854, 29855, and 29998 to 30000).

<sup>143</sup> Cf. Notice of the National Human Rights Commission (CNDH) published in *La Jornada* on October 26, 2006 (evidence file, folio 1606).

<sup>144</sup> According to the laws of Mexico in force at the time of the facts, the SCJN had specific authority to appoint a special commission to conduct inquiries into acts that constituted serious violations of any individual guarantee: "The Supreme Court of Justice of the Nation may appoint one or some of its members, or a district judge or circuit magistrate, or

May 3 and 4, 2006, understanding *prima facie* that they involved serious human rights violations.<sup>145</sup>

123. The SCJN set up a commission of inquiry composed of two justices<sup>146</sup> to investigate “the reasons for the violations that occurred on May 3 and 4, 2006, in the municipalities of Texcoco and San Salvador de Atenco; whether someone ordered them, and whether they were the result of a state strategy when the situation got out of hand, and of the deficient understanding of the situation, training of the police, etcetera.” However, owing to a subsequent amendment, this inquiry could “not refer to aspects related to either civil or legal forms of reparation for the violation of guarantees, or possible civil, criminal, administrative or political responsibilities.”<sup>147</sup> However, the SCJN noted that the individuals who had taken part in the events should be identified.<sup>148</sup>

124. The Commission of Inquiry opened a case file and conducted interviews, requested information from individuals connected to the events and third parties interested in supporting the inquiry.<sup>149</sup> On March 10, 2008, the Commission delivered its conclusions to the Plenary of the SCJN<sup>150</sup> and to 144 persons involved in the facts so that they could submit any observations or documentation they deemed pertinent.<sup>151</sup> On February 12, 2009, the Plenary of the SCJN delivered a ruling based on the report of the Commission of Inquiry, in which: (i) it established the background information and the way in which the operations of May 3 and 4, 2006, in Texcoco and San Salvador de Atenco had been executed; (ii) it concluded that “serious violations of individual guarantees had been committed”; (iii) it established the responsibility of the State for using law enforcement agents “excessively, disproportionately, inefficiently, unprofessionally and in a manner careless of respect for human rights”; (iv) it individualized those possibly responsible, without determining responsibility of any kind, and noted that “the competent

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designate one or several special commissioners, when it deems it appropriate or this is requested by the Federal Executive or one of the Chambers of the Congress of the Union, or the Governor of a state, solely to investigate any act or acts that constitute a serious violation of any individual guarantee. It may also request the Council of the Federal Judiciary to investigate the conduct of any judge or federal magistrate [...]. Constitution of the United Mexican States (in force in 2006), art. 97.2 (evidence file, folio 23156). This authority has been exercised infrequently and only in serious cases. *Cf.* Resolution on the request to exercise the authority to investigate of the SCJN of February 6, 2007 (evidence file, folios 1612 to 1614). Nowadays, this authority has been transferred to the CNDH. *Cf.* Decree amending the name of Chapter I of the First Title and amendment of diverse articles of the Constitution of the United Mexican States, dated June 10, 2011.

<sup>145</sup> *Cf.* SCJN judgment of February 12, 2009 (evidence file, folios 31341 to 31348), and Resolution on the request to exercise the authority to investigate of the SCJN of February 6, 2007 (evidence file, folio 1626).

<sup>146</sup> *Cf.* SCJN judgment of February 12, 2009 (evidence file, folio 31688), and Resolution on the request to exercise the authority to investigate of the SCJN of February 6, 2007 (evidence file, folio 1629).

<sup>147</sup> Initially, the Commission of Inquiry was also supposed “to rule on the forms of reparation” and “possible civil, criminal, administrative or political responsibilities.” Resolution on the request to exercise the authority to investigate of the SCJN of February 6, 2007 (evidence file, folios 1628 and 1629). However, subsequently, the Plenary issued General Decision 16/2007, which amended the powers of commissions of inquiry established under article 97 of the Constitution, so that they should “restrict [themselves] exclusively to the facts determined by the Plenary in the resolution deciding to appoint them,” and could not “adjudicate responsibilities, but only identify the persons who may have participated in the acts classified as serious violations of individual guarantees.” SCJN judgment of February 12, 2009 (evidence file, folios 31436 and 31437).

<sup>148</sup> *Cf.* SCJN judgment of February 12, 2009 (evidence file, folio 30659).

<sup>149</sup> *Cf.* SCJN judgment of February 12, 2009 (evidence file, folio 30668).

<sup>150</sup> *Cf.* SCJN judgment of February 12, 2009 (evidence file, folio 30660).

<sup>151</sup> The report was sent to 147 persons involved in the events. However, only 144 were notified, because one of them was deceased and it was impossible to find two others. *Cf.* SCJN judgment of February 12, 2009 (evidence file, folio 30671).

authorities [must determine] whether any other members of the police forces, commanders or rank and file, also committed serious violations of individual guarantees"; (v) it ordered that the list of those possibly responsible be forwarded to the entities with competence to investigate and sanction, and (vi) it ordered that all the municipalities in the Mexican State be advised of the standards for the use of force established in the said judgment, granting it interpretive value and establishing criteria applicable to the municipal authorities.<sup>152</sup> It also indicated that:

It has been determined, without identifying those who gave the orders and those who carried them out, that the authorities are attributed with participation in the events; [...] it is established that the roles played by authorities and officials who assembled on May 3 and authorized the use of law enforcement personnel cannot be determined [... nor the roles played by] those that assembled on May 3 and drew up the strategy for the use of force; [...] based on data from the investigations, specific individual roles played in the acts that constituted serious violations of individual guarantees can be established, and [...] it has been decided to establish criteria for the competent authorities to supplement the investigations in order to establish responsibilities.<sup>153</sup>

125. Furthermore, the SCJN considered that "the inquiry had gathered no evidence whatsoever establishing that the interventions and the use of force that occurred in those events had been agreed or ordered directly by the superiors of the head of the state Security Agency and of the Federal Preventive Police."<sup>154</sup> Nevertheless, according to the SCJN "it can be affirmed [...] that even though the violence was not ordered, it was *permitted and encouraged* and, to that extent, authorized, encouraged and endorsed."<sup>155</sup>

### **C.3 Investigations and criminal proceedings in the state of Mexico**

126. On May 9, 2006, the CNDH advised the Office of the Attorney General of the state of Mexico (PGJEM) of "the presumed acts consistent with abuse of a sexual nature perpetrated by police agents," in relation to the events that occurred on May 3 and 4, 2006, and, on this basis, preliminary inquiry TOL/DR/I/470/2006 was opened.<sup>156</sup> The next day, the PGJEM opened preliminary inquiry TOL/DR/I/466/2006,<sup>157</sup> in response to newspaper articles reporting injuries and sexual abuse during the operations of May 3 and 4, 2006, in Atenco, state of Mexico.<sup>158</sup> On May 11, the two preliminary inquiries were combined;<sup>159</sup> they included the complaints of, and interviews with, among others: Angélica Patricia Torres Linares, Bárbara Italia Méndez Moreno,

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<sup>152</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30679 to 30690, 30691 to 30754, 31349, 31353, 31354 to 31423, 31425, 31483 and 31484).

<sup>153</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 31485 and 31486).

<sup>154</sup> SCJN judgment of February 12, 2009 (evidence file, folio 31055).

<sup>155</sup> SCJN judgment of February 12, 2009 (evidence file, folio 31062).

<sup>156</sup> CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folio 28551).

<sup>157</sup> Cf. Order to constitute the First Criminal Trial Court in Toluca of October 15, 2014 (evidence file, folio 1637); Order on the constitutional time limit issued by the Toluca First Criminal Trial Court of October 18, 2014 (evidence file, folios 2485 and 2486), and Order on the constitutional time limit issued by the Toluca First Criminal Trial Court of October 21, 2014 (evidence file, folio 3485).

<sup>158</sup> Cf. Various newspaper articles dated May 8, 2006 (evidence file, folios 23164 to 23167).

<sup>159</sup> Order to constitute the Toluca First Criminal Trial Court of October 15, 2014 (evidence file, folio 1637); Order on the constitutional time limit issued by the Toluca First Criminal Trial Court of October 18, 2014 (evidence file, folio 2485 and 2486); Order on the constitutional time limit issued by the Toluca First Criminal Trial Court of October 21, 2014 (evidence file, folios 3485 and 3486), and Order on the constitutional time limit issued by the Toluca First Criminal Trial Court of October 27, 2014 (evidence file, folio 4386).

Ana María Velasco Rodríguez, Claudia Hernández García, Suhelen Gabriela Cuevas Jaramillo,<sup>160</sup> Yolanda Muñoz Diosdada, Mariana Selvas Gómez and María Cristina Sánchez Hernández.<sup>161</sup> Subsequently, on May 16, 2006, inquiry ZIN/I/718/2006 concerning the injuries and sexual abuse of Bárbara Italia Méndez Moreno and Claudia Hernández Martínez was received and incorporated.<sup>162</sup> Also, on May 19, 2006, the complaints of María Patricia Romero Hernández, Georgina Edith Rosales Gutiérrez and Norma Aidé Jiménez Osorio were received, and these were also added to preliminary inquiry TOL/DR/I/466/2006.<sup>163</sup>

127. According to information provided by the State, which was not contested by the representatives, between May 10 and August 9, 2006, the PGJEM requested and received documents from the institutions involved, namely: documents on the criminal proceedings instituted against the women, copy of the CNDH investigation, videos of the operation, and also medical certificates and information on the eleven petitioners in this case, among others. It also obtained statements from victims<sup>164</sup> and police, and inspected the trucks used for the transfer. Over the same period, the PGJEM provided reports on the investigation to various state and federal institutions, including: the CNDH, the Coordinator of Citizen Services of the government of the state of Mexico, the Unit for the Promotion and Protection of Human Rights of the Ministry of the Interior (federal), and the General Directorate of Human Rights and Democracy of the Ministry of Foreign Affairs.<sup>165</sup>

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<sup>160</sup> Suhelen Cuevas Jaramillo appears erroneously identified as "Selene" in the detailed records contained in the complaint filed before the PGJEM by the CNDH.

<sup>161</sup> Order on the constitutional time limit issued by the First Criminal Trial Court in Tenango del Valle of August 28, 2006 (evidence file, folios 4953 to 4967).

<sup>162</sup> Order to constitute the Toluca First Criminal Trial Court of October 15, 2014 (evidence file, folios 1638 and 1639); Order on the constitutional time limit issued by the Toluca First Criminal Trial Court of October 18, 2014 (evidence file, folio 2486 and 2487); Order on the constitutional time limit issued by the Toluca First Criminal Trial Court of October 21, 2014 (evidence file, folio 3487), and Order on the constitutional time limit issued by the Toluca First Criminal Trial Court of October 27, 2014 (evidence file, folio 4387).

<sup>163</sup> Cf. The State's brief before the Commission of October 15, 2012 (evidence file, folios 14333 and 14334).

<sup>164</sup> According to the information provided by the State, on May 5, 2006, the Human Rights Commission of the state of Mexico obtained the statements of Bárbara Italia Méndez Moreno, Ana María Velasco Rodríguez, Norma Aidé Jiménez Osorio, Claudia Hernández Martínez, Suhelen Gabriela Cuevas Jaramillo, Yolanda Muñoz Diosdada, Mariana Selvas Gómez and Cristina Sánchez Hernández; on May 12, 2006, Mariana Selvas Gómez, Suhelen Gabriela Cuevas Jaramillo, Cristina Sánchez Hernández, Claudia Hernández Martínez, Angélica Patricia Torres Linares, Bárbara Italia Méndez Moreno, Yolanda Muñoz Diosdada and Ana María Velasco Rodríguez gave statements before the Public Prosecution Service; on May 19, 2006, Norma Aidé Jiménez Osorio, Georgina Edith Rosales Gutiérrez and María Patricia Romero Hernández gave statements before the Public Prosecution Service; on May 30, 2006, Suhelen Gabriela Cuevas Jaramillo and Mariana Selvas Gómez expanded their statements; on June 13, 2006, Ana María Velasco Rodríguez gave her statement; on June 30, 2006, Suhelen Gabriela Cuevas Jaramillo expanded her statement; on July 4, Norma Aidé Jiménez Osorio expanded her statement; on July 26, Bárbara Italia Méndez Moreno gave a written statement and ratified this in person on August 1; on August 9, 2006, Claudia Hernández Martínez and Angélica Patricia Torres Linares gave written statements, and the same day ratified them in person. Cf. The State's brief before the Commission of July 27, 2010 (evidence file, folios 22126 to 22146); statement made by Ana María Velasco on June 13, 2006, before the agent of the Public Prosecution Service for ordinary offenses, Office of the Attorney General of the state of Mexico (evidence file, folios 1214 to 1215); statement made by Claudia Hernández Martínez on August 9, 2006, before the agent of the Public Prosecution Service for ordinary offenses, attached to the First Bureau of the General Directorate on Responsibility of the Office of the Attorney General of the state of Mexico (evidence file, folios 5012 to 5015), and statement made by Angélica Patricia Torres Linares on August 9, 2006, before the agent of the Public Prosecution Service for ordinary offenses, attached to the First Bureau of the General Directorate on Responsibility of the Office of the Attorney General of the state of Mexico (evidence file, folios 1505 to 1509).

<sup>165</sup> Cf. The State's brief before the Commission of July 27, 2010 (evidence file, folios 22126 to 22146).

128. On June 16, 2006, the PGJEM transferred part of the preliminary inquiry against seventeen (17) members of the state police and four (4) members of the municipal police to the First Criminal Trial Judge of the Tenango del Valle Judicial District, state of Mexico, and this gave rise to criminal case 59/2006 for the offense of abuse of authority against María Patricia Romero Hernández, her father and her son,<sup>166</sup> but the charges were declared to be unfounded (*infra* para. 134).

129. On March 8, 2007, the agent of the Public Prosecution Service for ordinary offenses, attached to the First Bureau of the General Directorate on Responsibility of the Office of the Attorney General of the state of Mexico stipulated that the preliminary inquiry should maintain the crime of torture in reserve,<sup>167</sup> pursuant to Article 116 of the Code of Criminal Procedure of the state of Mexico,<sup>168</sup> indicating that "no evidence has been gathered that [...] would establish the existence of perpetration of the crime of torture."<sup>169</sup>

130. Almost one year later, on February 11, 2009, the agent of the Public Prosecution Service authorized to combine the preliminary inquiries relating to the events that occurred on May 3 and 4, 2006, in Texcoco and San Salvador Atenco, again established this caveat.<sup>170</sup> On June 6, 2008, the PGJEM ordered that a technical and legal assessment be conducted of the actions taken in the preliminary inquiries. As a result of this, several irregularities were detected and the Internal Comptroller of the PGJEM and the Special Prosecutor for offenses committed by public servants were advised of this.<sup>171</sup>

131. On July 15, 2009, the PGJEM received preliminary inquiry AP/PGR/FEVIM/03/05-2006, because the FEVIM had waived jurisdiction in its favor<sup>172</sup> (*infra* para. 147).

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<sup>166</sup> Cf. The State's brief before the Commission of October 15, 2012 (evidence file, folios 14337 to 14339).

<sup>167</sup> Cf. CNDH Annual Report, 2007 (evidence file, folio 23133).

<sup>168</sup> Article 116 of the Code of Criminal Procedure of the state of Mexico indicates "Article 116. If the records in the case file of the procedures conducted by the agent of the Public Prosecution Service do not contain evidence that proves the elements of the *corpus delicti* and the probable responsibility of the accused so that the file can be forwarded to the jurisdictional organ, and it appears that other procedures cannot be conducted, but subsequently further information could be added in order to proceed with the inquiry, the judicial authority shall order that the case file be maintained in reserve until that information is obtained and, meanwhile, shall order the judicial police to conduct investigations to try and clarify the facts. The decision of the Agent of the Public Prosecution Service to maintain the inquiry in reserve shall be reviewed by the corresponding Assistant Regional Attorney, through the Agent of the Public Prosecution Service, Assistant to the Attorney General, to whom the case file shall be forwarded within 48 hours. The Agent of the Public Prosecution Service, Assistant to the Attorney General, shall prepare a draft resolution for the consideration and analysis of the Assistant Regional Attorney, who shall take a decision within the following 15 working days. This decision shall be notified to the plaintiff or complainant by the Agent of the Public Prosecution Service responsible for reviewing the file of the preliminary inquiry, on the day following that on which he receives the file from the Agent of the Public Prosecution Service, Assistant to the Attorney General." The State's brief before the Commission of October 15, 2012 (evidence file, folios 14339 and 14340).

<sup>169</sup> Decision of the Agent of the Public Prosecution Service attached to the First Bureau of the General Directorate on Responsibility of the Office of the Attorney General of the state of Mexico of March 8, 2007 (evidence file, folio 38767).

<sup>170</sup> Cf. The State's brief before the Commission of October 15, 2012 (evidence file, folio 14340).

<sup>171</sup> Cf. The State's brief before the Commission of October 15, 2012 (evidence file, folios 14340 and 14341).

<sup>172</sup> Cf. FEVIMTRA communication C/DAP/2218/2009, received on July 15, 2009 (evidence file, folio 5021); Order to constitute the First Criminal Trial Court in Toluca of October 15, 2014 (evidence file, folios 1642 and 1643); Order on the constitutional time limit issued by the Toluca First Criminal Trial Court of October 18, 2014 (evidence file, folio 2490), and Order on the constitutional time limit issued by the Toluca First Criminal Trial Court of October 27, 2014 (evidence file, folios 4390 and 4391).

132. On October 8, 2009, the eleven women asked to be recognized as interveners and as representatives of members of the Center Prodh in the preliminary inquiry. They also asked that the thirty-four (34) state police agents be located so that they could be brought to justice as those probably responsible.<sup>173</sup>

133. In light of the SCJN investigation (*supra* para. 122 and *ff.*), on March 11, 2010, the PGJEM Assistant Attorney General forwarded the inquiries related to the case to the General Directorate for Inspections to be continued and for a decision on the following steps. The General Directorate for Inspections carried out a legal study of the investigation file and returned it on June 1, 2010, ordering the reactivation of the criminal proceedings and proposing a series of procedures.<sup>174</sup> On September 22, 2010, the Special Working Group for the Atenco Case (GETCA) was established to act in the context of this preliminary inquiry. The GETCA addressed a series of official communications to other authorities, as proposed by the General Directorate for Inspections, and obtained some statements from the state police. Between September 2010 and September 2011, the investigation was active and conducted the proposed procedures.<sup>175</sup>

### C.3.1 Criminal case 59/2006 (relating to María Patricia Romero Hernández)

134. On June 16, 2006, criminal case 59/2006 was instituted against seventeen (17) members of the state police and four (4) members of the municipal police for the offense of abuse of authority against María Patricia Romero Hernández, her father and her son (*supra* para. 128). On June 19, 2006, an arrest warrant was issued, and on June 30, 2006, a formal order of imprisonment was ordered.<sup>176</sup> However, following several legal remedies, the charges were declared to be unfounded with regard to some of the police agents, owing to insufficient evidence, while others were acquitted.<sup>177</sup>

### C.3.2 Criminal case 418/2011-55/2013<sup>178</sup> (relating to the other ten women)

135. On September 14, 2011, the PGJEM Public Prosecution Service identified and requested arrest warrants for twenty-nine (29) state police agents,<sup>179</sup> based on their probable responsibility by omission for crimes of torture, abuse of authority and injuries perpetrated against twelve (12)

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<sup>173</sup> Cf. Brief of the eleven women before the Public Prosecution Service of October 8, 2009 (evidence file, folios 5017 to 5019).

<sup>174</sup> The lines of investigation and methodology proposed by the General Directorate for Inspections consisted of: requesting lists of the police agents who had taken part in the operation and the personnel working at the CEPRESO on May 3 and 4, taking their photographs and recording them; questioning them; questioning the authorities involved as to whether they had initiated any administrative procedure against any public servant based on these facts; carrying out medical and psychological appraisals of the victims who had reported torture; providing treatment to the victims; obtaining newspaper articles for May 2006, and adding the SCJN judgment published in September 2009 to the investigation. Cf. The State's brief before the Commission of October 15, 2012 (evidence file, folios 14344 to 14347).

<sup>175</sup> Cf. The State's brief before the Commission of October 15, 2012 (evidence file, folios 14344 to 14361).

<sup>176</sup> Cf. The State's brief before the Commission of October 15, 2012 (evidence file, folios 14337 to 14339).

<sup>177</sup> Cf. Decision of the First Criminal Trial Court of Tenango del Valle of January 9, 2008 (evidence file, folios 41522 to 41948). See also, The State's brief before the Commission of October 15, 2012 (evidence file, folios 14337 to 14339).

<sup>178</sup> According to the information provided by the State, "criminal case 418/2011 is the same as criminal case 55/2013, because, on May 2, 2013, the Fourth Criminal Trial Court was merged with the First Criminal Trial Court of Toluca, and criminal case 418/2011 was heard by the First Court as case 55/2013." Brief of the State of September 12, 2018 (merits file, folios 2197 and 2198).

<sup>179</sup> Cf. The State's brief before the Commission of October 15, 2012 (evidence file, folios 14312 and 14361).

women, ten (10) of them involved in this case,<sup>180</sup> and requested measures of reparation for these individuals.<sup>181</sup>

136. On September 27, 2011, the Fourth Criminal Trial Court of Toluca (hereinafter, "the Fourth Criminal Court of Toluca") decided that the Public Prosecution Service's request lacked legal grounds and substantiation with regard to the crimes of torture, abuse of authority and personal injuries because there was "inconsistency and a lack of clarity with regard to the [three] offenses"; consequently, it refused to issue the arrest warrant against the twenty-nine police agents.<sup>182</sup> On February 17, 2012, the PGJEM Public Prosecution Service corrected the criminal case against the twenty-nine police agents and again requested their arrest.<sup>183</sup> After postponing the decision owing to the dimensions of the case,<sup>184</sup> on April 9, 2012, the Fourth Criminal Court of Toluca again refused to issue the requested arrest warrants considering that the purpose of the acts had not been proved, in order to classify them as torture.<sup>185</sup> Following an appeal by the Public Prosecution Service on April 12, 2012,<sup>186</sup> on July 17, 2012, the Toluca First Collegiate Criminal Chamber of the Superior Court of Justice of the state of Mexico confirmed the refusal to issue the arrest warrant against twenty-six state police agents and issued arrest warrants against the three police agents responsible for the three trucks, who had the obligation to supervise and regulate the conduct of the others, because they appeared to be those probably responsible for perpetrating the crime of torture against Ana María Velasco Rodríguez, Yolanda Muñoz Diosdada, María Cristina Sánchez Hernández, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, Claudia Hernández Martínez, Norma Aidé Jiménez Osorio, Angélica Patricia Torres Linares and another two women who are not part of this case.<sup>187</sup>

137. On March 22, 2013, it was decided to dismiss the case against the twenty-nine state police agents initially accused of the offenses of abuse of authority and injuries, and also the case against the twenty-six agents for whom arrest warrants for the crime of torture had not been

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<sup>180</sup> María Patricia Romero Hernández does not appear as a possible plaintiff in this case. *Cf.* Indictment (evidence file, folios 5020 to 5024), and Order to constitute the First Criminal Trial Court in Toluca of October 15, 2014 (evidence file, folios 1633 to 2481).

<sup>181</sup> *Cf.* Order to constitute the First Criminal Trial Court in Toluca of October 15, 2014 (evidence file, folios 1643 to 1648); indictment of September 14, 2011, of the Agent of the Public Prosecution Service (evidence file, folios 5295, 5345, 5376, 5413, 5448, 5469, 5540, 5541, 5607 to 5609, 5662 to 5672), and communication 2131700040/240/2011 of the Public Prosecution Service of the PGJEM dated September 14, 2011 (evidence file, folio 5673 to 5680).

<sup>182</sup> Specifically, it indicated that the Public Prosecution Service "unduly divides up the definition of the offense because the crime of torture has a purpose, which is not to harm the victims; rather the purpose to obtain from the victims certain acts that harm them" and the purpose of torture is "to obtain from a defendant or from a third party: (a) a confession (b) information about a fact; (c) omission of an act; (d) any other conduct," and that obtaining this harms the person. Order of the Fourth Criminal Trial Court of the Toluca Judicial District of September 27, 2011 (evidence file, folios 5705 to 5727).

<sup>183</sup> *Cf.* Brief of the Public Prosecution Service of the PGJEM with the corrected criminal case and requesting arrest warrants of February 17, 2012 (evidence file, folios 5730 and 5731).

<sup>184</sup> *Cf.* Order of the Fourth Criminal Trial Court of the Toluca Judicial District of February 23, 2012 (evidence file, folios 6629 to 6631).

<sup>185</sup> *Cf.* Order of the Fourth Criminal Trial Court of the Toluca Judicial District of April 9, 2012 (evidence file, folios 6924 to 6939, 7022 to 7048, 7184 to 7216).

<sup>186</sup> Appeal filed by the Public Prosecution Service of the PGJEM on April 12, 2012 (evidence file, folio 7218); Order of the Fourth Criminal Trial Court of the Toluca Judicial District of April 16, 2012 (evidence file, folio 7221), and Order to constitute the First Criminal Trial Court in Toluca of October 15, 2014 (evidence file, folio 1648).

<sup>187</sup> *Cf.* Ruling of the Toluca First Collegiate Criminal Chamber of the Superior Court of Justice of the state of Mexico of July 17, 2012 (evidence file, folios 7813 to 7815 and 7835 to 7838) and Communication 1618 of the First Collegiate Criminal Chamber of Toluca of the Superior Court of Justice of the state of Mexico of July 17, 2012 (evidence file, folios 7842 to 7844).

issued.<sup>188</sup> The Public Prosecution Service appealed this decision.<sup>189</sup> On July 10, 2013, the Appeals Court revoked the dismissal with regard to the crime of torture and confirmed it for the offenses of abuse of authority and injuries.<sup>190</sup> On July 10, 2014, the Public Prosecution Service corrected the criminal case against the twenty-six police agents against whom the arrest warrants had not been issued for the crime of torture perpetrated against twelve (12) women, ten (10) of whom are part of this case, and requested arrest warrants against them.<sup>191</sup> On September 17, 2014, arrest warrants were issued for twenty-six police agents under criminal case 55/2013 (previously 418/2011), being heard by the First Criminal Trial Court of the Toluca Judicial District (hereinafter, "the First Criminal Court of Toluca")<sup>192</sup>.

138. According to the most recent information provided by the State, in the context of the criminal case sixteen (16) of the arrest warrants have been executed and ten (10) are pending. Also, of the twenty-nine individuals charged in the case, a formal order of preventive detention has been issued against eighteen of them.<sup>193</sup> Some of the police agents have filed applications for amparo against the arrest warrant or the order of preventive detention. Of these applications, some have been decided unfavorably, denying the amparo, and others are pending a decision.<sup>194</sup> When deciding these applications for amparo, the courts have determined, in exercise of control of conventionality, that the crime of torture is not subject to a statute of limitations.<sup>195</sup> Furthermore, the State has reported that "the PGJ asked the district courts and the Council of the

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<sup>188</sup> Cf. Order to constitute the First Criminal Trial Court in Toluca of October 15, 2014 (evidence file, folios 1652 to 1658).

<sup>189</sup> Cf. Order to constitute the First Criminal Trial Court in Toluca of October 15, 2014 (evidence file, folios 1658 to 1660).

<sup>190</sup> Cf. Order to constitute the First Criminal Trial Court in Toluca of October 15, 2014 (evidence file, folios 1658 to 1660).

<sup>191</sup> Cf. PGJEM brief correcting the criminal case of July 10, 2014 (evidence file, folios 8526 and 8527).

<sup>192</sup> Cf. The State's report on compliance with the recommendations of the Merits Report of September 5, 2016 (evidence file, folios 24617 to 24629).

<sup>193</sup> Cf. The State's report on compliance with the recommendations of the Merits Report of September 5, 2016 (evidence file, folio 30498).

<sup>194</sup> Regarding the arrest warrants, the State reported that 13 police agents had filed an application for amparo, and it had been denied in all 13 cases; of these 13, two agents filed appeals for review, which are pending a decision. Regarding the order for preventive detention, of the 18 police agents committed to trial, seven filed appeals and these are pending a decision, and four filed applications for amparo which were denied. Of those four, one filed an appeal for review, which is pending a decision. The State also reported that, of the 18 agents committed to trial, two filed an application for amparo against the precautionary measure issued against them; of these, one was dismissed and the other granted. Cf. The State's report on compliance with the recommendations of the Merits Report of September 5, 2016 (evidence file, folios 30501 to 3509), and brief of the State dated October 30, 2017, addressed to the Miguel Agustín Pro Juárez Human Rights [PRODH] Center (evidence file, folios 38182 to 38189).

<sup>195</sup> The State did not provide this decision. However, it reported that "to counteract the prescription of the crime of torture established in the criminal laws of the state of Mexico, the PGJ argued, among other matters, that "the judicial authorities have the obligation to exercise control of conventionality when examining a specific case" and that, "as established in the consistent case law of the Inter-American Court, [...] the crime of torture [...] is not subject to a statute of limitations"; therefore, "if an individual who is probably responsible for the crime of torture in its different forms is identified, the judge of the case would need to determine that the crime is not subject to a statute of limitations and thus examine the merits of the matter." According to the State, this argument was recognized by the domestic courts and this "made it possible to identify all the officials who could have had some degree of participation in the sexual abuse to which the victims in this case were subjected." The State's report on compliance with the recommendations of the Merits Report of September 5, 2016 (evidence file, folios 30516 and 30517).

Federal Judiciary's Commission on the Creation of New Organs to consolidate the amparos in a federal court of Toluca," and this was accepted.<sup>196</sup>

139. In August 2016, the State prepared a work plan for the investigation of the case under which it was proposed to summon victims who were on board the trucks and police agents who took part in the transfer of the detainees and the onward journey; to expand the criminal action against the 28 police agents on behalf of other victims, and to forward the Merits Report to the PGR, insofar as "it establishes the presumed participation of federal public servants in the facts."<sup>197</sup>

140. Also, according to information provided by the State, twenty-four (24) officials received administrative sanctions.<sup>198</sup>

### C.3.3 Case 166/2014 (relating to the eleven women presumed victims in this case)

141. On September 12, 2014, the PGJEM requested arrest warrants against ten (10) doctors from the Prevention and Social Rehabilitation Service and eleven (11) forensic physicians, owing to omissions when confronted by complaints and indications of torture, as well as an agent of the state Public Prosecution Service owing to his possible responsibility by omission for the crime of torture committed against the eleven women and two more who are not part of this case.<sup>199</sup> These arrest warrants were issued on October 10, 2014.

142. According to the most recent information provided by the State, at the date this judgment is delivered, it had obtained twenty-two (22) arrest warrants, ten (10) of which had been executed, and twelve (12) resulted in voluntary appearances before the court.<sup>200</sup> According to the State, of the twenty-one (21) doctors prosecuted, five (5) appealed the order of imprisonment, and their appeal is pending a decision. Another five (5) applied for amparo, and this was granted while the judge of the case determined whether an offense had been committed. In light of this, the Public Prosecution Service filed an application for amparo against the order of preventive detention, which was granted only until a new ruling had been made, but this was also an order for preventive detention; consequently, it filed an appeal for review, which is pending a decision. Also, in compliance with a final decision, the judge of the case issued five release orders owing to

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<sup>196</sup> The State explained that the measure was taken "in order to avoid contradictory decisions and to ensure that they were decided promptly." The State's report on compliance with the recommendations of the Merits Report of September 5, 2016 (evidence file, folio 30518).

<sup>197</sup> Work Plan for the investigation of Case No. 12,846 Mariana Selvas *et al.*" Annex 1 to the Mexican State's fifth report on compliance of August 2, 2016 (evidence file, folios 24535 and 24536).

<sup>198</sup> *Cf.* The State's report on compliance with the recommendations of the Merits Report of September 5, 2016 (evidence file, folios 30533 and 30534).

<sup>199</sup> *Cf.* Order on the constitutional time limit issued by the Toluca First Criminal Trial Court of October 18, 2014 (evidence file, folios 2490 to 2492); Order on the constitutional time limit issued by the Toluca First Criminal Trial Court of October 21,, 2014 (evidence file, folios 3491 and 3492), Order on the constitutional time limit issued by the Toluca First Criminal Trial Court of October 27, 2014 (evidence file, folios 4391 and 2492), and the State's brief of March 24, 2015 (evidence files, folios 14444 and 14445).

<sup>200</sup> *Cf.* Report of the Prosecutor General of the state of Mexico of October 31, 2017 (evidence file, folios 38187 to 38189), and The State's report on compliance with the recommendations of the Merits Report of September 5, 2016 (evidence file, folio 30509).

a lack of evidence to prosecute, subject to the legal reservations. In response, the Public Prosecution Service filed an appeal which is pending a decision.<sup>201</sup>

#### C.3.4 Criminal case 105/2016

143. On July 1, 2016, a criminal action was filed against the Deputy Director for Southern Region Operations of the state Security Agency for the crime of torture committed against Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, Claudia Hernández García, Norma Aidé Jiménez Osorio and Angélica Patricia Torres Linares, because he was in charge of the buses and other vehicles in which they were transferred on May 4, 2006.<sup>202</sup> On July 29, 2016, the judge refused to issue the arrest warrant requested by the PGJEM; therefore, the PGJEM filed a remedy of appeal.<sup>203</sup> On January 5, 2017, the PGJEM provided new evidence and requested an arrest warrant for the accused. On May 11, 2017, el Judge decided to deny the requested arrest warrant. The PGJEM filed a remedy of appeal against this decision.<sup>204</sup> At the date of this judgment, the Court's case file does not record whether these appeals have been decided.

#### C.3.5 Criminal case 79/2006 (relating to Ana María Velasco Rodríguez)

144. On August 28, 2006, the First Criminal Trial Court in Tenango del Valle, state of Mexico, in the context of criminal case 79/2006, issued an order for preventive detention against a state police agent for the offense of lewd acts<sup>205</sup> against the sexual freedom of Ana María Velasco Rodríguez.<sup>206</sup>

145. On October 25, 2007, it was decided to close the pre-trial proceedings and, on May 2, 2008, the judgment was notified convicting the state police agent for his criminal responsibility in the perpetration of the offense of lewd acts against Ana María Velasco Rodríguez, imposing a prison sentence of three years, two months and seven days and a fine of 1,877.80 Mexican pesos.<sup>207</sup>

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<sup>201</sup> Cf. Report of the Prosecutor General of the state of Mexico of October 31, 2017 (evidence file, folios 38187 to 38189), and the State's report on compliance with the recommendations of the Merits Report of September 5, 2016 (evidence file, folios 30510 to 30513).

<sup>202</sup> Cf. Work Plan for the investigation of Case No. 12,846 Mariana Selvas *et al.* Annex 1 to the Mexican State's fifth report on compliance of August 2, 2016 (evidence file, folio 24532); The State's report on compliance with the recommendations of the Merits Report of September 5, 2016 (evidence file, folio 30528). Also, according to the State, the other individual identified in the chain of command, who was the Deputy Director, died on February 17, 2011. In this regard, the State indicated that this meant that the PGJEM had filed charges against all those identified opportunely by the SCJN as the superior officers who were in command of the operation and whose omissive conduct had been presumptively established (evidence file, folios 30529 and 30530).

<sup>203</sup> Cf. The State's report on compliance with the recommendations of the Merits Report of September 5, 2016 (evidence file, folio 30529).

<sup>204</sup> Cf. The State's brief dated October 30, 2017, addressed to the Miguel Agustín Pro Juárez Human Rights Center (evidence file, folio 38189).

<sup>205</sup> Article 270 of the Criminal Code of the state of Mexico, in force at the time, establishes: "Anyone who, in the absence of consent by a person who has reached puberty, shall execute an erotic sexual act on that person, without the direct or immediate purpose of intercourse, shall be sentenced to six months' to two years' imprisonment. [...] If physical or moral violence is also used, the sentence shall be increased by a further one to four years' imprisonment." Order on the constitutional time limit issued by the First Criminal Trial Court in Tenango del Valle, state of Mexico, of August 28, 2006 (evidence file, folio 4955).

<sup>206</sup> Cf. Order on the constitutional time limit issued by the First Criminal Trial Court in Tenango del Valle, state of Mexico, of August 28, 2006 (evidence file, folio 5008), and the State's brief before the Commission of July 27, 2010 (evidence file, folio 22139).

<sup>207</sup> Cf. The State's brief before the Commission of October 15, 2012 (evidence file, folios 14335 and 14336).

However, he filed an appeal and, subsequently, filed an application for amparo, under which an order was issued to amend the judgment,<sup>208</sup> and this resulted in the final judgment being an acquittal, based on the lack of credibility of the identification made by Ana María Ana María Velasco Rodríguez. Specifically, that court indicated that the statement made by Ana María Velasco Rodríguez recognizing her assailant was:

Inadmissible because it conflicted with her initial statements [...] to which preponderant probative value is accorded because they were made with the proper immediacy and in which the passive subject categorically stated that she was unable to see the face of her assailants, [...] because she could only see the police agents who helped her [...] and, subsequently, she affirms that she did see the face of the accused; when she was shown his photograph, she indicated him decisively, without equivocation. Therefore, these inconsistencies detract from the convictive value of the accusation [...] and even though she has persisted in indicating him [...] there is no duly substantiated justification for the change she made in her initial version.<sup>209</sup>

#### **C.4 Preliminary inquiry at the federal level before the FEVIM**

146. On May 15, 2006, the Special Prosecutor for Crimes involving Acts of Violence against Women (FEVIM)<sup>210</sup> opened preliminary inquiry AP/FEVIM/003/05-2006 at the federal level for the probable perpetration of various offenses against women detainees.<sup>211</sup> Subsequently, on May 16, 2006, the Center Prodh filed a formal complaint before the FEVIM for sexual abuse and human rights violations committed in the context of the operations of May 3 and 4, 2006, on behalf of Claudia Hernández Martínez, Suhelen Gabriela Cuevas Jaramillo, Mariana Selvas Gómez, Yolanda Muñoz Diosdada, Bárbara Italia Méndez Moreno and two more women. This complaint was expanded on May 26, 2006, to include Ana María Velasco Rodríguez and three women who do not form part of this case.<sup>212</sup>

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<sup>208</sup> Cf. Ruling of February 9, 2009, of the First collegiate Criminal Court of the Second Circuit domiciled in the state of Mexico (evidence file, folios 23276 and 23277).

<sup>209</sup> Thus, the court considered that, "several inconsistencies are noted in the content of the offended party's statements, such as that, when testifying before the investigating authority on May 4 [...], she had the opportunity to inform the investigating authority of the sexual abuse [...] but, nevertheless, she decided not to do so; it was only on May 5 [...] that she stated that, on May 3 [...], during the transfer several police agents had demanded that she perform oral sex and others had groped her. [...] However, she did not identify the agent she now accuses [...] despite only two days having passed since the events took place; therefore, the events were still very recent and she could recount them in detail, but she did not do so; and this was repeated when she came forward [...] on May 12 [...] and stated that [...] she did not know to which police force the agents she complained about belonged and she could not see the faces of those who forced her to perform oral sex [...], and this statement clearly proves that the passive party cannot identify her assailants [...]; that although it is true that [...], on May 25 [...], she stated that while she was being sexual abused she remained with her eyes closed and [...] [then] was able to open her eyes and could see the two police agents who helped her and can recognize them, at no time did she state that she had seen her assailant; and it was only on June 13 [...], when making a written statement and having seen the photographs of the [state] police agents [...] that she recognized the active party, without equivocation as the person who forced her to perform oral sex." Judgment of the Superior Court of Justice of the state of Mexico, Second Unitary Criminal Chamber of Toluca, of February 18, 2009 (evidence file, folios 41479 to 41481).

<sup>210</sup> Currently, this office is entitled the Special Prosecutor for Violent Crimes against Women and Human Trafficking (FEVIMTRA).

<sup>211</sup> Cf. Order to constitute the First Criminal Trial Court in Toluca, Mexico of October 15, 2014 (evidence file, folio 1638); Order on the constitutional time limit issued by the First Criminal Trial Court in Toluca, Mexico of October 18, 2014 (evidence file, folio 2486); Order on the constitutional time limit issued by the First Criminal Trial Court in Toluca, Mexico of October 21, 2014 (evidence file, folio 3486), and Order on the constitutional time limit issued by the First Criminal Trial Court in Toluca, Mexico of October 27, 2014 (evidence file, folio 4387).

<sup>212</sup> Cf. Complaints filed by the Center Prodh before the FEVIM on May 16 and 26, 2006, (evidence file, folios 8529, 8530 and 8536).

147. The FEVIM conducted various procedures,<sup>213</sup> including receiving the statements and complaints of the eleven women.<sup>214</sup> On July 13, 2009, the FEVIM “waived jurisdiction *ex officio*” because “[t]he statements reveal that the public servants who intervened in the acts that probably constituted offenses [...] belong to police forces of the state of Mexico” and “there is no evidence of the participation of federal public servants [...] in the acts of torture suffered by the victims and that are the acts that this office investigated.”<sup>215</sup> Consequently, it considered that the facts fell under “common rather than federal law” and thus under the jurisdiction of the investigative organs of the state of Mexico where the wrongful acts had taken place. Despite this conclusion, in the decision waiving jurisdiction, the FEVIM indicated that it had established that the *corpus delicti* of torture and egregious violations of the human rights of the women had been proved, as well as the probable participation of at least 34 members of the state police forces.<sup>216</sup>

## IX MERITS

148. The instant case relates to the international responsibility of the Mexican State for the conduct of state agents before, during and after a social protest that took place in the municipalities of Texcoco and San Salvador de Atenco in May 2006. In particular, the case refers to the detention and police abuse, including sexual abuse, of eleven women who were arrested in the context of that event, as well as the presumed absence of a proper investigation of the facts.

149. In this chapter, the Court will examine the merits of the case, taking into account the State’s partial acknowledgement of responsibility accepted in Chapter V of this judgment. In order to clarify the scope of Mexico’s international responsibility for the facts of this case, the Court will examine the alleged violations as follows: (1) the rights to personal integrity, dignity and privacy and the prohibition of torture in connection with the obligation to respect and guarantee, without discrimination, the rights recognized in Articles 5 and 11 of the American Convention, in relation to Article 1(1) of this instrument, as well as Articles 7(a) of the Convention of Belém do Pará and 1 and 6 of the Inter-American Convention against Torture; (2) the right to personal liberty and the right of defense recognized in Articles 7 and 8 of the American Convention, in relation to

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<sup>213</sup> In addition, among other matters, it requested copies of the CNDH case file and also lists and photographs of the members of the Federal Preventive Police who took part in the events, and obtained the reports of several police agents. Cf. The State’s brief before the Commission of October 15, 2012 (evidence file, folios 14318 and 14319).

<sup>214</sup> Cf. Statement made by Norma Aidé Jiménez Osorio on May 25, 2006, before the FEVIM (evidence file, folio 802); statement made by Georgina Edith Rosales Gutiérrez on May 25, 2006, before the FEVIM (evidence file, folio 1114); statement made by María Patricia Romero Hernández on May 25, 2006, before the FEVIM (evidence file, folio 904); statement made by Mariana Selvas Gómez on May 25, 2006, before the FEVIM (evidence file, folio 1012); statement made by Suhelen Gabriela Cuevas Jaramillo on May 25, 2006, before the FEVIM (evidence file, folio 1284); expansion of the complaint filed by Bárbara Italia Méndez Moreno on June 14, 2006, before the FEVIM (evidence file, folio 1439); expansion of the complaint filed by Claudia Hernández Martínez on June 14, 2006, before the FEVIM (evidence file, folio 1586); statement and expansion of the complaint filed by Ana María Velasco Rodríguez on June 15, 2006, before the FEVIM (evidence file, folio 1219); expansion of the complaint filed by Yolanda Muñoz Diosdada on June 15, 2006, before the FEVIM (evidence file, folio 701); statement made by Cristina Sánchez Hernández on June 15, 2006, before the FEVIM (evidence file, folio 8905), and statement made by Angélica Patricia Torres Linares on June 19, 2006, before the FEVIM (evidence file, folio 1511).

<sup>215</sup> Cf. Transcript of the decision waiving jurisdiction of July 13, 2009 (evidence file, folios 24522 to 24524). As the legal grounds for waiving jurisdiction, the FEVIM used PGR Decision A/024/08 which indicated that “it has authority to investigate those acts of violence against women that fall within the federal jurisdiction or that are based on ordinary criminal laws related to federal offenses.” FEVIM communication FEVIMTRA-C/DAP/2218/2009 received on July 15, 2009 (evidence file, folio 5021).

<sup>216</sup> Cf. Transcript of the decision waiving jurisdiction of July 13, 2009 (evidence file, folios 24522 to 24524), and FEVIM communication FEVIMTRA-C/DAP/2218/2009 received on July 15, 2009 (evidence file, folio 5021).

Article 1(1) of this instrument; (3) the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) of this instrument, as well as Articles 1, 6 and 8 of the Inter-American Convention against Torture and Article 7 of the Convention of Belém do Pará, based on the investigations into the facts of this case, and (4) the right to personal integrity of the next of kin established in Article 5 of the American Convention.

**IX-1**  
**RIGHTS TO PERSONAL INTEGRITY,<sup>217</sup> DIGNITY AND PRIVACY,<sup>218</sup> PROHIBITION OF TORTURE AND RIGHT OF ASSEMBLY,<sup>219</sup> IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE THESE RIGHTS WITHOUT DISCRIMINATION<sup>220</sup>**

150. In this chapter, the Court will examine the arguments concerning the excessive use of force, the violations of personal integrity and privacy, including sexual abuse, as well as the prohibition of torture and other cruel, inhuman and degrading treatment, and the prohibition of gender-based discrimination.

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

151. The **Commission** indicated that, based on the consistent and reiterated statements made by the women and their medical records on entry into the CEPRESO, they were victims of physical injuries inflicted by police agents and "were threatened, in some cases, with rape, death or disappearance." Regarding the forms of sexual violence, it stated that the women had reported "indecent touching on buttocks, breasts and vagina, blows and pinching on the same parts of the body, groping, biting and pinching their nipples, tearing their underwear off violently, forced nudity, and threats of rape." It also indicated that the police performed several types of sexual abuse, such as "penetration of the vagina and the anus with fingers and objects, and also forcing them to perform oral sex," in a context of "insults, denigrating and humiliating expressions, the content of which reflects the special ferocity of the police agents based on the victims' condition as women." It considered proved that serious acts of physical and mental violence, including diverse forms of rape, had been executed by state agents against the eleven women, and rape in the case of seven of them, during the detention, the transfers and the arrival at CEPRESO.

152. The Commission concluded that the different acts of physical, psychological and sexual violence constituted torture, because the elements that constitute torture are met in this case, namely: (i) the acts were carried out intentionally and deliberately by agents of the state; (ii) in the case of the women who were raped, the severity of the effects is considered to be inherent;

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<sup>217</sup> The relevant part of Article 5 of the 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."

<sup>218</sup> Article 11(2) of the Convention establishes that: "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."

<sup>219</sup> Article 15 of the Convention establishes that: "The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others."

<sup>220</sup> Article 1(1) of the Convention establishes that: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

(iii) in the case of those who did not state that they had been victims of rape, the intensity of the physical or mental suffering was evident, because they were all beaten severely and subjected to other forms of sexual violence, and (iv) the violence was committed in order to debase, humiliate and punish the women for supposedly taking part in the protests suppressed by the operations.

153. The **representatives** argued that: (1) the violence suffered by the eleven women constituted violence against women and, therefore, was discriminatory in nature; (2) the 11 women underwent physical, psychological and sexual torture and, subsequently, did not receive adequate medical and psychological care when they arrived at the prison and during the following days; rather, to the contrary, they suffered renewed acts of physical and psychological violence at the hands of medical professionals; (3) the women suffered another violation of their integrity owing to the absence of even a minimally adequate response from the State, conserving key evidence, taking statements, and opening investigations into evident signs (and complaints) of torture when the victims reached the prison, and (4) the State violated the honor and dignity of the 11 women because: (i) the sexual torture of which they were victims sought to humiliate them and treat them in a denigrating manner, which entailed a serious act against the free exercise of the sexual intimacy and autonomy of the eleven women, and (ii) they were re-victimized by being exposed in the media by declarations that stigmatized them. The victims in this case experienced a multiplicity of the said acts repeatedly, sequentially and/or simultaneously. Thus, the representatives asked the Court to make a legal analysis of the violation of the integrity of the eleven women assessing all the acts of violence described (physical, psychological and sexual).

154. In their final written arguments,<sup>221</sup> the representatives added that the State had also violated the right to public protest of the eleven women, recognized in Articles 13 and 15 of the Convention, regardless of their role in the demonstration. They indicated that the said right was violated by the mere fact that the women were in a space in which that right was being exercised and, for the State, this was sufficient justification to subject them to extreme violence.

155. Lastly, the representatives argued that the State's legal framework facilitated the excessive use of force and the violation of human rights in contexts of social protest. They underlined that Mexico had not adopted "the legislative, institutional or any other kind of measures to ensure that law enforcement personnel respect the human rights of the population in situations of social protest; to limit the use of force in accordance with international law, or to guarantee the documentation or investigation of police operations in keeping with the said international framework."

156. The **State** acknowledged its responsibility for violating the rights to personal integrity and to privacy, the right not to be tortured, and the right to live a life free of violence of the women, owing to the physical, psychological and sexual abuse, including acts of sexual torture, as well as the debasing treatment and the interference in their private life, the lack of adequate medical treatment, and the effects on their health. In this regard and, based on the determinations made by the SCJN, it recalled that "senior police officers and agents mistreated the detainees physically and morally, thus failing to comply with the principles that should regulate the use of force; however, these serious violations of individual guarantees and human rights were not due to a

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<sup>221</sup> The representatives indicated that they made this allegation because, during the public hearing, the President of the Court at the time, under the *iura novit curia* principle, had expressly asked them to refer to the violation of those rights. Indeed, during the hearing, the President asked that "in the final arguments, the representatives also refer to [the right of assembly], because the case was presented from the perspective of gender-based violence, and also from the perspective of gender, but the collective right of assembly, I believe also merits reflection in the final arguments."

state strategy, and were not the result of unlawful orders by senior authorities to plan the abuse or plot actions against the protesters.”

157. Mexico stressed that, despite the foregoing, “at no time was a direct order given by the commanders in charge of the operation, who are hierarchical superiors of the Mexican State, to attack the protesters or to carry out acts of sexual violence.” In addition, the State emphasized that “the deployment of force on May 3 and 4, 2006, was legitimate and in keeping with the law (as were the orders issued by the senior commanders),” because it constituted a necessary reaction to the levels of violence reached by the protest. It argued that “the human rights violations committed in this case did not arise from an illegitimate instruction on the use of force, but were committed disregarding the lawful way in which the police should conduct themselves, as actions *ultra vires* of state agents, which the State, nonetheless, recognizes give rise to its international responsibility.” The State also acknowledged its international responsibility with regard to the “violation of its obligation to adopt domestic legal provisions [...] owing to the absence of a domestic legal framework on the use of force and torture at the time of the events.”

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

158. In this case, the Court will examine: (i) the use of force by State law enforcement agents and the violation of the right of assembly; (ii) sexual violence and rape committed against the eleven women and its classification as torture in this case; (iii) the use of sexual violence as a weapon to control public order; (iv) the use of stereotypes in the repression, and the response to the complaints of abuse by the victims;; (v) the medical abuse experienced by the victims, and (vi) the gender-based discrimination that occurred in this case.

### **B.1 Use of force and right of assembly**

#### **B.1.1 Use of force**

159. The Court has recognized that States have the obligation to ensure security and to maintain public order within their territory and, therefore, have the right to use force legitimately to re-establish this if necessary.<sup>222</sup> Even though State agents may resort to the use of force and, in some circumstances, even lethal force, the State’s power to achieve its purposes are not unlimited, regardless of the gravity of certain actions and of the guilt of the authors.<sup>223</sup>

160. The Court has had recourse to different international instruments on this matter and, in particular, to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>224</sup> and the Code of Conduct for Law Enforcement Officials,<sup>225</sup> to provide content to the

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<sup>222</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 154, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of April 17, 2015. Series C No. 292, para. 264.

<sup>223</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 154, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of April 17, 2015. Series C No. 292, para. 262.

<sup>224</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter, “Basic Principles on the Use of Force”) adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, from August 27 to September 7, 1990.

<sup>225</sup> Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly in Resolution 34/169, December 17, 1979.

obligations relating to the use of force by the State.<sup>226</sup> The Basic Principles on the Use of Force establish that “[i]n the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary,” while “[i]n the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.”<sup>227</sup> Thus, the international standards and the case law of this Court have established that “State agents shall make a distinction between individuals who, by their actions, present an imminent threat of death or serious injury and those persons who do not present this threat, and use force only against the former.”<sup>228</sup>

161. This Court recalls that the use of force entails specific obligations for the States: (i) to regulate adequately its application, with a clear and effective legal framework; (ii) to train and educate its law enforcement personnel on the principles and standards for the protection of human rights, the limits and conditions to which any use of force must be subjected, and (iii) to establish adequate mechanisms to control and verify the legitimacy of the use of force.<sup>229</sup>

162. Based on the foregoing, the Court has established that, if the use of force is essential, it is necessary to satisfy the principles of legality, absolute necessity and proportionality, as follows:<sup>230</sup>

*Legality:* the use of force must be addressed at achieving a legitimate objective, and a regulatory framework must exist that establishes the guidelines for this situation.<sup>231</sup>

*Absolute necessity:* the use of force must be limited to the inexistence or non-availability of other means to protect the life and integrity of the individual or situation that it is intended to protect, depending on the circumstances of the case.<sup>232</sup>

*Proportionality:* the means and method used should be proportionate to the resistance offered and the danger that exists.<sup>233</sup> Thus, agents must apply a standard of differentiated and progressive use

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<sup>226</sup> Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of July 5, 2006. Series C No. 150, paras. 68 and 69, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of April 17, 2015. Series C No. 292, para. 264.

<sup>227</sup> Basic Principles on the Use of Force, Principles No. 13 and 14. Principle 9 establishes that: “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

<sup>228</sup> *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166, para. 85, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of April 17, 2015. Series C No. 292, para. 264.

<sup>229</sup> Cf. *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166, paras. 85 to 88.

<sup>230</sup> Cf. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs.* Judgment of October 24, 2012. Series C No. 251, para. 85, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of April 17, 2015. Series C No. 292, para. 265. Similarly, ECHR, *Case of Chumak v. Ukraine*, No.44529/09. Judgment of March 6, 2018, para. 40.

<sup>231</sup> Cf. Basic Principles on the Use of Force, Principles Nos. 1, 7, 8 and 11.

<sup>232</sup> Cf. Basic Principles on the Use of Force, Principle No. 4.

<sup>233</sup> Cf. Basic Principles on the Use of Force, Principles Nos. 5 and 9.

of force, based on the degree of cooperation, resistance or aggression by the subject to be restrained and, consequently, use tactics of negotiation, control or use of forces, as appropriate.<sup>234</sup>

163. An assessment of the conventionality of the use of force should be made in every circumstance and in the context of the events,<sup>235</sup> taking the above criteria into account.

164. In light of the conditions required for the use of force by the State, the Court will now analyze the use of force that took place on May 3 and 4, 2006, in Texcoco and San Salvador de Atenco.

165. In the instant case, even though the State acknowledged the violations committed against the eleven women owing to the excessive use of force, it repeatedly underscored the SCJN's finding that the use of force was legitimate and that there was no evidence that express instructions had been given "to injure or abuse the protesters";<sup>236</sup> rather, the assaults and human rights violations were the result of actions *ultra vires*<sup>237</sup> of some state officials who failed to comply with their duty (*supra* paras. 124 and 125). In this regard, the Court considers that the State is making a partial and selective reading of the SCJN judgment, which concluded with regard to the legitimacy of the use of force that: (i) the operation on the morning of May 3, 2006, to try and prevent the flower sellers from setting up in the market was neither legitimate nor justified,<sup>238</sup> and (ii) that, although the operation of May 4, 2006, initially had a legitimate purpose, "the objectives of the different interventions by the police forces gradually changed, as the events progressed," and "in implementing them, events began to take on a tone and form that spiraled out of their control."<sup>239</sup> In this regard, it underlined, *inter alia*, that: (i) an indeterminate number of police agents who took part in the operation of May 4, 2006, worked under physical and emotional conditions that may have influenced their conduct to some extent because they had

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<sup>234</sup> Cf. Basic Principles on the Use of Force, Principles Nos. 2, 4, 5 and 9.

<sup>235</sup> Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of July 5, 2006. Series C No. 150, para. 82, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of April 17, 2015. Series C No. 292, para. 266.

<sup>236</sup> SCJN judgment of February 12, 2009 (evidence file, folio 31056).

<sup>237</sup> According to Article 7 of the Articles on Responsibility of States for Internationally Wrongful Acts drafted by the UN International Law Commission, an internationally wrongful act shall be attributed to the State for the "conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority [...] even if it exceeds its authority or contravenes instructions." United Nations General Assembly, Responsibility of States for Internationally Wrongful Acts, A/RES/56/83, January 28, 2002.

<sup>238</sup> In this regard, the SCJN indicated that: "far from taking actions that would reflect the agreement and commitment to tolerate the sales the following day, municipal police, together with state police, significantly increased the police presence during the early morning hours of that day. Thus, on the morning of May 3, when the flower sellers arrived with their supporters to set up their stalls, aware that the police presence had been increased during the night (they were already carrying their machetes and had requested the support of members of the Peoples' Front), the people's anger at the authorities heated up because, added to it was the perception that the state authorities had deceived them the previous day, ignoring their requests, and there was even a feeling that they were being goaded. [...] In this specific factual context, the operation executed that day – even if its purpose had been dissuasive – was not only unjustified but, to the contrary, it was not difficult to see that it was inappropriate because, in the context of the facts, it was a provocative operation, a time bomb. And, based on the known record of the People's Front, it was foreseeable that it would cause a great deal of anger among the civilians towards the police, which ended in the head-on confrontation already identified, when reciprocal defense became mutual aggression. On this basis, [this] operation [...] which resulted in the confrontation between municipal police and inspectors and the sellers and their supporters, was not justified; thus, from the start, the use of force was not legitimate. [...] Therefore, the confrontation can only be considered an inefficient, unprofessional, unnecessary and disproportionate action by the municipal authorities that, evidently, had no constitutional justification. Cf. SCJN judgment of February 12, 2009 (evidence file, folios 31172, 31173 and 31174).

<sup>239</sup> SCJN judgment of February 12, 2009 (evidence file, folios 31055 to 31057).

participated in the previous day's operation,<sup>240</sup> and also that (ii) the facts reveal a "lack of professionalism, owing to the deficient training and skills of the police."<sup>241</sup> According to the SCJN, "[t]he investigation reveals unprofessional police agents who, added to other factors present, behaved violently, and superior officers who failed to take measures to prevent this, or to ensure that the violence ceased once it erupted."<sup>242</sup>

166. As revealed by this and other evidence, the Court notes that, contrary to the State's arguments, its responsibility is not derived merely from a few acts of state agents who exceeded the scope of their authority. In this case, the State's responsibility for the excessive use of force also arises from the failure of the authorities to prevent the violations: (i) by failing to regulate the use of force by its law enforcement personnel adequately;<sup>243</sup> (ii) by not providing adequate training for the different police forces attached to one of the three levels of government – municipal, state and federal – to enable them to execute their task of maintaining public order with due professionalism and respect for the human rights of the civilians with whom they came into contact in this context;<sup>244</sup> (iii) by planning the operation of May 4 with the participation of agents who could not be objective and without giving express and unequivocal instructions regarding the obligation to respect the human rights of protesters, passers-by and onlookers;<sup>245</sup> (iv) during the operations, by not halting or taking action to address the abuses that were being committed, in order to supervise and monitor the situation and the use of force;<sup>246</sup> (v) owing to the absence of mechanisms to control and verify the legitimacy of the use of force after the facts

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<sup>240</sup> In this regard, the SCJN indicated that: "[i]t is logical to suppose that the consequent mood that such events naturally generate (frustration, courage, revenge, solidarity with the group) had an impact on the fact that they did not act in a calculated manner, but lost their objectivity when executing their task." SCJN judgment of February 12, 2009 (evidence file, folio 31068).

<sup>241</sup> SCJN judgment of February 12, 2009 (evidence file, folio 31070).

<sup>242</sup> SCJN judgment of February 12, 2009 (evidence file, folio 31072).

<sup>243</sup> The SCJN concluded that its investigation "revealed important omissions [legislative] in the area of policing and public security that are not insignificant; rather, owing to their mere existence, they result in the vulnerability of human rights, particularly the rights of detainees. [...] In general, there is almost no reference to this important issue in Mexican law. The circumstances in which the use of force is legal have not been established by law, especially the use of force exercised with lethal weapons. The obligations that the use of force generate for the State have not been established by law, or the obligations resulting from excesses and irregularities in the use of force, as occurred in Atenco, including the obligation to punish and to make reparation." SCJN judgment of February 12, 2009 (evidence file, folio 31463 and 31464).

<sup>244</sup> "Law enforcement officials must be adequately trained in facilitating assemblies. This training should include proper knowledge of the legal framework governing assemblies, techniques of crowd facilitation and management, human rights in the context of assemblies and the important role assemblies play in a democratic order. Training must include soft skills such as effective communication, negotiation and mediation allowing law enforcement officials to avoid escalation of violence and minimize conflict." Cf. Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies of February 4, 2016, A/HRC/31/66, para. 42.

<sup>245</sup> With regard to the sexual abuse, on this point the SCJN emphasized that, although "it was very difficult for the superior officers of the police to observe in real time while it was happening; [...] what was reprehensible, and revealed lack of professionalism and efficacy due to lack of foresight, was that, aware of the magnitude of the operation, measures were not taken to prevent the perpetration of those conducts or to permit a record and testimony of what happened to be obtained." SCJN judgment of February 12, 2009 (evidence file, folios 31199 and 31200).

<sup>246</sup> In this regard, the SCJN underlined that: "[t]he said actions can be attributed to those who executed them, but they can also be attributed by omission to all those police agents, and their commanders and superior officers who, during the operations, exercised functions of supervision and control, and there were many of them. [...] It is true, as some of the accused have argued that, at the time, a great deal was happening at the same time and in different places, and that a lot of this had taken place in a relatively short time; but, it is also true that, in an operation of this magnitude and sophistication, in which so many commanders and superior officers were looking on by air and land, it is incomprehensible and inexcusable that no action was taken to stop it." Cf. SCJN judgment of February 12, 2009 (evidence file, folio 31197).

occurred.<sup>247</sup> Regarding the latter, it should be emphasized that the police abuse was shown on the television which was broadcasting live at the time of the facts and, furthermore, according to the security agencies themselves, at least during the operation of May 4, 2006, they were being supervised by land and air.<sup>248</sup>

167. Even though States enjoy a certain margin of discretion when evaluating the danger to public order for the purpose of ordering the use of force, this discretionality is not unlimited or unconditional, particularly in the case of assemblies, protests or demonstrations protected by Article 15 of the Convention.<sup>249</sup> It is incumbent on the State to prove that it adopted the measures that were strictly necessary and proportionate to control the perceived danger to public order or to human rights, without unnecessarily restricting or violating the right to peaceful assembly of others.<sup>250</sup> In this regard, the Court has already indicated that public safety cannot be based on a standard for the use of force that treats the civilian population as the enemy, but should consist in the protection and control of civilians.<sup>251</sup>

168. Contrary to the foregoing, in this case, the actions of the law enforcement authorities were characterized by the indiscriminate and excessive use of force against anyone they assumed to be a protester. In this regard, both the CNDH and the SCJN concluded that the police agents applied indiscriminate use of force, without taking into account whether the people they were beating and detaining had taken part in wrongful acts or even in the protest itself.<sup>252</sup> As indicated by expert witness Maina Kiai, former United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, "the violations committed against the victims clearly occurred owing to the chaos created by the way in which the police handled the protest."<sup>253</sup>

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<sup>247</sup> On this point, the SCJN concluded: "[t]he use of force by the State also entails obligations for the State once the operation has ended. There is no evidence that, in this case, the State complied with these obligations. It is evident that the State did provide information on the execution of the operations in response to the requests for information made by this court and also the National Human Rights Commission, describing the details, personnel and equipment used in the operation. However, beyond this, there is no evidence that it has carried out a self-assessment of the achievements and shortcomings of the operations and, above all, there is no evidence that it has complied with the obligation to hold people accountable for the violations that occurred; [...] these obligations, which are compulsory after the use of force, have not been observed in this case." SCJN judgment of February 12, 2009 (evidence file, folios 31201 and 31202).

<sup>248</sup> In this regard, "[t]he Head of the Security Agency confirmed [to the SCJN] that the operation was supervised on land and by air by the superiors of those who were executing it. However, nothing allows it to be noted that, when the detentions began, accompanied by the physical assaults indicated (some, even captured on live television), the said superiors took measures to ensure that this ceased. It is true, as some of the accused argue, that at the time a great deal was happening at the same time and in different places, and that a lot of this had taken place in a relatively short time; but, it is also true that, in an operation of this magnitude and sophistication, in which so many commanders and superior officers were looking on by air and land, it is incomprehensible and inexcusable that no action was taken to stop it." SCJN judgment of February 12, 2009 (evidence file, folio 31197).

<sup>249</sup> Even though it is evident that law enforcement agents have a margin of discretion when deciding on the appropriate response to a specific situation, they should take into account that the use of force is an extreme measure of an exceptional nature; consequently, it "shall not be used unless it is strictly unavoidable, and if applied it must be done in accordance with international human rights law." Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies of February 4, 2016, A/HRC/31/66, p. 12).

<sup>250</sup> See, similarly, ECHR, *Case of Frumkin v. Russia*, No. 74568/12. Judgment of January 5, 2016, paras. 99 and 137.

<sup>251</sup> Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of July 5, 2006, Series C No. 150, para. 78.

<sup>252</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 31254 and 31306), and CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 28523 and 28524).

<sup>253</sup> Expert opinion provided by affidavit by Maina Kiai, former United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, on October 31, 2017 (evidence file, folio 37344).

169. Specifically in relation to the eleven victims in this case, no information or evidence has been provided that any of them were committing violent acts, resisting authority in any way, or carrying weapons. To the contrary, the information provided reveals that the eleven women were behaving peacefully or protecting themselves when they were detained (*infra* paras. 172 and 236). According to uncontested facts, the eleven women victims of the State's use of force in this case were not behaving in any way that required the use of force against them.

170. Therefore, in this case, it is clear that the use of force by the police authorities was not legitimate or necessary; moreover, it was also excessive and unacceptable owing to the characteristics described below regarding the discriminatory and sexual nature of the abuse suffered. The Court concludes that the State's indiscriminate use of force in this case, resulting from the absence of adequate regulation, a lack of training of the agents, an ineffective supervision and monitoring of the operation, and an erroneous belief that the violence of some people justified the use of force against everyone, entailed violations of Articles 5 and 11 of the Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the eleven women in this case.

### B.1.2 Right of assembly

171. The right to protest or to demonstrate discontent with a State action or decision is protected by the right of assembly recognized in Article 15 of the American Convention. Even though neither the Commission nor the representatives alleged the violation of this right at the opportune moment, this Court considers that, in application of the *iura novit curia* principle, in this case it is also appropriate to analyze the use of force in light of the right of assembly. Under Article 15 of the American Convention "[t]he right of peaceful assembly, without arms, is recognized" and this refers to both private assemblies and assemblies in public spaces, whether they are held in one place or include marches.<sup>254</sup> The possibility of demonstrating publicly and peacefully is one of the most accessible ways of exercising the right to freedom of expression, through which the protection of other rights can be demanded.<sup>255</sup> Therefore, the right of assembly is a fundamental right in a democratic society and should not be interpreted restrictively.<sup>256</sup>

172. In the instant case, the use of force referred to above occurred in the context of demonstrations or protests initiated because some flower sellers were unhappy with their relocation, and also the demands of the FPDT (*supra* paras. 56 and ff.). Most of the victims in this case formed part of the protest, to the extent that they had travelled intentionally to Texcoco or San Salvador de Atenco to take part in it, either to cover the events as reporters, which was the case of Norma Aidé Jiménez Osorio and Suhelen Gabriela Cuevas Jaramillo; to document the events as part of their studies, which was the case of Bárbara Italia Méndez Moreno, Angélica

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<sup>254</sup> *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of October 5, 2015. Series C No. 302, para. 167 citing *Cf. ECHR, Case of Djavit An v. Turkey*, No. 20652/92. Judgment of February 20, 2003, para. 56, and *Case of Yilmaz Yildiz and Others. v. Turkey*, No. 4524/06. Judgment of October 14, 2014, para. 41.

<sup>255</sup> *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of October 5, 2015. Series C No. 302, para. 167 citing *Cf. UN, Resolution of the Human Rights Council on the promotion and protection of human rights in the context of peaceful protests.* A/HRC/RES/19/35, March 23, 2012; *Resolution of the Human Rights Council on the promotion and protection of human rights in the context of peaceful protests.* A/HRC/RES/22/10, March 21, 2013, and *Resolution of the Human Rights Council on the promotion and protection of human rights in the context of peaceful protests.* A/HRC/25/L.20, March 24, 2014.

<sup>256</sup> *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of October 5, 2015. Series C No. 302, para. 167 citing *ECHR, Case of Djavit An v. Turkey*, No. 20652/92. Judgment of February 20, 2003, para. 56, and *Case of Yilmaz Yildiz and Others. v. Turkey*, No. 4524/06. Judgment of October 14, 2014, para. 41.

Patricia Torres Linares and Claudia Hernández Martínez, or to assist demonstrators who were injured as in the case of Mariana Selvas Gómez and Georgina Edith Rosales (*supra* paras. 75 and ff.). The Court considers that, since they formed part of the protest, these seven victims were exercising their right of assembly. Therefore, it will analyze the use of force against them in light of the right recognized in Article 15 of the Convention. In this regard, the Court takes note of the opinion of the former United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, according to which “when the violation of the right to freedom of peaceful assembly is an enabling factor or even a determining factor or a pre-condition for the violation of other rights [...], inevitably the right to freedom of peaceful assembly is also affected and this should be recognized.”<sup>257</sup> In addition, as in the case of other rights with a social dimension, he underscored that the violation by the authorities of the rights of the participants in a meeting or assembly, “has a seriously chilling effect on future meetings or assemblies,” because people may choose to abstain in order to protect themselves from these abuses; in addition to being contrary to the State obligation to facilitate and to create favorable environments for people to be able to enjoy their right of assembly.<sup>258</sup>

173. Regarding freedom of expression, the violation of which was alleged by the representatives in their brief with final arguments (*supra* para. 154), the Court finds that both rights (the right of assembly and the right to freedom of expression) are intrinsically connected. As previously mentioned, the exercise of the right of assembly is a form of exercising freedom of expression.<sup>259</sup> Nevertheless, the Court considers that each of these rights contained in the Convention has its own sphere, meaning and scope<sup>260</sup> and should be interpreted and applied taking into account its specificity. In the Court’s opinion, the violation of the right of assembly could give rise to a violation of freedom of expression. However, for an autonomous violation of freedom of expression to occur, distinct from the inherent content of the right of assembly, it would be necessary to prove that freedom of expression was violated in addition to the intrinsic harm to the violation of the right of assembly that has been declared. In this case, the facts relate to the use of force to prevent and disperse a protest. Neither the Commission nor the representatives have alleged any specific restriction of the expressions or opinions of the eleven women, beyond their right to be present in the protest. Consequently, it is not appropriate to make an autonomous analysis or evaluation of freedom of expression.

174. Based on the foregoing considerations, the Court must examine the factual circumstances of this case as a possible inappropriate restriction of the right of assembly in the case of the seven victims mentioned above (para. 172). In this regard, the Court recalls that the right of assembly is not an absolute right and may be subject to restrictions, provided these are not abusive or arbitrary; therefore, they must be established by law, pursue a legitimate purpose (which is

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<sup>257</sup> Expert opinion provided by affidavit by Maina Kiai, former United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, on October 31, 2017 (evidence file, folio 37344).

<sup>258</sup> Expert opinion provided by affidavit by Maina Kiai, former United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, on October 31, 2017 (evidence file, folios 37344 and 37359).

<sup>259</sup> Indeed, the European Court has recognized that the protection of freedom of thought and expression is one of the purposes of the right of assembly. *Cf.* ECHR, *Case of Taranenko v. Russia*, No. 19554/05. Judgment of May 15, 2014, para. 64; *Case of Women on Waves and Others v. Portugal*, No. 31276/05. Judgment of February 3, 2009, para. 28; *Case of Galystan v. Armenia*, No. 26986/03. Judgment of November 15, 2007, paras. 95 and 96; *Case of Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, Nos. 29221/95 and 29225/95. Judgment of October 2, 2001, para. 85, and *Case of Ezelin v. France*, No. 11800/85. Judgment of April 26, 1991, para. 37.

<sup>260</sup> *Cf.* *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits and reparations*. Judgment of May 26, 2010. Series C No. 213, para. 171, and *Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of January 30, 2014. Series C No. 276, para. 119.

limited by Article 15 of the Convention to national security, public safety or public order, or to protect public health or morals or the rights or freedom of others) and be necessary and proportionate.<sup>261</sup>

175. In this case, although it is true that some protesters resorted to violence, the seven women referred to above were carrying out peaceful activities. In this regard, the right to freedom of peaceful assembly is held by each individual participating in an assembly. Acts of sporadic violence or offences by some should not be attributed to others whose intentions and behaviour remain peaceful in nature.<sup>262</sup> Therefore, the State authorities must spare no effort to distinguish between individuals who are violent or potentially violent, and peaceful protesters.<sup>263</sup> The proper management of assemblies requires the protection and enjoyment of a broad range of rights by all the parties involved.<sup>264</sup> In addition, even if participants in an assembly are not peaceful and as a result forfeit their right to peaceful assembly, they retain all the other rights, subject to the normal limitations.<sup>265</sup>

176. Based on the above, in the case of Norma Aidé Jiménez Osorio, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, Angélica Patricia Torres Linares, Claudia Hernández Martínez, Mariana Selvas Gómez and Georgina Edith Rosales Gutiérrez, the use of force also constituted an inappropriate restriction of their right of assembly recognized in Article 15 of the Convention.

## **B.2 The sexual violence and rape committed against the eleven women and its classification as torture in this case**

177. Article 5(1) of the Convention recognizes the right to personal integrity, physical, mental and moral in general terms. Meanwhile, Article 5(2) establishes, specifically, the absolute prohibition to subject someone to torture or to cruel, inhuman, or degrading treatment or punishment, as well as the right of persons deprived of their liberty to be treated with respect for the inherent dignity of the human person.<sup>266</sup> The Court understands that any violation of Article 5(2) of

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<sup>261</sup> See, *inter alia*, *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, paras. 35 and 37, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2012. Series C No. 257, para. 273; *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 120; *Case of Fontevecchia and D'Amico v. Argentina. Merits, reparations and costs*. Judgment of November 29, 2011. Series C No. 238, para. 43, and *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 302, para. 168.

<sup>262</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies of February 4, 2016, A/HRC/31/66, para. 20, and ECHR, *Case of Ziliberberg v. Moldova*, No. 61821/00. Judgment of February 1, 2005.

<sup>263</sup> ECHR, *Case of Gsell v. Switzerland*, No.12675/05. Judgment of October 8, 2009, para. 60.

<sup>264</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies of February 4, 2016, A/HRC/31/66, para. 8.

<sup>265</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies of February 4, 2016, A/HRC/31/66, para. 9.

<sup>266</sup> Cf. *Case of Yvon Neptune v. Haiti, Merits, reparations and costs*. Judgment of May 6, 2008. Series C No. 180, para. 129, and *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 169.

the American Convention necessarily results in the violation of Article 5(1) thereof.<sup>267</sup> The violation of the right to physical and mental integrity has different connotations of degree and ranges from torture to other types of abuse or cruel, inhuman, or degrading treatment, the physical and mental aftereffects of which vary in intensity based on endogenous and exogenous factors (including duration of the treatment, age, sex, health, context and vulnerability) that must be analyzed in each specific situation.<sup>268</sup>

178. The Court has established that torture and cruel, inhuman or degrading treatment or punishment are absolutely and strictly prohibited by the international human rights law. This prohibition is absolute and non-derogable, even in the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crime, state of siege or emergency, internal unrest or conflict, suspension of constitutional guarantees, internal political instability or other public emergencies or disasters<sup>269</sup> and, nowadays, it forms part of the domain of international *jus cogens*.<sup>270</sup> Universal<sup>271</sup> and regional<sup>272</sup> treaties establish this prohibition and the non-derogable right not to be subjected to any form of torture.

179. Furthermore, in cases that involve any form of sexual violence, it has been established that violations of personal integrity involve the violation of the private life of the individual, protected by Article 11 of the Convention, which encompasses the sexual life or sexuality of the individual.<sup>273</sup> Sexual violence violates essential values and aspects of an individual's private life, involves an intrusion in their sexual life and annuls their right to freely take decisions regarding with whom they have sexual relations, thus causing them to lose complete control over their most personal and intimate decisions, and over their basic bodily functions.<sup>274</sup>

180. In addition, the Court notes that, in this case, the general obligations derived from Articles 5 and 11 of the American Convention are reinforced by the specific obligations arising from the Inter-American Convention against Torture and the Convention of Belém do Pará. Article 7 of the

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<sup>267</sup> Cf. *Case of Yvon Neptune v. Haiti, Merits, reparations and costs*. Judgment of May 6, 2008. Series C No. 180, para. 129, and *Case of Quispialaya Vilcapoma v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2015. Series C No. 308, para. 125.

<sup>268</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, paras. 57 and 58, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 185.

<sup>269</sup> Cf. *Case of Lori Berenson Mejía v. Peru. Merits, reparations and costs*. Judgment of November 25, 2004. Series C No. 119, para. 100, and *Case of Quispialaya Vilcapoma v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2015. Series C No. 308, para. 126.

<sup>270</sup> Cf. *Caesar v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of March 11, 2005. Series C No. 123, para. 100, and *Case of Herzog et al. v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of March 15, 2018. Series C No. 353, para. 220.

<sup>271</sup> Cf. International Covenant on Civil and Political Rights, Article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2; Convention on the Rights of the Child, Article 37, and International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 10.

<sup>272</sup> Cf. Inter-American Convention to Prevent and Punish Torture, Articles 1 and 5; African Charter of Human and Peoples' Rights, Article 5; African Charter on the Rights and Welfare of the Child, Article 16; Convention of Belém do Pará, Article 4, and European Convention on Human Rights, Article 3.

<sup>273</sup> Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 129, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, footnote 206.

<sup>274</sup> Cf. *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 367, and *Case of Espinoza Gonzales v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 197.

Convention of Belém do Pará establishes State obligations to prevent, punish and eradicate violence against women<sup>275</sup> and these specify and supplement the obligations of the State in relation to compliance with the rights recognized in Articles 5 and 11 of the Convention.<sup>276</sup> In light of the specific obligations under the Convention of Belém do Pará, in cases of violence against women, States must take comprehensive measures that are enforced with due diligence, and possess an appropriate protective legal framework, which is enforced effectively, and prevention policies and practices that allow it to act effectively to address complaints.<sup>277</sup> Also, Articles 1 and 6 of the Inter-American Convention against Torture reinforce the absolute prohibition of torture and the obligation of the States to prevent and to punish any act or attempt to commit torture or other cruel, inhuman or degrading treatment in the sphere of its jurisdiction.

### B.2.a Sexual violence and rape

181. In keeping with international case law and taking into account the provisions of the Convention of Belém do Pará, the Court has considered that sexual violence is constituted by actions of a sexual nature that are committed against an individual without their consent, and that in addition to including the physical invasion of the human body may include acts that do not involve penetration or even any physical contact.<sup>278</sup>

182. Also, following the prevailing jurisprudence and legal criteria in international criminal law and comparative criminal law, this Court has considered that rape is any act of vaginal or anal penetration, without the victim's consent, using parts of the attacker's body or objects, as well as oral penetration by the penis.<sup>279</sup> For an act to be considered rape, it is sufficient that penetration occurs, however superficial this may be, in the terms described above.<sup>280</sup> Additionally, it should be understood that the vaginal penetration refers to penetration with any part of the attacker's body or objects of any genital orifice, including the major and minor labia, as well as the vaginal orifice. This interpretation conforms to the concept that any type of penetration, however superficial it

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<sup>275</sup> The Convention of Belém do Pará defines violence against women in its Article 1 as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."

<sup>276</sup> Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 346, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 131.

<sup>277</sup> 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. 258, and *Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2015. Series C No. 307, para. 108.

<sup>278</sup> See, *inter alia*, *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 306; *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 191, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of February 16, 2017. Series C No. 333, para. 246.

<sup>279</sup> *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 310; *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 192, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of February 16, 2017. Series C No. 333, para. 247.

<sup>280</sup> Cf. International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Anto Furundzija*, Judgment of December 10, 1998, case No. IT-95-17/1-T, para. 185; International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Kunarac et al.*, Judgment of February 22, 2001, case No. IT-96-23-T and IT-96-23/1-T, paras. 437 and 438; International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Kunarac et al.*, Judgment on Appeal of June 12, 2002, case No. IT-96-23-T and IT-96-23/1-T, para. 127.

may be, is sufficient for an act to be considered rape. The Court understand that rape is a form of sexual violence.<sup>281</sup>

183. In particular, rape is a paradigmatic form of violence against women the consequences of which even exceed the victim herself.<sup>282</sup> This Court has also emphasized how the rape of a women who is detained or in the custody of a State agent is an especially egregious and reprehensible act, taking into account the vulnerability of the victim and the abuse of power deployed by the agent.<sup>283</sup>

184. The Court takes note that, in the instant case, the State has not contested the facts related to the sexual violence endured by the eleven women in the context of their detention, transfer and subsequent “deposit” in the CEPRESO. To the contrary, Mexico has expressly acknowledged these facts (*supra* para. 35).

185. Nevertheless, the Court notes the consistency of the different statements provided by the women regarding what happened. Also, in many cases, the injuries that were recorded, although superficial, were consistent with some of the abuse recounted; also their statements are supported by the expert appraisals that were conducted in application of the Istanbul Protocol (*supra* paras. 106 to 112).

186. The Court also notes that the abuse committed against the eleven women took place in a broader context verified by the SCJN, which concluded that “during the police operations [of May 3 and 4, 2006,] the police used sexual and physical force against most of the women detained.” It also determined that at least 62% of the women detained in the operations recounted that they had suffered sexual abuse.<sup>284</sup> In this regard, the Court observes that the sexual violence suffered by the eleven women was not isolated, but took place within a pattern that occurred throughout the operation.

187. Taking the foregoing into account, as well as the facts described above (paras. 75 to 105), the Court notes that the eleven women were subjected to the following forms of violence, including rape:

1. *Yolanda Muñoz Diosdada*: was beaten, kicked, insulted, pulled by her hair, mauled and threatened with death or disappearance at the time of her detention. During the transfer to the prison, she was groped by a police agent who lifted up her blouse and “squeezed her and pinched her nipples,” he removed her underwear, “touched her and rubbed her vagina.” On arriving at CEPRESO, she was beaten once again, pulled by her hair and kicked, and made to undress in front of numerous people to be examined.
2. *Norma Aidé Jiménez Osorio*: was beaten and left semi-naked at the time of her detention. During the transfers, they walked over her, touched her and beat her

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<sup>281</sup> *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 359, and *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary objections, merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 350, para. 290.

<sup>282</sup> *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, para. 119, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 187.

<sup>283</sup> *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 311, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of February 16, 2017. Series C No. 333, para. 255.

<sup>284</sup> SCJN judgment of February 12, 2009 (evidence file, folio 30937).

buttocks and threatened to rape her. In the second vehicle, in which she was transferred to the prison, several agents "took turns" introducing their fingers in her vagina and anus; another introduced his tongue in her mouth, groping her and squeezing her breasts and nipples.

3. *María Patricia Romero Hernández*: was beaten, insulted and threatened with violence at the time of her detention. In the Office of the Texcoco Assistant Attorney General she was beaten, threatened with rape and subjected to sexualized insults. During the transfer, several agents "did whatever they wanted with [her]"; they squeezed her breasts, pulled her nipples and touched her genitalia on top of her clothes. Then, in the CEPRESO they beat her again and threw her violently against a wall.
4. *Mariana Selvas Gómez*: was beaten, kicked, insulted and pulled by her hair at the time of her detention. During the transfer, they beat her, kicked her and pushed her; they punched her, threatened to kill her, and insulted her because she was a woman. One agent "put his hands between her legs and rubbed against her through her trousers," he pinched her "buttocks, vagina, and even put his fingers in her vagina." Then, another agent groped her, put his hands inside her clothes, tore her underwear and pinched her nipples. In the CEPRESO they continued beating and insulting her until she reached the waiting area.
5. *Georgina Edith Rosales Gutiérrez*: was beaten, pulled by her hair, subjected to sexualized insults and mauled at the time of her detention. During the transfer, she was beaten again, pushed, threatened with anal rape and death, groped by a police agent who "placed his hands between her buttocks, squeezed her vagina, pinched her and hurt her, in addition to squeezing her breasts under her blouse"; they piled people on top of her and again beat and insulted her. In the CEPRESO, in addition to the foregoing, she was obliged to undress in front of four doctors to be examined.
6. *Ana María Velasco Rodríguez*: was beaten, pulled by her hair, kicked, subjected to sexualized insults and mauled at the time of her detention. During the transfer, she was beaten again; they touched her "breasts, vagina and buttocks while calling her a "bitch" and a "whore"; one agent put his penis in her mouth and forced her to give him oral sex and also with her hand, while another two agents touched her breasts and vagina. Then, another police agent again forced her to give him oral sex and another two agents "continued to grope" her and put their fingers in her vagina roughly, tearing her underwear, while they threatened her with greater abuse. In the CEPRESO, in addition to the foregoing, she was again beaten, pushed and kicked.
7. *Suhelen Gabriela Cuevas Jaramillo*: was beaten, groped and subjected to sexualized insults at the time of her detention. A police agent almost undressed her, touched her breasts and buttocks and pinched her breasts and tried to take her trousers off and, when she "closed her legs, [the agent] opened them with his boots and kicked [her] vagina." During the transfer to the prison, several police agents pinched her breasts, "tore at [her] trousers," piled people on top of her and beat her randomly. They "tore at [her] brassiere," leaving her with her breasts uncovered and pinched and bit them while insulting her. She felt several agents put their fingers in her vagina, "numerous times because some of them approached her and did it and then others approached and did it." She was threatened with death and subjected to stressful positions, half naked and in the presence of her partner. In the CEPRESO, she was beaten again and obliged to undress for the examination.
8. *Bárbara Italia Méndez Moreno*: was beaten, subjected to sexualized insults, mauled and threatened with death and rape at the time of her detention. During the transfer to the prison, she again was beaten, pushed, piled on top of other people and undressed. In addition, she was penetrated numerous times with fingers and with a metallic object by several police agents; several agents rubbed their genitals against hers and they left her naked and in a stressful and vulnerable position during the remainder of the

journey. She recounted that they pinched her breasts, while they beat her and yelled obscene expressions, including forcing her to call one of the agents who was attacking her "cowboy." At least three agents penetrated her vagina with their fingers, encouraging each other and, on one occasion, two agents held her hips while they encouraged another agent to "fuck her" and they threatened her, insulted her, hit her with their fists and forced their tongues into her mouth. The police "rubbed" their genitalia against her external genitalia, "first one, then another, then the first one did it again," and then she was penetrated again "but this time with a small object" that she believed were keys; after this they left her naked and in a supremely vulnerable position for the rest of the journey to the CEPRESO. In the prison, she was beaten again and insulted and denied medical treatment.

9. *María Cristina Sánchez Hernández*: was beaten and threatened with death at the time of her detention. During the transfer to the prison, she was beaten while she was interrogated and was forced to sing and tell obscene jokes; they groped her, touched her and squeezed her breasts and between her legs, and she saw how they forced another woman to perform oral sex. On arrival at the CEPRESO, they again kicked, insulted and threatened her.
10. *Angélica Patricia Torres Linares*: was beaten, subjected to sexualized insults, threatened with death and rape, and mauled at the time of her detention. During the transfers, they beat her and insulted her again, squeezed her breasts hard, groped her and touched her buttocks and genitalia on top of her clothes. In the CEPRESO, she was again beaten, threatened with rape, and a police agent touched her "vulva with his fingers, and subsequently penetrated [her]."
11. *Claudia Hernández Martínez*: was beaten, insulted and mauled at the time of her detention. In addition, during the transfer, the police agents removed her underwear and several agents introduced their fingers "violently and repeatedly in [her] vagina," while others took off her brassiere, licked her breasts and pulled her nipples, among other forms of sexual violence. In the CEPRESO, they continued to beat her, forced her to watch someone being raped, and pulled her hair and she suffered another attempt to rape her.

188. The foregoing reveals that the eleven women in this case were beaten, insulted, mauled and subjected to diverse forms of sexual violence by numerous police agents at the time of their detention, during the transfers and when they entered the CEPRESO. The Court notes that, in this case, the sexual or sexualized nature of all the violence used against the victims stands out. The indecent touching, groping, pinching and blows were inflicted on intimate parts of the body that are typically reserved to each individual's private sphere, such as their breasts, genitalia and mouth. In addition, many of them were made to undress and remain naked in the buses and trucks in which they were transferred to the CEPRESO, or on entering the prison.<sup>285</sup> In addition, the insults, verbal abuse and threats to which the women were subjected had highly sexual and discriminatory gender-based connotations. Although these forms of violence will be examined in greater detail below (para. 210 and ff.), the Court considers that all the violent actions and

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<sup>285</sup> Subjecting women to forced nudity, while they are guarded by armed men constitutes sexual violence. Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 306, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 131. In this regard, in addition to the nudity to which many of them were subjected during the transfer, Yolanda Muñoz Diosdada recounter, for example, that on arriving at the CEPRESO they "entered a room in which there were already men and women who were naked," they were ordered to undress and she was left "naked in front of everyone, men and women," and suffered a strong "impression on seeing [herself] there among everyone, several of them bleeding" (*supra* para. 103).

conducts deployed by the state agents against the eleven women victims in this case were of a sexual nature and therefore constituted sexual violence.

189. In addition, as alleged by the Commission and the representatives, acknowledged by the State and described by the victims, Court notes that: (i) Norma Aidé Jiménez Osorio, (ii) Mariana Selvas Gómez, (iii) Ana María Velasco Rodríguez, (iv) Suhelen Gabriela Cuevas Jaramillo, (v) Bárbara Italia Méndez Moreno, (vi) Angélica Patricia Torres Linares and (vii) Claudia Hernández Martínez, were also victims of rape, to the extent that they underwent specific forms of sexual violence that included penetration of their bodies (vagina, anus and mouth) by the police agents, in some cases, in a joint and coordinated manner, with fingers, penises and, in one case, an object (*supra* para. 187).

190. Having determined that the eleven women in this case were victims of sexual violence, and seven of them also of rape, the Court must determine whether this violence also constituted torture.

### B.2.b Torture

191. According to the Court's case law, in light of Article 5(2) of the American Convention, torture should be understood as any act of ill-treatment that: (i) is intentional; (ii) causes severe physical or mental suffering, and (iii) is committed with an objective or purpose.<sup>286</sup>

192. The Court recalls that an international legal regime has been established concerning the absolute prohibition of all forms torture, both physical and psychological and, regarding the latter, it has been recognized that threats and the real danger of someone being subjected to serious physical injury produces, in certain circumstances, a moral anguish of such intensity that it may be considered "psychological torture."<sup>287</sup>

193. Furthermore, in numerous cases, the Court's case law has determined that rape is a form of torture.<sup>288</sup> This Court has considered that the intense suffering of the victim is inherent in rape and, in general, rape, like torture, pursues, among other purposes, that of intimidating, debasing, humiliating, punishing or controlling the victim.<sup>289</sup> For a rape to be classified as torture, the

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<sup>286</sup> Cf. *Case of Bueno Alves v. Argentina. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 164, para. 79, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 186.

<sup>287</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, para. 102, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 183.

<sup>288</sup> See, *inter alia*, *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, para. 128; *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, para. 118; and *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250, para. 132; *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of February 16, 2017. Series C No. 333, para. 252

<sup>289</sup> Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, para. 127, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 187.

intentionality, the severity of the suffering and the purpose of the act must be analyzed, taking into consideration the specific circumstances of each case.<sup>290</sup>

194. To establish whether the abuse suffered by the eleven women in this case constituted acts of torture, the Court must examine whether the acts were: (i) intentional (ii) caused severe physical or mental suffering, and (iii) were committed with an objective or purpose.

195. In this case, it is plain that the police acted deliberately against the eleven women. Given the sexual nature of the violence used, the repetition and similarity of the acts committed against the different women, as well as the insults and the threats made against them, the Court finds it evident that these acts were intentional.

196. Regarding the severity of the suffering, this Court has recognized that sexual violence committed by state agents while the victims are in their custody is a serious and reprehensible act, during which the agent abuses his power and takes advantage of the vulnerability of the victim, and this may have severe psychological consequences for victims.<sup>291</sup> The Court also stresses that, in this case, during their detention and transfer to the prison, the victims were repeatedly threatened with murder or rape, and with even worse abuse than the acts that were being inflicted on them. Furthermore, regarding the rapes, the Court has recognized that rape constitutes an extremely traumatic experience that has severe consequences and causes great physical and psychological harm which leaves the victim "physically and emotionally humiliated," a situation that it is difficult to overcome with the passage of time, contrary to what occurs with other traumatic experiences.<sup>292</sup> This reveals that the severe suffering of the victim is inherent in rape, even when there is no evidence of physical injury or disease.<sup>293</sup> Women victims of rape also experience severe psychological, and even social, harm and aftereffects.<sup>294</sup> As revealed by their statements, the violence to which they were subjected by the state agents in the context of their detentions on May 3 and 4, 2006, caused them severe suffering, the aftereffects of which persist up until the present as has been corroborated by the psychological tests, and by the application of the Istanbul Protocol (*supra* paras. 106 and ff.).

197. Lastly, with regard to the purpose, the Court notes that the victims' statements, and the investigations conducted by the CNDH and the SCJN, reveal that the purpose of the violence used against the eleven women was to humiliate them and those the police assumed were their companions; to frighten them, to intimidate them and to prevent them from taking part in political life again or expressing their discontent in the public sphere because, according to the

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<sup>290</sup> Cf. *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, paras. 110 and 112, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 184.

<sup>291</sup> *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 311, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of February 16, 2017. Series C No. 333, para. 255.

<sup>292</sup> Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 311, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 187. Similarly, ECHR, *Case of Aydin v. Turkey*, No 23178/94. Judgment of September 25, 1997, para. 83.

<sup>293</sup> *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, para. 193, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 187.

<sup>294</sup> *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, para. 193, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 184.

police, they should not leave their homes, the only place where they supposedly belonged according to the latter's imaginary and stereotyped vision of social roles (*infra* paras. 210 and ff.); moreover, it also had the distinctive purpose of punishing them for daring to question police authority, as well as in retaliation for the supposed injuries suffered by their police colleagues. In this regard, the SCJN stressed that "a possible cause of the sexual abuse reported could be that the mindset of some police agents was affected by awareness of the attacks that their colleagues had suffered and they wanted to punish those they believed were, or were associated with, the individuals responsible."<sup>295</sup>

198. Therefore, the Court concludes that the series of abuses and attacks suffered by each of the eleven women in this case, including but not limited to the rapes, constituted acts of torture by state agents against Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Ana María Velasco Rodríguez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Claudia Hernández Martínez.

199. The Court emphasizes that the torture perpetrated in this case was committed during a police operation in which the women were under the complete control of State agents and in a situation of absolute helplessness. Far from acting as guarantors of the rights recognized in the Convention to the persons in their custody,<sup>296</sup> the Mexican State's security agents personally abused, repeatedly and collectively, of the vulnerable situation of the victims.

#### B.2.c Use of torture and sexual violence as a weapon for repressive social control

200. That said, the Court observes with concern that the severity of the sexual violence in this case, in addition to its classification as torture, also stems from the fact that it was used as an intentional and targeted form of social control. In the context of armed conflicts, the United Nations Security Council,<sup>297</sup> international criminal courts/tribunals,<sup>298</sup> and domestic courts<sup>299</sup> have

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<sup>295</sup> In this regard, it determined that "the police agents were not only aware of the attacks that their colleagues had suffered, but also they believed that they were dead" and this could have had an impact on their mindset. The interviews with several police agents conducted by the Commission of Inquiry reveal that some of them coincided in indicating that the excesses could be due to the anger they felt owing to the attacks they had suffered. *Cf.* SCJN judgment of February 12, 2009 (evidence file, folios 31048 to 31050).

<sup>296</sup> *Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of June 7, 2003. Series C No. 99, paras. 99 and 100, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of February 16, 2017. Series C No. 333, para. 255.

<sup>297</sup> "Noting that [...] women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group; and that sexual violence perpetrated in this manner may in some instances persist after the cessation of hostilities; [...] 1. Stresses that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security, [...] and therefore] effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security, and expresses its readiness, when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence." UN Security Council. Resolution 1820 of June 19, 2008, S/RES/1820 (2008), preamble and first operative paragraph.

<sup>298</sup> ICTY, *Prosecutor v. Kunarac, Kovac and Vukovic.* Judgment of February 22, 2001, paras. 583 to 585; ICTR, *The Prosecutor v. Jean-Paul Akayesu.* Judgment on appeal of June 1, 2001, para. 731; Special Court for Sierra Leone, *Prosecutor against Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (Case No. SCSL-04-15-T). Judgment of March 2, 2009 (Trial Chamber 1), paras. 1347 and 1348

<sup>299</sup> See, *inter alia*, Constitutional Court of Colombia. Ruling 092/08 in the context of surmounting the situation of unconstitutionality declared in judgment T-025/04 and judgment T-126/18 of April 12, 2018.

recognized that sexual violence has frequently been used as a tactic of war “in order to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group.”<sup>300</sup> This Court has referred to the use of sexual violence in armed conflicts as a symbolic means of humiliating the other party or as a means of punishment or repression. In this regard, it has underscored how the use of the State’s power to violate the rights of women in an internal conflict, in addition to affecting them directly, may be designed to have an effect on society and give a message or lesson, because the consequences of sexual violence usually transcend the victim.<sup>301</sup>

201. The African Commission on Human and Peoples’ Rights has also emphasized how sexual violence is used in contexts where there is no armed conflict, when referring to sexual assaults committed against women during the 2005 protests in Egypt. It considered that the insults, violence, intimidation and sexual harassment of the women, because they were women, were designed to silence them and deter their activism in political affairs.<sup>302</sup>

202. Similarly, in this case, sexual violence was used by State agents as a tactic or strategy of control, domination and imposing authority. Indeed, as in the cases referred to previously, sexual violence was used in public, with numerous witnesses, as a macabre and intimidating spectacle in which the other detainees were forced to listen and, in some cases, to witness what was being done to the women’s’ bodies.

203. In this regard, the Court stresses that: (i) Norma Aidé Jiménez Osorio recounted that during the transfer she could hear the cries of men and women pleading with the police not to rape them (*supra* para. 93); (ii) María Patricia Romero Hernández, who was beaten and threatened by the police in front of her son and her father, recounted that she was sexually abused by several agents “a few meters away from [her] son and [her] father,” and they forced her “to be quiet [... because if not] they would be able to hear [her] [and she could only think that she] did not want [her] family to find out” (*supra* para. 90); (iii) Suhelen Gabriela Cuevas Jaramillo recounted that she had been detained with her partner and that, when one of the police agents realized that she was accompanied, “he said to him, ‘this is how you fuck her, jerk?’” while slapping his face, and also that, during the journey to the prison, she could hear other women resisting sexual assaults (*supra* para. 97); (iv) Bárbara Italia Méndez Moreno recounted how she was raped by several agents, who incited and encouraged each other, while she was lying on top of two other people and, at the same time, she could hear another woman crying out for them to stop attacking her (*supra* para. 98 and 99), and (v) María Cristina Sánchez Hernández recounted how she witnessed a rape, during which the other woman was forced to perform oral sex (*supra* para. 89). All of

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<sup>300</sup> United Nations Security Council. Resolution 1820 of June 19, 2008, S/RES/1820 (2008), Preamble. See, similarly, a 2018 Report of the Secretary-General on conflict-related sexual violence, which underscored that ten years after the adoption of that resolution, “[w]ars are still being fought on and over the bodies of women, to control their production and reproduction by force. Across regions, sexual violence has been perpetrated in public or witnessed by loved ones, to terrorize communities and fracture families through the violation of taboos, signifying that nothing is sacred and no one is safe.” “The recognition of the fact that such incidents are not random or isolated but integral to the operations, ideology and economic strategy of a range of State actors and non-State armed groups marked a shift in the classic security paradigm.” Report of the Secretary-General on conflict-related sexual violence, March 23, 2018, UN Doc. S/2018/250, para. 9.

<sup>301</sup> *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, paras. 223 and 224; *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, para. 165, and *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, para. 226.

<sup>302</sup> *Cf. African Commission on Human and Peoples’ Rights, Case of the Egyptian Initiative for Personal Rights and INTERIGHTS v. Arab Republic of Egypt.* Decision of December 12, 2011, para. 166.

which would appear to indicate that the purpose was precisely that the other protesters saw or were aware of what happened to their women when they challenged the authority of the agents, under a male chauvinist concept of women as a possession or object to be dominated in order to crush the group they were trying to control.

204. Therefore, the Court concludes that, in this case, the police agents used the detained women's bodies as instruments to transmit their message of repression and condemnation of the protest measures employed by the demonstrators. They objectified the women to humiliate, dominate and instill fear in the voices of dissent against their powers of command. Sexual violence was used as just one more weapon in the repression of the protest, as if, together with the tear gas and the anti-riot gear, it was merely an additional tactic to achieve the purpose of dispersing the protest and ensuring that the State's authority was not challenged again. This type of conduct in the maintenance of public order, more than reprehensible, is absolutely unacceptable. Sexual violence has no place and should never be used as a way of controlling public order by the law enforcement agents of a State bound by the American Convention, the Convention of Belém do Pará and the Inter-American Convention against Torture to pursue "by all appropriate means and without delay, policies to prevent, punish and eradicate" violence against women.

#### B.2.d Medical violence

205. Meanwhile, both the Commission and the representatives alleged specific violations of personal integrity, owing to the treatment received by the victims from the doctors when they arrived at the prison.<sup>303</sup> In this regard, The Court notes that several of the victims underlined the denigrating treatment they received from the first doctors who attended them when they reached the prison. For example: (i) Norma Aidé Jiménez Osorio recounted that the doctors refused to perform a gynecological examination because there was no gynecologist, and to record or report the rape, in addition to saying to her in a mocking way, "well, if you want, I will examine you, but I'm not a gynecologist"; (ii) Bárbara Italia Méndez Moreno indicated that having to face the "violence of the doctors was really devastating," because she told them that she required medical treatment owing to the sexual abuse and the doctors refused to treat her or examine her. She indicated that they stitched up her head without cleaning the wound or giving her an anesthetic, which caused her "really acute pain," and that the doctors mocked her, and (iii) Claudia Hernández Martínez underscored that she was taken to the infirmary in the early morning hours, where she was mocked and insulted by one of the doctors who said to her: "I don't believe that anyone touched you, fucking old radicals! Filth!" She added that the doctor did not perform a clinical examination and refused to provide her with gynecological treatment. She was then taken to see a forensic physician who also refused to provide her with any type of treatment despite her complaints (*supra* para. 104).

206. The Court has recognized how specific cruel, inhuman or degrading treatment and even torture may occur in the sphere of the health care services.<sup>304</sup> It has also stressed the important

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<sup>303</sup> In this regard, the Court notes that, according to the Articles on Responsibility of States for Internationally Wrongful Acts drafted by the UN International Law Commission, the internationally wrongful act may not only be attributed to any entity that is an organ of the State under its domestic law (Article 4), but also to any person or entity "empowered by the law of that State to exercise elements of the governmental authority, [...] provided the person or entity is acting in that capacity in the particular instance" (Article 5). UN, General Assembly, Responsibility of States for Internationally Wrongful Acts, A/RES/56/83, January 28, 2002.

<sup>304</sup> Cf. *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 329, para. 263, and *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 350, paras. 174 to 177. See, similarly, UN, Report of the Special

role that doctors and other health care professionals have in safeguarding personal integrity and preventing torture and other ill-treatment.<sup>305</sup> Particularly in cases such as this one, the evidence obtained as a result of the medical examination plays a crucial role in investigations.<sup>306</sup>

207. The Court notes that the doctors who attended the women victims in this case treated them in a denigrating and stereotypical manner, which was particularly serious, owing to their position of authority, the failure to comply with their care duties, and the complicity they revealed by refusing to record the injuries suffered, but even more importantly, owing to the special situation of vulnerability of the women, bearing in mind that they had been victims of sexual torture inflicted by police agents and, in many cases, these doctors were the first person to whom they tried to report the violations that had been committed. Moreover, owing to their refusal to examine the women and record their injuries, they significantly jeopardized the subsequent investigations, as explained below (paras. 274 and ff.). This Court finds that the treatment received from the doctors constituted an additional element of the sexual violence and discrimination to which the victims were subjected.

#### B.2.e Conclusion

208. Based on the foregoing, the Court considers that the treatment to which the women were subjected by the doctors who attended them was not only denigrating and stereotypical, but also formed part of the sexual violence of which they were victims.

209. Additionally, it concludes that the eleven women victims in this case were subjected to torture and sexual violence, including rape in the case of the seven women referred to above. The Court also finds that the severity of the sexual violence in this case was increased because this especially reprehensible and discriminatory form of violence was used by state agents as a form of control of public order to humiliate, inhibit and impose their domination over a sector of the civilian population that the police, far from protecting, treated as an enemy that had to be crushed, without caring whether, to this end, they used the women detained as just one more tool in their public order strategy.

### **B.3 Gender-based discrimination and verbal violence based on discriminatory female stereotypes**

210. Article 1(1) of the Convention is a general rule whose content extends to all the provisions of the treaty and it establishes the obligation of the States Parties to respect and to ensure the free and full exercise of the rights and freedoms, recognized therein "without any discrimination." In other words, whatsoever its origin or the form it assumes, any treatment that may be considered discriminatory with regard to the exercise of any of the rights recognized in the Convention is, *per*

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Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/31/57, January 5, 2016, paras. 5 and 9.

<sup>305</sup> Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, paras. 152 to 156, and *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 350, paras. 174 to 177.

<sup>306</sup> Cf. ECHR, *Korobov v. Ukraine*, No. 39598/03, Judgment of July 21, 2011, para. 69, *Salmanoğlu and Polattaş v. Turkey*, No. 15828/03, Judgment of March 7, 2009, para. 79, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 333.

se, incompatible with this instrument.<sup>307</sup> Non-compliance by the State with the general obligation to respect and to ensure human rights, owing to any discriminatory treatment, gives rise to its international responsibility. Thus, there is an indissoluble link between the obligation to respect and to ensure human rights and the principle of equality and non-discrimination.<sup>308</sup>

211. The Court considers that gender-based violence – that is, violence against a woman because she is a woman – or violence that affects women disproportionately, is a form of discrimination against women.<sup>309</sup> Both the Convention of Belém do Pará, and the Convention on the Elimination of All Forms of Discrimination against Women and its monitoring mechanism have recognized the link that exists between violence against women and discrimination.<sup>310</sup> In the instant case, the Court considers that the physical violence committed against the eleven women constituted a form of gender-based discrimination because the sexual abuse was applied to the women, because they were women. Even though the men detained during the operations were also subjected to an excessive use of force, the women were affected by differentiated forms of violence, which were clearly of a sexual nature and focused on intimate parts of their bodies, and that were laden with stereotypes concerning their sexual role and their role in the home and in society, and also with regard to their credibility. Furthermore, it had the distinctive purpose of humiliating and punishing them for being women who, presumably, were participating in a public protest against a decision of the State authority.

212. Furthermore, although it has already been concluded that the series of assaults committed by the police against the eleven women constituted torture and sexual violence, the Court deems it pertinent to include some additional considerations on the stereotypical verbal violence to which they were subjected in the context of these facts, owing to the nature of those expressions, their consistent and repetitive nature, and the absence of an adequate response by the State in this regard. The physical violence to which the victims were subjected, and which has already been described, was severe but, despite this, the gravity of the verbal and psychological violence to which they were also repeatedly subjected by insults and threats with highly sexual, *macho*, discriminatory and, in some case, misogynous connotations should not be obscured. Therefore, in this section, the Court will analyze, in particular, the stereotypical verbal abuse and expressions to which the eleven women were subjected at the time of their detention, during the transfers and on arrival at CEPRESO by the police agents who carried out the operations. The Court will also refer to the immediate reaction, also laden with stereotypes, of senior government authorities when confronted with the reports of the abuses that had been or were being committed.

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<sup>307</sup> Cf. *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 53, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs*. Judgment of March 9, 2018. Series C No. 351, para. 271.

<sup>308</sup> Cf. *Juridical Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 85, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs*. Judgment of March 9, 2018. Series C No. 351, para. 271.

<sup>309</sup> Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160. para. 303, and *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 223.

<sup>310</sup> 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, paras. 394 and 395, citing the Convention of Belém do Pará, Preamble and Article 6; the Convention on the Elimination of All Forms of Discrimination against Women of December 18, 1979, Article 1, and the Committee for the Elimination of Discrimination against Women, General Recommendation No. 19: Violence against women, UN Doc. A/47/38, January 29, 1992, paras. 1 and 6. See also, *inter alia*, *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 350, para. 290.

213. A gender-based stereotype refers to a preconception of attributes, conducts or characteristics possessed by, or roles that are or should be played by, men and women, respectively, and it is possible to associate the subordination of women to practices based on socially dominant and persistent gender-based stereotypes. In this regard, their creation and use becomes one of the causes and consequences of gender-based violence against women, a situation that is exacerbated when they are reflected, implicitly and explicitly, in policies and practices, particularly in the thinking and language of the State authorities.<sup>311</sup>

214. As verified above (paras. 75 to 105), the violence used by the police against the eleven women in this case included stereotyped insults and threats of being subjected to different forms of sexual violence. In particular, the Court has noted the following:

1. *Yolanda Muñoz Diosdada*, recounted that, after beating her, a police agent told her that they were all "whores, bitches, now you're fucked!"
2. *Norma Aidé Jiménez Osorio* declared that the police, when assaulting her, told her that this was happening "because [she] was not at home, washing dishes" and that she was a whore, telling them that they "should be at home cooking instead of out and about; that [they] were not thinking about [their] families or [their] children." Also, during the transfer, they threatened her and her family, telling her that her mother would also be "fucked," and that "soon, we're going to rape you and then we're going to make you disappear."
3. *María Patricia Romero Hernández* stated that, when she refused to undress, several agents beat her saying she was "aggressive" and that "this will teach you a lesson, bitch." She also recounted how the police threatened her in front of her son and her father, saying "we're going to fuck you," "you're a bitch and don't deserve to live," "we're going to kill you," and "we're going to rape you, you fucking bitch."
4. *Mariana Selvas Gómez* stated that, while they were beating her, the agents insulted her saying things like "fucking whore, bitch." She explained that they then continued to ask for her personal data while they insulted her and that "as she was a woman, during the whole journey, they were saying "damn whore, bitch, murderer, damn Samaritan, rebel, we're going to fuck you [...]."
5. *Georgina Edith Rosales Gutiérrez* indicated that they insulted her saying "whore, bitch, soon you're going to see what's coming to you!" In addition, she heard another agent shouting: "fuck these bitches from behind to calm them down!"
6. *Ana María Velasco Rodríguez* recounted how, when she did not give the answer that the police were seeking, they beat her and insulted her as "bitch" and "whore." Seeing that she was not bleeding, "they used more force and said: 'this bitch is clean, hit her more.'"
7. *Suhelen Gabriela Cuevas Jaramillo* recounted how, on arresting her, the police asked her why she was not studying and told her that she "was a whore." In addition, she stated that, during the transfer, while they assaulted her, they shouted that she "was a whore and what was [she] doing there, and that [she] should go back to making tortillas."
8. *Bárbara Italia Méndez Moreno* recounted how the police insulted her, calling her a "bitch" while they hit her; also, they yelled: "it's her! It's the bitch, mark her!" "Bitch How does this feel? I'm going to kill you! I'm going to fuck you and then I'll kill you!" She narrated that they began "to yell obscene expressions about [her] body, about

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<sup>311</sup> 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. 401, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 235.

[her] being a woman, they told [her] that this was happening because [she] had not stayed home to look after [her] children." She also described how, while they beat her, they shouted "whore, say I'm a cowboy, say I can ride you or I'll kill you; go on say it!"<sup>312</sup> Also, while they were raping her, they said "You like this, whore, don't you? How will you not like it if you're a bitch; as soon as I finish with you, I'm going to kill you, I'm going to fuck your mother and I'll kill her also!"; at the same time, he encouraged other agents to rape her with expressions such as "Come, shut this whore up, try her, she'll enjoy it! Whore, of course you enjoy it!" or "Come and feel this whore."

9. *María Cristina Sánchez Hernández* stated that, while they assaulted her, the agents said to her "why weren't you [...] at home, damn bitch" and many other strong words.
10. *Angélica Patricia Torres Linares* recounted how while they beat her, they asked her "what was [she] doing there? that women are only useful for making tortillas; that [she should be at home; that this was happening because [she] was not at home."
11. *Claudia Hernández Martínez*, recounted that, when she said where she came from, a police agent yelled, "hey, look, this bitch if from Tepito, let's warm her up!" On realizing that she was menstruating, he yelled to the others, "look, this bitch is bleeding, let's dirty her a little more." Also, during the transfer, when threatening her, the agents said that "if [they] had been at home making tortillas this would not have happened to [them]."

215. The Court notes that, the right of women to live a life free of violence and the other specific rights recognized in the Convention of Belém do Pará result in the correlative obligations of the State to respect and to ensure those rights. The State obligations stipulated in Article 7 of the Convention of Belém do Pará should encompass all the State's spheres of action, transversally and vertically; that is, all the public powers (legislative, executive and judicial), at both the federal and the state or local level, as well as the private spheres. This calls for the enactment of laws and the design of public policies, institutions and mechanisms aimed at combatting all forms of violence against women, but also requires the adoption and implementation of measures to eradicate prejudices, stereotypes and practices that constitute the fundamental causes of gender-based violence against women.<sup>313</sup>

216. The Court has already indicated that justifying violence against women and, in some way, attributing them with responsibility owing to their conduct is an inexcusable gender-based stereotype that reveals a discriminatory pattern against women, just for being women.<sup>314</sup> In the instant case, the extremely coarse and sexist ways in which the police addressed the victims, with obscene words, alluding to their imagined sexual life and supposed failure to comply with their household roles, as well as the supposed need for domestication, reveals profoundly *macho* stereotypes that sought to reduce the women to a sexual or domestic function, where, stepping out of those roles to demonstrate, protest, study or document what was happening in Texcoco and San Salvador de Atenco – in other words, their mere presence and action in the public sphere – was sufficient to punish them with diverse forms of abuse.

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<sup>312</sup> The Court underscores that, according to the evidence gathered by the SCJN, the testimony exists of at least one other person who indicated that "during the transfer, she heard the voice of a man who said to someone 'say I'm a cowboy!'" which agrees with what Bárbara described. Cf. SCJN judgment of February 12, 2009 (evidence file, folios 30946 and 30947).

<sup>313</sup> The Committee for the Elimination of Discrimination against Women (CEDAW) has ruled similarly with regard to the general obligations of the Convention on the Elimination of All Forms of Discrimination against Women. Cf. CEDAW, *General Recommendation No. 35*, para. 26.

<sup>314</sup> Cf. *Case of Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2015, para. 183, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, paras. 235 and 236.

217. In this case it has already been determined that the police actions were characterized by a lack of professionalism, discipline and adequate training (*supra* paras. 165 and ff.), so that the use of extremely sexist and stereotypical language in their treatment of the victims can be attributed, in part, to the failure of the State. However, this Court is concerned that the State's response to the events that occurred in Texcoco and San Salvador de Atenco on May 3 and 4, 2006, have focused on the physical violence suffered by the victims (*supra* paras. 126 to 147). Similarly, the SCJN highlighted that "the administrative and prosecutorial investigators did not address clarification" of the complaints of verbal and psychological violence.<sup>315</sup>

218. As previously indicated, in order to ensure that women have real and effective equality and, particularly, bearing in mind the circumstances of this case, in order to guarantee them the possibility of taking part in public life in the same conditions as men, States must take active and positive measures to combat stereotypical and discriminatory attitudes such as those demonstrated by their police agents when repressing the protests of May 3 and 4, 2006. To the extent that those conducts were based on deeply-rooted socio-cultural patterns and prejudices, it is not sufficient that the State adopt a passive attitude or a mere sanction, and even this has not occurred in this case. The State must implement programs, policies and mechanisms to actively combat such prejudices and ensure that women have real equality. When the State fails to take concrete actions to eradicate them, it reinforces and institutionalizes them, which gives rise to, and reproduces, violence against women.<sup>316</sup>

219. In addition to the police violence based on stereotypical attitudes, the Court takes note of the response of the most senior government authorities of the state in which the events occurred, which was also based on a stereotypical attitude (*supra* paras. 73 and 74). The Court observes that, following the violence endured at the hands of members of the police forces, the victims were subjected to doubts about their credibility and public stigmatization as members of the guerrilla, by the Governor, the Secretary General of the government of the state of Mexico and the Commissioner of the state Security Agency. In this regard, the Court notes that is absolutely unacceptable that the first public reaction of the pertinent highest authorities was to call into question the credibility of the women who reported sexual violence, stigmatizing them and accusing them of being members of the guerrilla, and denying what had happened when not even an investigation had been opened. Part of the compliance by the State with its obligations to prevent and to punish violence against women, involves giving due attention and importance to any complaint of violence. The Court recognizes and rejects the gender-based stereotypes present in the response by the authorities, owing to which they denied the existence of rape due to the absence of physical evidence; blamed the victims for the failure to file complaints and for the absence of medical examinations, and undermined their credibility based on an in-existent supposed membership in an insurgent group.<sup>317</sup>

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<sup>315</sup> The SCJN determined that "in the climate of violence, confrontation and excesses in which these events took place, and since the competent authorities made almost no effort to clarify them, it is not only credible that the violence was also verbal and moral, but also logical and explicable; and that is sufficient, in the instant case, for it to be considered that there were cases in which, added to, or independently of, the physical violence, there was also violence of this type." SCJN judgment of February 12, 2009 (evidence file, folio 30861).

<sup>316</sup> Cf. *Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of August 24, 2017. Series C No. 339, para. 173, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 236.

<sup>317</sup> As in other cases, the authorities based their response on a gender-based stereotype according to which women who are detained or subjected to judicial proceedings would inherently lie and be unreliable, and this constituted a negative stereotype found in this case. Cf. *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, para. 272.

220. The Court concludes that the physical and mental violence suffered by the eleven women constituted stereotypical and discriminatory treatment in violation of the general prohibition of discrimination contained in Article 1(1) of the Convention. The Court also recalls that the State acknowledged the violation of Article 24 of the Convention.

#### **B.4 Conclusion**

221. Based on all the preceding considerations, the Court concludes that the State failed to comply with its obligations: (i) to adopt domestic legal provisions to regulate the use of force adequately; (ii) to train and educate its law enforcement personnel with regard to the standards and principles for the protection of human rights in the management and use of force, and (iii) to establish appropriate mechanisms to adequately control the legitimacy of the use of force. In addition to non-compliance with these obligations before and during the deployment of the use of force, in the instant case, the State failed to comply with its obligations to respect and to ensure the rights of the victims during the operations in which the police agents deployed a totally excessive use of force. In addition, owing to the absence of any conduct by the women that made the use of force against them necessary, as well as the sexual nature of the violence used, the use of force against the eleven women victims in this case was not even legitimate.

222. Additionally, the Court determined that: (i) the eleven women suffered sexual violence, consisting of verbal and physical abuse, with sexual connotations and allusions; (ii) seven of them were also victims of rape because some of the abuse suffered included penetration of their bodies with some part of the body of the agents or an object, and (iii) all of them were victims of torture owing to the series of assaults and abuse they suffered including, but not limited to, rape, owing to the severity and the intentional nature of the suffering inflicted by the police, as well as the objective which was to humiliate and punish the victims. The Court also found that: (i) in this case, torture was used as a form of social control which increased the egregiousness of the violations committed; (ii) the victims were subjected to diverse forms of psychological and verbal violence that were profoundly stereotypical and discriminatory, and (iii) the treatment received from the prison doctors constituted an additional element of the cruel and degrading treatment. Lastly, the Court considered that the sexual violence and torture, both physical and psychological, used against the eleven victims also constituted gender-based discrimination, in violation of the general prohibition of discrimination established in Article 1(1) of the American Convention.

223. Based on all the above, the Court concludes that the Mexican State violated the rights to personal integrity, privacy, and not to be subjected to torture recognized in Articles 5(1), 5(2) and 11 of the Convention, in relation to the obligations to respect and to ensure these rights without discrimination, established in Articles 1(1) and 2 of this instrument and Articles 1 and 6 of the Inter-American Convention against Torture, and Article 7 of the Convention of Belém do Pará, and recalls that the State has acknowledged the violation of Article 24 of the Convention, to the detriment of Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Ana María Velasco Rodríguez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Claudia Hernández Martínez.

224. Furthermore, to the extent that the violence experienced constituted an unnecessary and illegitimate interference in their right of assembly, the Court concludes that the State also violated this right recognized in Article 15 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Norma Aidé Jiménez Osorio, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, Angélica Patricia Torres Linares, Claudia Hernández Martínez, Mariana Selvas Gómez and Georgina Edith Rosales Gutiérrez.

**IX-2**  
**RIGHTS TO PERSONAL LIBERTY<sup>318</sup> AND TO JUDICIAL GUARANTEES,<sup>319</sup> IN RELATION TO**  
**THE OBLIGATION TO RESPECT AND TO ENSURE THESE RIGHTS, WITH REGARD TO THE**  
**DETENTIONS ON MAY 3 AND 4, 2006**

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

225. The **Commission** argued that the detention of the eleven women victims in this case was unlawful and, therefore, contrary to Article 7(2) of the Convention because it contravened the provisions of the Mexican Constitution as it was not based on a reasoned order issued by a competent authority. It indicated that, although, in some of its briefs, the State had argued that they had been detained *in flagrante delicto*, it had not justified this assertion and, to the contrary, the facts reveal the contrary. Also, it considered that the detentions were arbitrary and contrary to Article 7(3) of the Convention owing to the acts of physical, psychological and sexual violence perpetrated against the victims, both at the time of their detention, and during the transfer to and entry into the CEPRESO. Furthermore, it affirmed that Article 7(4) and paragraphs (b), (d) and (e) of Article 8(2) had been violated because the women were not advised of the reasons for their detention; they made their first statements without knowing the charges or the acts attributed to them, and "without having a trusted defense counsel or, if this was not possible, a counsel provided by the State."

226. The **representatives** indicated that the deprivation of the women's' personal liberty violated Article 7(1) because it took place "in the context of mass detentions, merely based on the fact that the victims were in the area" and "without there necessarily being any connection between the persons detained and the protests, and in particular with regard to any unlawful conduct." They indicated that, in each case, the detention was unlawful because it did not comply with the pertinent requirements indicated in the Constitution, and also "most of the women were detained in private houses during unauthorized searches." They also asserted that the detentions were arbitrary because the use of physical, psychological and sexual violence "as a methodology to carry out arrests, in the moments following the deprivation of liberty, and during the transfer, was not reasonable, predictable or proportionate and did not seek to achieve any valid purpose." In addition, they argued that Article 7(4) and paragraphs (b), (d) and (e) of Article 8(2) had been violated because: (i) the women were not informed of the reasons for their detention, or (ii) notified "clearly of the charges against them and of the facts and arguments on which those charges were based before their first appearance before the Public Prosecution Service", and (iii) "they did not have defense counsel from the start of the investigations against them, or before their first appearance before the Public Prosecution Service."

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<sup>318</sup> Article 7(1) of the Convention establishes that: "1. Every person has the right to personal liberty and security."

<sup>319</sup> The relevant part of Article 8 of the Convention establishes that: "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. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: [...] (b) prior notification in detail to the accused of the charges against him; [...] (d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel; (e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law."

227. The State acknowledged responsibility for the violation of the right to personal liberty of the eleven women victims in this case, owing to their deprivation of liberty and the failure to notify the reasons for their detention, as well as the facts contained in paragraphs 122 to 307 of the Merits Report presented by the Commission, which describe the circumstances of the detentions.

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

228. In this chapter, the Court will analyze jointly the alleged violations of the personal liberty and the judicial guarantees of the eleven women victims in this case, in the context of the preliminary inquiries that were opened following their detention, owing to the similarity of the facts that may have given rise to these violations.

229. The Court has established that Article 7 of the American Convention contains two very different types of rules, one general and the other specific. The general rule is to be found in the first paragraph: "Every person has the right to personal liberty and security." While, the specific rule is composed of a series of guarantees that protect the right not to be deprived of liberty unlawfully (Article 7(2)) or arbitrarily (Article 7(3)), to be informed of the reasons for the detention and the charges against him or her (Article 7(4)), to judicial control of the deprivation of liberty (Article 7(5)) and to contest the lawfulness of the detention (Article 7(6)). Any violation of paragraphs 2 to 7 of Article 7 of the Convention necessarily results in the violation of Article 7(1) thereof.<sup>320</sup>

230. Article 7(2) of the American Convention establishes that "[n]o one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the Constitution of the State Party concerned or by a law established pursuant thereto." This Court has indicated that owing to the reference to the Constitution of the State Party or to a law established "pursuant thereto," examination of the observance of Article 7(2) of the Convention entails an analysis of compliance with the requirements established as specifically as possible and "beforehand" in the said laws as regards the "reasons" and "conditions" for the deprivation of physical liberty. If both the formal and material requirements of domestic law are not met when depriving a person of their liberty, this deprivation will be unlawful and contrary to the American Convention, in light of Article 7(2).<sup>321</sup> Consequently, the Court must verify whether the detentions of the eleven women victims in this case were made in accordance with the laws of Mexico.

231. Regarding the arbitrariness referred to in Article 7(3) of the Convention, the Court has established that no one may be subjected to detention or imprisonment based on reasons and methods that – even though they are classified as legal – may be considered incompatible with respect for the fundamental rights of the individual because, among other matters, they are unreasonable, unpredictable or disproportionate.<sup>322</sup> Moreover, the domestic law, the applicable procedure and the corresponding general express or tacit principles must also be compatible with

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<sup>320</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 54, and *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of April 25, 2018. Series C No. 354, paras. 351 and 352.

<sup>321</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 57, and *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of April 25, 2018. Series C No. 354, para. 354.

<sup>322</sup> Cf. *Case of Gangaram Panday v. Suriname. Merits, reparations and costs.* Judgment of January 21, 1994. Series C No. 16, para. 47, and *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of April 25, 2018. Series C No. 354, para. 355.

the Convention.<sup>323</sup> Thus, the concept of “arbitrariness” should not be equated with “contrary to the law,” but should be interpreted in a broader sense in order to include elements of wrongness, injustice and unpredictability.<sup>324</sup> Furthermore, the Court underscores that the prohibition of arbitrary deprivation of liberty is a non-derogable right, which may not be suspended and is applicable even in cases in which the detention is executed for reasons of public safety.<sup>325</sup>

232. Based on the above, the Court will analyze: (1) the initial detention of the women; (2) the alleged violations regarding the failure to notify the reasons for the detention and the right of defense, jointly, and (3) the preventive detention of the victims.

### **B.1. Unlawfulness and arbitrariness of the initial detentions of the eleven women victims in this case**

#### B.1.a Unlawfulness of the detentions

233. The Court observes that Article 16 of the Mexican Constitution, in force at the time of the facts, establishes:

No one may suffer interference with their person, family, domicile, papers or possessions unless it is by a written order issued by a competent authority that justifies and provides the grounds for the legality of the procedure. [...]

In cases of *flagrante delicto*, any person may detain the suspect bringing him immediately before the nearest authority and the latter, with the same promptness, shall bring him before the Public Prosecution Service.

Only in urgent cases, if a serious offense, so classified by the law, is involved and there is a substantiated risk that the suspect may evade the action of justice, provided that it is not possible to go before the judicial authority owing to the time, the place or the circumstances, the Public Prosecution Service may, under its responsibility, order his detention, providing the grounds and indicating the evidence for this procedure [...].<sup>326</sup>

234. According to article 142 of the Code of Criminal Procedure of the state of Mexico in force at the time of the events, *flagrante delicto* exists when “the person is detained as he is committing the act, or when the suspect is pursued substantively, uninterruptedly and immediately after committing it.”<sup>327</sup>

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<sup>323</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 91, and *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of June 30, 2015. Series C No. 297, para. 238.

<sup>324</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 92, and *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of April 25, 2018. Series C No. 354, para. 355.

<sup>325</sup> Cf. *Case of Osorio Rivera and family v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 120, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 14, 2014. Series C No. 287, para. 402.

<sup>326</sup> Constitution of the United Mexican States in force at the time of the facts (evidence file, folio 42772). It should be noted that, in their brief with observations on the helpful evidence presented on September 21, 2018, the representatives clarified that although the Constitution provided by the State was not in force at the time of the events, it contained the text of article 16 of the Constitution that was in force on May 3 and 4, 2006.

<sup>327</sup> Initial brief with observations on the merits (evidence file, folio 9992). In addition, according to article 193 of the Federal Code of Criminal Procedure in force at the time of the facts, it is considered that *flagrante delicto* exists when: “I. The accused is detained as he commits the offense; II. Immediately after execution of the offense, the accused is pursued

235. According to the said articles, at the time of the facts, under Mexico's domestic law, detentions could be lawful if there were based on: (a) a court order; (b) an order of the Public Prosecution Service, in urgent cases when it was not possible to obtain a court order, or (c) in cases of *flagrante delicto*, in either of its forms. In this case, the Court notes that the detention of the eleven women victims in this case was carried out pursuant to quasi-*flagrante delicto*.<sup>328</sup>

236. In this regard, the Court has noted that, in order to evaluate the lawfulness of a deprivation of liberty under the American Convention, the State must prove that it was carried out in accordance with the pertinent domestic law, as regards both the reasons and the procedure.<sup>329</sup> Specifically, in the case of the presumption of *flagrante delicto*, this Court has indicated that the State must prove that the detention was carried out *in flagrante delicto*.<sup>330</sup> In the instant case, the State has not proved the existence of elements that, reasonably, allow the *flagrante delicto* required by domestic law to be supposed; to the contrary, it has acknowledged that the detention of the eleven women victims in this case was carried out in violation of Article 7(2) of the Convention. Furthermore, the statements of the eleven women victims in this case reveal that they were arrested when they were walking down the street, waiting for buses, shopping, going to work, carrying out research or journalism, providing medical care, and even when they had taken shelter in private homes (*infra* para. **iError! No se encuentra el origen de la referencia.**). In its Recommendation 38/2006, the CNDH observed that nine of the eleven women victims in this case were detained in the context of "raids" without a court order, thus contravening the provisions of domestic law and "without the certainty that they might have participated in the perpetration of a wrongful act."<sup>331</sup>

237. The Court finds that the detentions were executed unlawfully, because the situation of *flagrante delicto* required by domestic law – and on the basis of which they were detained – was not proved. Therefore, the State violated Articles 7(1) and 7(2) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the eleven women victims in this case.

#### B.1.b Arbitrariness of the detentions

238. This Court also notes that, in the instant case, in addition to the reasons why the State declared that the detention of the eleven women victims in this case was unlawful, it also acknowledged the arbitrariness of the deprivation of their liberty in the context of the operations carried out in Texcoco and San Salvador Atenco on May 3 and 4, 2006. In this regard, the Court

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substantively, or III. The accused is indicated as responsible by the victim, an eyewitness, or someone who has taken part with him in the perpetration of the offense, or the object, instrument or product of the offense is found in his possession, or there are traces and evidence that justify presumption of his participation in the offense; provided that it is a serious offense classified as such by law, that less than 48 hours have passed since the moment that the criminal acts were perpetrated, that the preliminary inquiry has started, and that the prosecution of the offense has not been interrupted." Federal Code of Criminal Procedure (in force in 2006) (evidence file, folio 23325). Initial brief with observations on the merits (evidence file, folio 9992).

<sup>328</sup> Cf. Initial brief with observations on the merits (evidence file, folios 11745 and 11756).

<sup>329</sup> Cf. *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287, para. 405.

<sup>330</sup> Cf. *Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 65, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287, para. 413.

<sup>331</sup> Cf. CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 28923, 28924, 29139, 29140, 29457, 29781, 29852, 29921, 29922, 29967 and 30079). Also, the CNDH highlighted other irregularities in the detentions and the preliminary inquiry in relation to the eleven women victims in this case (*supra* para. 120).

notes that the detention of the eleven women occurred in a context of “numerous arbitrary detentions,” as determined by the SCJN, which indicated the following:

During the events in question, it has been proved that numerous arbitrary detentions were executed, which could be explained, although not justified, by the vertiginous nature of the events, especially those that occurred on the blocked highway and surrounding areas, and given the many members and supporters of the Peoples’ Front who took part in the events, and others who, without forming part of that group, were in the village of Atenco. *The police, without much consideration or delay, swept in, in what the factual context led them to believe was a case of flagrante delicto, detaining people indiscriminately, without knowing for sure, to begin with, whether those people had taken part in the perpetration of the wrongful acts they were repressing, or what their participation in such acts had been.*<sup>332</sup>

239. Bearing this in mind, and notwithstanding the State’s acknowledgement, the Court finds it pertinent to include some specific considerations on the treaty-based obligations of the States with regard to collective detentions such as those that occurred in this case. In this regard, the Court has recognized that collective detentions could constitute a mechanism to ensure public safety when the State has evidence to prove that the actions of each of the individuals concerned meet the requirements for detention established by its domestic law and that are in keeping with the Convention.<sup>333</sup> In other words, evidence must exist to individualize and separate the conduct of each detainee and, also, the detentions must be controlled by the judicial authority.<sup>334</sup>

240. This Court has established that, in the case of collective detentions, the State must substantiate and prove, in the specific case, the existence of sufficient evidence to reasonably suppose the criminal conduct of the individual and that the detention is strictly necessary. Therefore, the detention cannot be based on a mere suspicion or personal perception that the detainee is a member of a specific group.<sup>335</sup> In particular, in the context of demonstrations or social protests, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association has indicated that “[t]he presence of a few people engaging in violence in and around a protest does not authorize police to brand the entire protest non-peaceful. It does not give the State *carte blanche* to use force against or carry out indiscriminate arrests.”<sup>336</sup> In such cases, violent conduct should not be presumed, and “[a]ssembly organizers should not be held liable for the violent behaviour committed by others. Instead, police have the duty to remove violent individuals from the crowd in order to allow protesters to exercise their basic rights to assemble and express themselves peacefully.”<sup>337</sup>

<sup>332</sup> Cf. SCJN judgment of February 12, 2009 (evidence file, folios 31253 and 31254).

<sup>333</sup> Cf. *Case of Servellón García et al. v. Honduras*. Judgment of September 21, 2006. Series C No. 152, para. 92, and *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 241, para. 107.

<sup>334</sup> Cf. *Case of Servellón García*. Judgment of September 21, 2006. Series C No. 152, para. 92, and *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 241, para. 107.

<sup>335</sup> Cf. *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 241, para. 106, and *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of April 25, 2018. Series C No. 354, para. 353. Similarly, the UN Working Group on Arbitrary Detention has said that detention will be arbitrary, “when it is apparent that persons have been deprived of their liberty specifically [...] because of their real or suspected membership of a distinct [...] group.” UN, General Assembly, Report of the Working Group on Arbitrary Detention, July 19, 2017, Doc. UN A/HRC/36/37, para. 48.

<sup>336</sup> UN, Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report on his mission to Chile, September 30, 2015, UN Doc. A/HRC/32/36/Add.1, para. 43.

<sup>337</sup> Cf. UN, General Assembly, Human Rights Council, Report of the United Nations High Commissioner for Human Rights on Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, January 21, 2013, UN Doc. A/HRC/22/28, para. 10.

241. In summary, the Court considers that, to avoid arbitrariness in collective detentions, States must: (i) individualize and separate the conducts of each of the persons detained to prove that there are reasonable indications, based on objective information, that the conduct of each detainee meets the requirements for detention established in domestic law in keeping with the Convention; (ii) ensure that the detention is necessary and proportionate to guarantee a purpose permitted by the Convention, such as the general interest, and also (iii) ensure that detentions are subject to judicial control, in addition to the other conditions established in Article 7 of the American Convention.

242. In this case, regarding the requirement to individualize and to separate the conducts, the Court takes note that the SCJN verified that, during the operations of May 3 and 4, 2006, in Texcoco and San Salvador de Atenco, "in many cases, individuals who were not taking part in criminal activities were detained," because the police detained people indiscriminately, presuming that they were all "*in flagrante delicto*."<sup>338</sup> Similarly, the CNDH noted that "several people [were detained] who had not taken part in the events, or committed the violent acts attributed to them," and underlined that some people were detained "without any reason or justification and, according to the reasoning of the police, merely because they were at the scene observing what was happening."<sup>339</sup> Particularly, with regard to the eleven women in this case, according to the facts acknowledged by the State, the Court notes that there are no indications that lead to a reasonable presumption of their participation in any misdemeanor or offense; rather, to the contrary, everything would appear to indicate that they were subsumed within a group of individuals who were detained *en masse*, merely because they were at the scene.<sup>340</sup>

243. Regarding the necessity and proportionality of the detentions, the Court underscores that the CNDH concluded that, during the operations of May 3 and 4, "the right to life of at least 207 people who were detained was jeopardized, in addition to those who, without being involved in the said events, owing to being there temporarily or in transit, put themselves in danger of being assaulted."<sup>341</sup> In addition, the facts acknowledged by the State reveal that the detentions of the eleven women victims in this case were not the inevitable result of circumstances beyond the control of the authorities, and necessary to avoid a real risk of serious harm to people or property; rather they were the result of a practice of equating presence on the scene with probable participation in criminal acts. Lastly, the measures taken by the police were not limited to what was strictly necessary and proportionate, because the eleven women in this case were detained in the context of a police operation characterized by a disproportionate use of force, in which they were subjected to sexual violence and torture at the time of their arrests, during their transfers, and on arrival at CEPRESO (*supra* paras. 75 to 105). In this regard, the Court has

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<sup>338</sup> SCJN judgment of February 12, 2009 (evidence file, folios 31249, 31253 and 31254).

<sup>339</sup> Recommendation No. 38/2009 of the CNDH of October 16, 2006 (evidence file, folios 504 to 506).

<sup>340</sup> Thus, for example, Cristina Sánchez Hernández recounted that "[t]he *grenadiers* were there and we asked them to let us through, that we had nothing to do with the situation and asked for permission to leave, but they said no, that we were fucked because we were already there and we would just have to be sorry; [...] the police agents [...] did not ask whether or not you were involved, simply "here you are and here you go' to everyone." Affidavit made by Cristina Sánchez Hernández on October 31, 2017 (evidence file, folio 37173). She also stated that an agent of the Public Prosecution Service told her that it was not worth trying to explain anything because "it was as if you were in a car and ran over someone who had crossed in front of you, and even though it was not intentional, you were there and were responsible." Statements and briefs of the eleven victims before the Social Institution (evidence file, folio 32058). Suhelen Gabriela Cuevas Jaramillo recalled that "they did not respect children, dogs or old people, they did not respect anyone." Statement made by Suhelen Gabriela Cuevas Jaramillo during the public hearing held before the Court.

<sup>341</sup> CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folio 28529).

established that detention may become arbitrary if, while underway, acts occur that can be attributed to the State that are incompatible with respect for the human rights of the detainee.<sup>342</sup> In the instant case, it is evidence that the methods used by the law enforcement agents who detained, transferred and entered the eleven women victims in this case into the prison were disproportionate and incompatible with respect for the fundamental rights recognized in the Convention, and this constituted an additional factor in the arbitrary nature of their detentions.

244. Based on the foregoing considerations, the Court concludes that the deprivation of the personal liberty of the eleven women in this case was carried out in the context of a collective detention that was unlawful and arbitrary, because: (i) it was not in keeping with the causes established by law, or executed pursuant to the procedures established by law; (ii) it did not include an individualization of their conduct in order to prove a reasonable suspicion that they had taken part in criminal acts or committed any other act that was a cause for deprivation of liberty established by domestic law, and (iii) it was not proved that the detentions were necessary or proportionate to guarantee a purpose permitted by the Convention.

245. Based on all the above, the Court concludes that the detentions of the eleven women victims in this case, in addition to being unlawful, were also arbitrary. Consequently, the State also violated Article 7(1) and 7(3) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Ana María Velasco Rodríguez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Claudia Hernández Martínez.

## **B.2 Notification of the reasons for the detention and the right of defense**

246. Regarding the right recognized in Article 7(4) of the American Convention, this Court has indicated that this refers to two guarantees for the individual who is being detained: (i) oral or written information on the reasons for the detention, and (ii) notification of the charges, which must be in writing. The information on the "reasons" for the detention must be provided "at the time of the arrest," and this is a mechanism to avoid unlawful or arbitrary detentions at the very moment of the deprivation of liberty and, also, to ensure the individual's right of defense. In addition, this Court has indicated that the agent who makes the arrest must provide information, in simple, jargon-free language of the fundamental facts and legal grounds on which the detention is based and that the provisions of Article 7(4) of the Convention are not met if only the legal grounds are mentioned. If the persons is not adequately informed of the reasons for the detention, including the facts and their legal grounds, he does not know the charges against which he must defend himself and, consequently, the judicial control is illusory.<sup>343</sup>

247. The Court notes that, in this case, the facts concerning the obligation to notify promptly and in writing the charges against the eleven women victims in this case are related to the obligation to inform the accused of the charges against him or her, included in Article 8(2)(b). In this regard, this Court has established that this subparagraph determines the need to provide "prior notification in detail to the accused of the charges against him." The Court has indicated that this

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<sup>342</sup> Cf. *Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 66.

<sup>343</sup> Cf. *Case of Yvon Neptune v. Haiti. Merits, reparations and costs*. Judgment of May 6, 2008. Series C No. 180, para. 109, and *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 124. See also, *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2016. Series C No. 316, para. 154.

rule “applies even before ‘charges’ *stricto sensu* are filed, [because f]or this article to meet its inherent purpose, it is necessary for the notification to be made before the accused makes his first statement<sup>344</sup> before a public authority of any kind.”<sup>345</sup>

248. In this case, the State acknowledged the violation of its obligations under Articles 7(4) and 8(2)(b), (d) and (e) of the Convention, to the detriment of the eleven women detained in this case. Indeed, the facts acknowledged and the statements of the victims reveal that they were not informed of the reasons for their detention or the charges against them.<sup>346</sup> Furthermore, they were not guaranteed the right “to be assisted by legal counsel of [their] own choosing” or “by counsel provided by the State” from the start of the investigation against them, and they were not allowed to communicate with their families or lawyer of choice.<sup>347</sup>

249. Therefore, based on the foregoing and the State’s acknowledgement of responsibility, the Court concludes that Mexico violated the rights recognized in Articles 7(1), 7(4) and 8(2)(b), 8(2)(d) and 8(2)(e) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the eleven women victims in this case.

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<sup>344</sup> Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 187, and *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2016. Series C No. 316, para. 182.

<sup>345</sup> Cf. *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs*. Judgment of November 17, 2009. Series C No. 206, para. 30, and *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2016. Series C No. 316, para. 182.

<sup>346</sup> Cf. IACHR, Merits Report No. 74/15 of October 28, 2015 (merits file, folios 122, 126, 129, 134, 136, 138 and 143). (i) Yolanda Muñoz Diosdada explained that she “did not want to make a statement because [she] did not know what [she] was accused of”; (ii) Mariana Selvas Gómez recounted that “they wanted to take a statement but they did not identify themselves or tell [the women] why they had brought” them to the prison, and that she did not know the reasons for her detention until May 10, when the formal order of imprisonment was issued; (iii) Ana María Velasco Rodríguez recounted that they “took [her] fingerprints and photograph, asking her to hold up a piece of wood with [her] name, a number and the indication of ‘unspecified offense’, but at no time did they tell [her] why [she] was there [...] of what offense [she] was accused”; (iv) Bárbara Italia Méndez Moreno described how she was taken to make a statement “before someone who she later found out was an agent of the Public Prosecution Service, because at the time he did not identify himself,” and that “[u]naware of legal procedures, [she] asked what she was accused of and the agent told [her] that the offense was unknown”; consequently, she reserved her right to make a statement, and (v) Angélica Patricia Torres Linares recalled that she was taken to the prison dining hall where “there were some men waiting to take our statements,” and that she “did not understand who they were; she only knew that [she] could reserve her right to make a statement, and that is what [she] did.” Statement by Yolanda Muñoz Diosdada before the FEVIM on June 15, 2006 (evidence file, folio 709); statement by Mariana Selvas Gómez before the FEVIM on May 25, 2006 (evidence file, folio 1016); video of the statement by Mariana Selvas Gómez (evidence file, folios 1009 and 1010); statement and expansion of the complaint before the FEVIM on June 15, 2006 (evidence file, folio 1223). See also, affidavit made by Ana María Velasco Rodríguez, victim in this case, on October 31, 2017 (evidence file, folio 37161); expansion of the complaint by Bárbara Italia Méndez Moreno before the FEVIM on June 14, 2006 (evidence file, folio 1442); statement by Angélica Patricia Torres Linares during preliminary inquiry TOL/DR/I/466/2006 (evidence file, folio 1508). Also, on May 24, four of the eleven women victims in this case advised the CNDH that the authorities had not informed them of the reason for their detention. Cf. Detailed record of the Deputy Inspector of May 24, 2006, with regard to several persons on hunger strike (evidence file, folio 1596).

<sup>347</sup> Cf. IACHR, Merits Report No. 74/15 of October 28, 2015 (merits file, folios 122, 126, 129, 136, 138 and 143). In addition, Yolanda Muñoz Diosdada indicated that they “were never able to ask for help, file complaints, nothing; because [they] were kept incommunicado.” Statement by Yolanda Muñoz Diosdada before the FEVIM on June 15, 2006 (evidence file, folio 709). María Patricia Romero Hernández recounted that “even though they appointed her a defense counsel, she never had contact with him and he did not advise her of her rights.” Report of the CNDH of May 6, 2006 (evidence file, folio 835). The CNDH also documented, with regard to three of the eleven women victims in this case, that “there was no evidence that legal counsel had been provided by the State, even though she indicated that she had not been assisted by legal counsel of her own choosing or a private lawyer,” while in the other eight cases, it noted that “the [...] corresponding public defender failed to handle the defense of their cases starting when [the women] were contacted by the investigating authority.” Cf. CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 28927, 29142, 29204, 29392, 29393, 29459, 29764, 29784, 29855, 29924, 29999, 30081 and 30082).

### B.3 The arbitrary nature of the preventive detention

250. In this section, the Court will analyze whether the order of preventive detention issued on May 10, 2006, against the presumed victims by the Second Criminal Trial Court of Toluca in the context of cases 95/2006 and 96/2006 was in keeping with the Convention.<sup>348</sup>

251. This Court has indicated that, for deprivation of liberty not to become arbitrary, it must meet the following standards: (i) its purpose must be compatible with the Convention; (ii) it must be appropriate to meet the stated purpose; (iii) it must be necessary; in other words, it must be absolutely essential to achieve the desired purpose and there is no less severe measure in relation to the right affected; (iv) it must be strictly proportionate, so that the sacrifice inherent in the restriction of the right to personal liberty is not exaggerated or disproportionate in relation to the advantages obtained by this restriction and compliance with the purpose sought, and (v) any restriction of personal liberty that is not based on sufficient justification, permitting an evaluation of whether it is in keeping with the conditions indicated, will be arbitrary and, therefore, will violate Article 7(3) of the Convention.<sup>349</sup> The Court also reiterates that the only legitimate purpose for the deprivation of liberty of the accused is to ensure that he or she will not hinder the development of the proceedings or evade justice.<sup>350</sup> Risks to the proceedings should not be presumed, but must be verified in each case, based on real and objective circumstances relating to the specific case.<sup>351</sup>

252. In the instant case, the Court notes that, on none of the 346 pages that compose the order of preventive detention issued by the Second Criminal Trial Court on May 10, 2006, in criminal proceeding 96/2006, subjecting ten of the eleven women victims in this case to preventive detention, is there a mention of the need to order this measure or the purpose of preventing

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<sup>348</sup> Yolanda Muñoz Diosdada, Ana María Velasco Rodríguez and María Cristina Sánchez Hernández were detained on May 3. The same day, the SPEM16 opened preliminary inquiry TOL/MD/I/330/2006. On May 7, 2006, they were brought before the Second Criminal Trial Court of Toluca for the offenses of attacks on highways and means of transportation, felony kidnapping, and organized crime. Norma Aidé Jiménez Osorio, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, Angélica Patricia Torres Linares and Claudia Hernández Martínez were detained on May 4. The same day, the SPEM19 opened preliminary inquiry TOL/MD/III/332/2006. On May 7, 2006, they were brought before the Second Criminal Trial Court of Toluca for the offense of felony kidnapping and its consequences. On May 10, in the context of criminal proceedings 96/2006, preventive detention was ordered for ten women, while awaiting trial for the offense of attacks on highways and means of transportation, as well as for felony kidnapping in the case of Suhelen Gabriela Cuevas Jaramillo. In addition, María Patricia Romero Hernández was detained on May 3. The same day, the SPEM9 opened preliminary inquiry TEX/AMOD/III/603/2006. On May 4, 2006, she was brought before the Second Criminal Trial Court of Toluca for the offenses of carrying a prohibited weapon, assault and malicious injury. On May 10, 2006, in the context of criminal proceedings 95/2006, her preventive detention was ordered while awaiting trial for the offenses of carrying a prohibited weapon and injury. Cf. CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 28923, 29139, 29201, 29389, 29456, 29761, 29780, 29781, 29851, 29852, 29921, 29996 and 30078); order on the constitutional time limit of the preventive detention of the victim, María Patricia Romero Hernández (evidence file, folios 32110, 32111 and 32238), and order on the constitutional time limit of the preventive detention of several victims (evidence file, folios 32242 to 32252 and 32580 to 32583).

<sup>349</sup> Cf. *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paras. 128 and 129, and *Case of Amrhein v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of April 25, 2018. Series C No. 354, para. 356.

<sup>350</sup> Cf. *Case of Servellón García*. Judgment of September 21, 2006. Series C No. 152, para. 90, and *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of April 25, 2018. Series C No. 354, para. 353.

<sup>351</sup> Cf. *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs*. Judgment of November 17, 2009. Series C No. 206, para. 115, and *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2015. Series C No. 297, para. 250.

them from hindering the development of the proceedings or evading justice. To the contrary, after describing the evidence based on which the judge reached the conclusion that the *corpus delicti* was reasonably proved, as well as the probable responsibility of the accused, he proceeded directly and without further justification to order preventive detention. The same is true of the preventive detention ordered by the Second Criminal Trial Court on May 10, 2006, in the context of criminal proceeding 95/2006, in which María Patricia Romero Hernández was subjected to preventive detention.<sup>352</sup>

253. Consequently, the Court considers that the State violated Article 7(1) and 7(3) of the Convention, in relation to Article 1(1) of this instrument, based on the orders of preventive detention issued against the eleven women victims in this case.

254. Furthermore, the representatives argued that “after having been deprived of their liberty unlawfully, the victims remained detained for days or even years.” In this regard, the Court has indicated that ordering preventive detention requires considering the proportionality of this measure based on the evidence and the facts investigated. If there is no proportionality, the measure will be arbitrary. Article 7(3) of the Convention reveals the State’s obligation not to restrict the liberty of a detainee more than is strictly necessary to ensure that he or she will not hinder the development of the investigations or evade justice. The Convention is violated when a person whose criminal responsibility has not been established is deprived of their liberty for an excessive length of time, which is therefore disproportionate. This is equal to punishing them in advance.<sup>353</sup>

255. This Court has also noted that preventive detention is the most severe measure that can be applied to a person accused of an offense, and that it is a precautionary rather than a punitive measure.<sup>354</sup> Therefore, it must be subject to periodic review so that it does not continue when the reasons for its adoption no longer subsist. The domestic authorities are responsible for assessing whether or not it is pertinent to maintain the precautionary measures issued under their legal system. When performing this task, the domestic authorities must provide sufficient grounds so that the reasons why the restriction of liberty is maintained may be known and, to be compatible with Article 7(3) of the American Convention, these should be based on the need to ensure that the detainee will not hinder the development of the investigations or evade justice.<sup>355</sup>

256. In this case, the facts that have been acknowledged reveal that, between May 13 and 15, 2006, Ana María Velasco Rodríguez, Yolanda Muñoz Diosdada, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Bárbara Italia Méndez Moreno were “released.”<sup>356</sup> However,

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<sup>352</sup> Cf. Order on the constitutional time limit of the preventive detention of the victim, Patricia Romero Hernández (evidence file, folios 32110 and 32238), and order on the constitutional time limit of the preventive detention of several victims (evidence file, folios 32253, 32254 and 32580 a 32583).

<sup>353</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 77, and *Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, paras. 68 and 69.

<sup>354</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 77, and *Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187, para. 69.

<sup>355</sup> Cf. *Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187, para. 74, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 163.

<sup>356</sup> The Court notes that the State refers to the “release” [*externación*] of those indicated, a term that would appear to refer to the moment when the court took the decision to release them on bail, which might or might not be the date on which the women left prison.

Claudia Hernández Martínez, Norma Aidé Jiménez Osorio, Mariana Selvas Gómez, Suhelen Gabriela Cuevas Jaramillo, Georgina Edith Rosales Gutiérrez and María Patricia Romero Hernández remained in preventive detention for between 11 and 28 months,<sup>357</sup> (*supra* para. 114). During this time, the State failed to undertake any review of the existence or persistence of reasons to keep them in preventive detention, the need and proportionality of the measure, or the reasonableness of the length of detention. A review of this type would have afforded the State the opportunity to correct the initial arbitrariness of the preventive detention.

257. By failing to undertake this assessment for between 11 and 28 months, as applicable, the State again violated the personal liberty of the defendants and, consequently, for yet another reason violated Article 7(1) and 7(3) of the American Convention, to the detriment of Claudia Hernández Martínez, Norma Aidé Jiménez Osorio, Mariana Selvas Gómez, Suhelen Gabriela Cuevas Jaramillo, Georgina Edith Rosales Gutiérrez and María Patricia Romero Hernández.

#### **B.4 Conclusion**

258. On the basis of the foregoing considerations, the Court concludes that the initial detentions of the eleven women victims in this case were unlawful and arbitrary because: (i) the State failed to prove the supposed situation of *flagrante delicto* based on which they were originally detained, so that (ii) their detentions were implemented without observing the reasons and procedures established by domestic law, and (iii) in the context of collective detentions that were not necessary to guarantee any purpose permitted by the Convention, or proportionate, or responded to an adequate individualization of the conduct of each detainee.

259. In addition, because (i) they were not informed of the reasons for their detention or the charges against them; (ii) they were not guaranteed the right to be assisted by legal counsel of their own choosing or a public defender from the start of the investigations against them, and (iii) they were not allowed to communicate with their families or personal lawyer, this Court concludes that the State violated the right to be informed of the reasons for their detention and the right of defense of the eleven women represented in this case.

260. Meanwhile, the Court concludes that the measure of preventive detention was arbitrary because: (i) the measure did not respond to one of the two legitimate purposes established in the American Convention, which are: the need to ensure that the accused do not hinder the development of the proceedings or evade justice, and (ii) the State did not undertake the periodic reviews on the need to maintain the said measure. Therefore, the State violated the rights recognized in Articles 7(1) and 7(3) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the eleven women.

261. Consequently, the Court concludes that the State violated the rights to personal liberty and the right of defense, recognized in Articles 7(1), (2), (3) and (4), and 8(2)(b), (d) and (e) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez,

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<sup>357</sup> The facts acknowledged by the State reveal that Claudia Hernández Martínez was released on January 26, 2007, almost nine months after her detention. Norma Aidé Jiménez Osorio was released on April 16, 2007, more than 11 months after her detention. Mariana Selvas Gómez was released on April 30, 2007, almost a year after being detained. Suhelen Gabriela Cuevas Jaramillo and Georgina Edith Rosales Gutiérrez were released on June 2 and 4, 2007, respectively, 13 months after their detention. Finally, María Patricia Romero Hernández was released on August 29, 2008, after being sentenced to four years' imprisonment and a fine equal to 205 days, and having received the benefit of commutation of the prison sentence. *Cf.* Judgment of the Third Criminal Trial Court of Texcoco of August 21, 2008 (evidence file, folios 41949 to 42335).

Georgina Edith Rosales Gutiérrez, Ana María Velasco Rodríguez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Claudia Hernández Martínez.

262. Lastly, this Court finds that the length of the preventive detention of Claudia Hernández Martínez, Norma Aidé Jiménez Osorio, Mariana Selvas Gómez, Suhelen Gabriela Cuevas Jaramillo, Georgina Edith Rosales Gutiérrez and María Patricia Romero Hernández was disproportionate and, therefore, violated Article 7(1) and (3) of the Convention, in relation to Article 1(1) of this instrument.

### IX-3

#### **RIGHTS TO JUDICIAL GUARANTEES<sup>358</sup> AND JUDICIAL PROTECTION,<sup>359</sup> IN RELATION TO THE OBLIGATION TO RESPECT AND TO ENSURE THESE RIGHTS**

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

263. The **Commission** indicated that no one has been punished for the torture suffered by the eleven women because: (i) the investigations were officially opened days after the acts of torture and sexual violence had been reported; (ii) during weeks, and in some cases months, the victims were not give a complete medical examination, which meant that the medical certificates did not constitute adequate means of establishing possible acts of violence and rape; (iii) criminal proceedings were held that obstructed clarification of the facts and the individualization of those responsible; (iv) the cases against the forensic physicians were opened several years after the State became aware of the serious omissions and the types of re-victimization they had committed; (v) the State failed to conduct a diligent investigation into the direct authors of the physical, psychological and sexual torture inflicted on the eleven victims; (vi) to date, no progress has been made in the investigation into the responsibilities of federal law enforcement agents even though their participation in the events has been verified by the SCJN, and (vii) the State has still not investigated responsibilities arising from the chain of command.

264. The **representatives** alleged the following violations of the victims' rights to judicial guarantees and to judicial protection, which have meant that, to date, the facts remain unpunished: (i) failure to comply with the obligation to investigate *ex officio and* immediately; (ii) lack of due diligence in the gathering of evidence in light of the standards applicable in cases of torture and sexual violence; (iii) various forms of obstruction and delay in the investigations at both state and federal level, as well as in access to the case file; (iv) failure to investigate all those responsible, especially the failure to clarify the responsibilities derived from the chain of command; (v) violation of the right of access to justice and equal protection of the law, owing to the use of stereotypes and the lack of a gender-based perspective in the investigation, and (vi) failure to investigate within a reasonable time because, to date, no one has been convicted. They also indicated that, despite the investigations conducted in recent years, the obligation to investigate and to clarify the violations that were committed remains pending. In addition, they

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<sup>358</sup> Article 8(1) of the Convention establishes that: "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

<sup>359</sup> Article 25(1) of the Convention establishes that: "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."

alleged that the state of Mexico's Law to Prevent and Punish Torture "requires proof that the purpose of the perpetrator was to obtain something from the victim or from a third party, which is contrary to Article 2 [of the Inter-American Convention against Torture]," and that article 3 of the Federal Law to Prevent and Punish Torture currently in force does not comply with the standards established in the Inter-American Convention against Torture." Lastly, they asserted that "[t]he State laws [...] did not include procedures with a gender perspective [...] in order to guarantee access to justice for women victims of torture," and that "by failing to adopt domestic legal provisions [...] to respond appropriately to acts of violence against women [...] the Mexican State was internationally responsible for non-compliance with Article 2 of the [American Convention]."

265. Meanwhile, the State alleged that: (i) the initial deficiencies had been rectified, eliminating the obstacles arising from the errors originally committed, and (ii) that it had already investigated the chain of command and all those presumed to be responsible, adding that the Court did not have jurisdiction to rule on individual criminal responsibility.

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

266. First, the Court finds it necessary to note that this section refers to the investigations conducted into the acts of torture and sexual violence of which the eleven women were victims, and not to the criminal proceedings that were instituted against them. Thus, since the representatives expressly indicated that they were not requesting a ruling "on the violations of the judicial guarantees and judicial protection of the eleven women during the criminal proceedings instituted against them," the Court will not make this analysis.

267. This Court has established that, pursuant to the American Convention, the States Parties are obliged to provide effective judicial remedies to the victims of human right violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all in keeping with the general obligation of those States to ensure the free and full exercise of the rights recognized by the Convention to every person subject to their jurisdiction (Article 1(1)).<sup>360</sup> It has also indicated that the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or their next of kin that everything necessary is done to discover the truth of what happened, and to prosecute and to punish, as appropriate, those eventually found to be responsible.<sup>361</sup>

268. In addition, the Court recalls that the State acknowledged its international responsibility with regard to the rights to judicial guarantees and judicial protection and equality before the law, (Articles 8, 24 and 25 of the Convention) and the obligation to investigate acts of torture and violence against women (Articles 1, 6 and 8 of the Inter-American Convention against Torture and 7 of the Convention of Belém do Pará), owing to the initial failure to investigate *ex officio* the facts and the inappropriate definition of the offenses at the start. The State also acknowledged its international responsibility in this case for the violation of its obligation to adopt domestic legal provisions to ensure the exercise of the rights and freedoms recognized in the Convention, the Inter-American Convention against Torture, and the Convention of Belém do Pará, in Articles 1(1) and 2 of the Convention, Articles 1, 6 and 8 of the Inter-American Convention against Torture,

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<sup>360</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 217.

<sup>361</sup> Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 217.

and Articles 7(c), 7(e) and 7(h) of the Convention of Belém do Pará, owing to the absence of an internal legal framework on the use of force and torture at the time of the facts. Thus, the Court has considered that the dispute has ceased on those issues and will not refer to them in its considerations, and finds that the State is responsible for the violation of those rights to the detriment of the eleven women victims in this case.

269. Taking the above into account, the Court will now analyze: due diligence in the investigation and the processing of the complaint of rape (*B.1*); the duty to investigate within a reasonable time (*B.2*), and gender-based discrimination owing to the flaws in the investigation (*B.3*).

### **B.1 Due diligence in the investigation and processing of the complaint of rape**

270. The Court has indicated that the duty to investigate established in the American Convention is enhanced by the provisions of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture which oblige the States "to take effective measures to prevent and punish torture within their jurisdiction," as well as "to prevent and punish other cruel, inhuman or degrading treatment or punishment." According to the provisions of Article 8 of that Convention, the States parties "guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case" and that "their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process." Furthermore, in cases of violence against women, the general obligations established in Articles 8 and 25 of the American Convention are supplemented and enhanced for those States that are party to the Convention of Belém do Pará by the obligations derived from this specific inter-American treaty. Article 7(b) of this Convention specifically obliges the States parties to apply due diligence to prevent, punish and eradicate violence against women.<sup>362</sup>

271. Bearing this in mind, the Court will proceed to analyze: (i) the initial flaws in the processing of the complaint and the gathering of evidence; (ii) the presumed obstruction of the Public Prosecution Service in the inquiries and access to the case files, and (iii) the investigation of all those responsible.

#### **B.1.1 Initial flaws in the processing of the complaint and the gathering of evidence**

272. The Court has stipulated that, in a criminal investigation into sexual violence, it is necessary that: (i) the victim's statement should be taken in a safe and comfortable environment that offers privacy and inspires confidence; (ii) the victim's statement should be recorded to avoid or limit the need to repeat it; (iii) the victim should be provided with medical, psychological and hygienic treatment, both on an emergency basis, and continuously if required, under a protocol for such treatment aimed at reducing the consequences of the rape; (iv) a complete and detailed medical and psychological examination should be performed immediately by appropriate trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be advised that she may be accompanied by a person of confidence if she so wishes; (v) the investigative measures should be coordinated and documented and the evidence handled with care, including taking sufficient samples and performing all possible tests to determine the possible perpetrator of the act, obtaining other evidence such as the victim's clothes, examining the scene of the incident immediately, and guaranteeing the proper chain of custody of the

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<sup>362</sup> Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 193, and *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 350, para. 152.

evidence, and (vi) the victim should be provided with access to free legal assistance at all stages of the proceedings.<sup>363</sup>

273. Regarding the interview with a person who states that they have been subjected to acts of torture, the Court has indicated that: (i) the person should be allowed to describe freely what he or she considers relevant, (ii) no one should be required to talk about any form of torture if they feel uncomfortable doing so; (iii) during the interview, the presumed victim's pre-arrest psychosocial history should be documented; and also a summary of the facts relating to the time and circumstances of the initial detention, the place and conditions of detention while in State custody, and the methods of ill-treatment and torture presumably suffered, and (iv) the detailed statement should be recorded and transcribed.<sup>364</sup> In addition, the interview with a presumed victim of acts of violence or rape should be carried out in a comfortable and safe environment, that offers privacy and inspires confidence, and should be recorded in order to avoid or limit the need to repeat it.<sup>365</sup>

274. In this regard, the Court notes that, when they were brought before the Public Prosecution Service to make a statement, several of the women tried to report the facts. However, the authorities not only refused to let them describe freely what they considered relevant, but refused to document the facts recounted by the women regarding the torture and sexual violence they had suffered.<sup>366</sup> The Court also notes that the statements were made in the prison's dining hall, in front of many other detainees, some of whom the victims knew; and, when taken to see the medical personnel, in many cases they were examined in the presence of other detainees, in an environment that was neither comfortable or safe, and did not offer privacy or inspire trust.

275. Furthermore, the Court considers that, in cases where there are indications of torture, the medical examination of the presumed victim should be performed with their prior and informed consent, without the presence of law enforcement or other State agents. Also, on becoming aware of acts of violence against a woman, a complete and detailed medical and psychological examination should be performed immediately by appropriate trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be advised that she may be accompanied by a person of confidence if she so wishes. This examination should be performed in accordance with protocols specifically designed to document evidence in cases of gender-based violence.<sup>367</sup> In addition, the doctors and other health care personnel have the

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<sup>363</sup> Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 194, and *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 350, para. 154.

<sup>364</sup> Cf. UN, Office of the United Nations High Commissioner for Human Rights, *Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)*, New York and Geneva, 2004, paras. 100 and 135 to 141, and *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 248.

<sup>365</sup> Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215 para. 194, and *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 249.

<sup>366</sup> In fact, the Court notes that the authorities told them that they were not there to file complaints, but rather to make a statement with regard to the offenses of which they were accused, or that they would have to file the complaint on their release from prison, and they were even expressly ordered not to include that information in their statement (*supra* para. 105). Similarly, the SCJN concluded that, even though "some of the women who said that they had been sexually assaulted indicated this in their initial statement [...] this did not lead to prompt inquiries or verification." SCJN judgment of February 12, 2009 (evidence file, folio 30922).

<sup>367</sup> In this regard, the Court has stipulated that the corresponding reports should include, at least: (a) The circumstances of the interview. The name of the subject and name and affiliation of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the

obligation not to take part, either actively or passively, in acts that constitute participation or complicity in torture or other cruel, inhuman or degrading treatment; they have the obligation to record in their reports the existence of evidence of ill-treatment, if applicable, and must take steps to notify possible abuse to the corresponding authorities or, if this entails possible risks to the health professionals or their patients, to authorities outside the immediate jurisdiction. Similarly, the State must guarantee the independence of medical and health care personnel responsible for examining and providing care to detainees.<sup>368</sup>

276. In the instant case, the Court notes that, despite indications and even express denunciations of torture and sexual violence, the authorities did not ensure a complete and detailed medical and psychological examination by appropriate trained personnel. To the contrary, as revealed by the prison entry records and the facts acknowledged by the State, the examination performed was merely a superficial physical examination where the doctors refused to document the women's allegations of sexual violence and torture. The Court also note that:

- i) In some cases, the physical examination was performed by male forensic personnel, and there is no record that the women were offered the presence of anyone of the sex they preferred, even though they had reported acts of sexual violence;
- ii) In most cases, the examinations were performed in the presence of other detainees, and even in the presence of law enforcement agents;
- iii) The entry records do not contain any of the information provided by the women on the facts that occurred during their arrest, transfer and entry into the prison;
- iv) There is no other documentation, particularly photographic documentation, to support the observations of the personnel who intervened;
- v) There is no interpretation of the probable relationship between the physical symptoms and the possible torture referred to by the women victims in this case;
- vi) There is no information that they were advised that they could be accompanied by a person of confidence during the examination; to the contrary, the women victims in this case were kept incommunicado from their families;
- vii) The lack of independence, appropriateness and training of the medical personnel involved was revealed by the ill-treatment and stigmatizing and revictimizing statements they made to the victims in some cases, insulting and mocking them, disbelieving their allegations, and refusing to record the facts they recounted.

277. In particular, the Court highlights that, except in the cases of Bárbara Italia Méndez Moreno and Claudia Hernández Martínez, the physical examinations performed on entry into the

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examination is being conducted (e.g. detention centre, clinic, house, etc.); any appropriate circumstances at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of law enforcement personnel during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor; (b) The background. A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment was alleged to have occurred and all complaints of physical and psychological symptoms; (c) A physical and psychological examination. A record of all physical and psychological findings upon clinical examination including appropriate diagnostic tests and, where possible, colour photographs of all injuries; (d) An opinion. An interpretation as to the probable relationship of physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment or further examination should also be given, and (e) A record of authorship. The report should clearly identify those carrying out the examination and should be signed. *Cf. Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, para. 251.

<sup>368</sup> *Cf. Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of October 30, 2008. Series C No, 187, para. 92, and *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, paras. 258 and 260.

CEPRESO, as well as those performed by the CNDH on May 5, 2006, did not include a gynecological examination, even though several of the women reported having undergone sexual abuse and expressly requesting this.<sup>369</sup> With the exception of Bárbara Italia Méndez Moreno and Claudia Hernández Martínez, the women victims in this case did not receive adequate medical and gynecological treatment until June 2006, as the State has acknowledged, almost four weeks after the events occurred. Many of them were even obliged to start a hunger strike demanding that they be provided with gynecological treatment. Moreover, several of the women were deprived of liberty for months, so that they were unable to seek other means of obtaining gynecological treatment.

278. Furthermore, the Court has already noted that States have the duty to recover and preserve evidentiary material in order to assist any potential criminal investigation into those responsible.<sup>370</sup> In this case, however, the Court notes that not only were no medical and gynecological examinations performed, but also there is no record that the authorities in charge of the investigation gathered or ordered the immediate collection of other evidence, such as the clothes worn by the women at the time of the facts. To the contrary, in some cases, this clothing disappeared or was washed by order of police personnel.<sup>371</sup> Only the clothing of Bárbara Italia Méndez Moreno and Ana María Velasco Rodríguez was subjected to chemical analysis and this was on May 12, 2006, nine days after their detention and after it had been washed (*supra* para. 108). The chemical analysis of Bárbara Italia Méndez Moreno's clothes gave a positive result for the presence of semen; however, the information provided to the Court does not reveal that the State followed up on the evidence. All of which concurs with the SCJN's assertion that "the evidence gathered in these inquiries [...] reveals significant errors and omissions committed when addressing the complaints made by the women concerning these delicate issues."<sup>372</sup>

279. Regarding the preliminary inquiry by the FEVIM, the Court notes that between June 2006 and May 2007, the victims or their representatives requested and provided evidence to be added to the case file in order to prove the *corpus delicti*, including the results of the examinations performed in application of the Istanbul Protocol by independent experts and by the CNDH;<sup>373</sup> they also asked FEVIM to exercise its right to transfer jurisdiction of the ordinary crimes.<sup>374</sup> In addition,

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<sup>369</sup> This examination was not performed until the CNDH applied the Istanbul Protocol to Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Ana María Velasco Rodríguez and Suhelen Gabriela Cuevas Jaramillo between two and three weeks after their detention. Also, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno and Claudia Hernández Martínez had recourse to the CCTI to request application of the Istanbul Protocol and this began on October 24 and 25 in the case of the last two, and between July 11 and 14 for the others (*supra* paras. 111 and 112). Finally, there is no record that the Istanbul Protocol was applied to Cristina Sánchez Hernández and Angélica Patricia Torres Linares.

<sup>370</sup> Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 194.

<sup>371</sup> In this regard, the CNDH recommendation "noted that no evidence was presented of the traces left by the injuries and abuse caused by the police agents, particularly on the clothing of the victims, because when they reached and entered the prison, the same police agents took away the clothing of some of the women and obliged others to wash theirs." CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 28528).

<sup>372</sup> SCJN judgment of February 12, 2009 (evidence file, folio 30931).

<sup>373</sup> Cf. Letter of Norma Aidé Jiménez Osorio of June 8, 2006 (evidence file, folio 22091); brief presented to the FEVIM by several of the women dated November 21, 2006 (evidence file, folios 8540 to 8550); brief presented to the FEVIM by the Center Prodh dated January 12, 2007 (evidence file, folios 8552 to 8556); brief presented to the FEVIM by several of the women dated February 21, 2007 (evidence file, folios 8558 and 8559), and brief presented to the FEVIM by the Center Prodh dated May 2, 2007 (evidence file, folios 8561 to 8567).

<sup>374</sup> Among other arguments, the said request was based on the following: (i) the PGJEM had charged 25 police agents with the offense of abuse of authority; (ii) members of the Federal Preventive Police had raided private homes and arrested people

in February 2007, several of the women presented a brief to the FEVIM asking it: (i) to file the inquiry before the judicial authority on the basis of the crime of torture, and (ii) to endorse the results of the examinations performed in application of the Istanbul Protocol by the CNDH and the CCTI.<sup>375</sup> Regarding the first point, according to information provided by the State, on March 9, 2007, the FEVIM decided that, "for the moment, it is not possible to agree to your petition because the requirements for exercising the authority to transfer jurisdiction have not been met." On the second point, the State advised that "[t]he agreement to this request could not be found in the records of the inquiry; only a note of May 4, 2007, indicating that the brief had been received and added to the preliminary inquiry."

280. In addition, in light of the FEVIM request that the appraisals corresponding to the Istanbul Protocol be re-applied, this time by PGR personnel, on February 27, 2007, several of the women presented a letter refusing this, considering that it revictimized them,<sup>376</sup> while Bárbara Italia Méndez Moreno and Ana María Velasco Rodríguez accepted to allow the PGR to apply the Istanbul Protocol directly.<sup>377</sup> On May 16 and 17, 2007, the PGR applied the Protocol to Bárbara Italia Méndez Moreno and Ana María Velasco Rodríguez.<sup>378</sup> On August 13, 2007, on discovering that the results had not been added to the case file, the women and the Center Prodh urged the FEVIM to incorporate them.<sup>379</sup> The two appraisals were added to the case file in February 2008.<sup>380</sup>

281. In this regard, the Court has said that, in the investigation of cases of torture, the Istanbul Protocol indicates that "[t]he timeliness of such medical examination is particularly important," and that "[a] medical examination should be undertaken regardless of the length of time since the torture."<sup>381</sup> However, the Protocol notes that "[d]espite all precautions, physical and psycho-

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arbitrarily, with excessive use of force; a situation confirmed by the CNDH; (iii) the Honor and Justice Commission of the Ministry of Public Security had imposed administrative sanctions on at least three federal agents for the offense of omission during the operation; (iv) a connection existed between the offenses that fell within the federal sphere and those that fell within the local jurisdiction; (v) what happened to the women should be classified as torture, and (vi) the PGJEM did not meet the requirement of impartiality. Cf. Brief presented by several of the women before the FEVIM of November 21, 2006 (evidence file, folios 8540 to 8550), and brief presented to the FEVIM by the Center Prodh dated January 12, 2007 (evidence file, folios 8552 to 8556).

<sup>375</sup> Cf. Brief presented to the FEVIM by several of the women dated February 21, 2007 (evidence file, folios 8558 and 8559).

<sup>376</sup> Cf. Letter of Mariana Selvas Gómez, Suhelen Gabriela Cuevas Jaramillo, María Patricia Romero Hernández, Georgina Edith Rosales Gutiérrez and Norma Aidé Jiménez Osorio to the FEVIM dated February 27, 2007 (evidence file, folios 23399 and 23400).

<sup>377</sup> Requests for appraisals sent to the FEVIM by Bárbara Italia Méndez Moreno and Ana María Velasco Rodríguez on January 15, 2007 (evidence file, folios 24348 and 24349). See also, the State's brief before the Commission of October 15, 2012 (evidence file, folio 14323), and letter sent to the FEVIM by Mariana Selvas Gómez, Suhelen Gabriela Cuevas Jaramillo, María Patricia Romero Hernández, Georgina Edith Rosales Gutiérrez and Norma Aidé Jiménez Osorio on February 27, 2007 (evidence file, folios 23399 and 23400).

<sup>378</sup> This led to the conclusion that the complainants displayed the psychological effects of ill-treatment and that it was medically impossible to confirm the physical effects. Regarding Ana María Velasco Rodríguez, the medical report indicated that "acute and chronic psychological effects exist that [...] are the result of physical ill-treatment and/or torture." Appraisals made of Bárbara Italia Méndez Moreno and Ana María Velasco Rodríguez, and presented by the FEVIM on November 12, 2007 (evidence file, folios 24374 and 24446). See also, Answer to the request to incorporate the FEVIM appraisal (evidence file, folios 24353 and 24354).

<sup>379</sup> Cf. Request to incorporate appraisals into the federal case file submitted by the Center Prodh on August 13, 2007 before the FEVIM (evidence file, folio 24351).

<sup>380</sup> Cf. The State's brief of October 15, 2012 (evidence file, folio 14322).

<sup>381</sup> Cf. UN, Office of the United Nations High Commissioner for Human Rights, *Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)*, New York and Geneva, 2004, para. 104, and *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 255.

logical examinations by their very nature may re-traumatize the patient by provoking or exacerbating symptoms of post-traumatic stress by reviving painful effects and memories.”<sup>382</sup> Similarly, in cases of sexual violence, the Court has emphasized that:

[...] the investigation must try, insofar as possible, to avoid the re-victimization of the presumed victim or the re-experience of the profoundly traumatic incident. Regarding examinations of sexual integrity, [...] the gynecological examination should be made as soon as possible [...] if it is considered appropriate to perform it and with the prior informed consent of the presumed victim, during the first 72 hours after the reported act, based on a specific protocol for attention to victims of sexual violence. This does not preclude the gynecological examination being performed after this period, with the presumed victim’s consent, because evidence can be found some time after the act of sexual violence; [...] the appropriateness of a gynecological examination must be considered on the basis of a case-by-case analysis taking into account the time that has passed since the alleged sexual violence occurred. [...] The authority requesting a gynecological examination must provide detailed reasons for its appropriateness and, should it not be appropriate or if the presumed victim has not given her informed consent, the examination should be omitted, although this should never serve as an excuse for doubting the presumed victim and/or avoiding an investigation.<sup>383</sup>

282. In the instant case, the Court notes that the CNDH and the CCTI applied the Istanbul Protocol to nine of the eleven women victims in this case, concluding that there were indications of torture and sexual violence. However, the FEVIM did not consider that this information provided sufficient evidence, and ordered that it be repeated by PGR experts. Consequently, the PGR experts applied the Istanbul Protocol to Bárbara Italia Méndez Moreno and Ana María Velasco Rodríguez for a second time, one year after the events. They did so without justifying the need to do this or considering the possibility that the existing reports provided sufficient evidence, which could have avoided subjecting them to re-victimization and to re-experiencing the traumatic incident that an appraisal of this kind may represent.

283. Furthermore, the Court notes with special concern that the authorities in charge of the federal investigation focused their efforts on requesting a second application of the Istanbul Protocol and obtaining the statements of the women victims in this case, rather than on securing and safeguarding other evidence. The Court has verified that, consequently, the refusal of some of the women victims in this case to subject themselves again to the traumatic experience of the application of the Istanbul Protocol prejudiced the investigation, and this is revealed by the fact that, finally, the FEVIM waived jurisdiction based on the lack of evidence proving the *corpus delicti* and those probably responsible. This was despite the fact that the victims submitted items of evidence on numerous occasions in order to prove the probable responsibility of various federal agents; however, from the evidence provided by the State, it would appear that the FEVIM did not process this or give the reasons for rejecting it.

284. Based on the foregoing, the Court concludes that the investigations implemented by the PGJEM and the FEVIM were not conducted with due diligence because: (i) the gathering and handling of the evidence was very inefficient; (ii) the interviews and the medical examinations

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<sup>382</sup> Cf. UN, Office of the United Nations High Commissioner for Human Rights, *Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)*, New York and Geneva, 2004, para. 149, and *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 255.

<sup>383</sup> *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 256. See also, *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 196, and *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 350, para. 171.

that were conducted did not comply with the requirements in cases of victims of sexual violence and/or torture; (iii) gynecological examinations were not performed and the Istanbul Protocol was not applied immediately; (iv) gynecological care was not provided, even though the women had reported being victims of sexual violence; (v) the women were subjected unnecessarily to re-victimizing appraisals; (vi) the failure to take other measures was detrimental to the investigation, and (vii) the items of evidence submitted by the victims were not processed.

285. It should be added that the Court has no evidence that these initial errors were rectified by subsequent actions that would have resulted in determination of the facts and those responsible. To the contrary, the Court notes that the initial lack of diligence caused significant prejudice to the subsequent investigations. This is revealed by the fact that, owing to the evidentiary difficulties, the State had to resort to investigating the responsibility by omission of the police agents owing to the acts of torture committed against the women and, to date, it has not been possible to identify the perpetrators of those crimes. Thus, even though progress has been made in the said criminal actions based on omissions, they are not clarifying all the crimes, because the initial flaws in the investigation in relation to gathering evidence has resulted in the impossibility of identifying all the perpetrators. Consequently, the Court considers that the State's argument that the said initial flaws have been rectified is not admissible.

#### B.1.2 Presumed obstruction of the inquiries and access to the case files by the Public Prosecution Service

286. The Commission and the representatives alleged that, by ordering the confidentiality of preliminary inquiry 466/2006, the investigation and clarification of the facts at the state level were obstructed. The representatives also considered that the investigation had been obstructed at the federal level, because "despite the pro-active procedural activity of the women to ensure that the facts were investigated, and the evidence of the perpetration of crimes of violence against women by and linked to actions by federal agents," the FEVIM waived jurisdiction in favor of the PGJEM. Lastly, the representatives indicated that "access to the case file and, in general, to details of the investigation were obstructed on various occasions," explaining that they were refused copies of the preliminary inquiry at the federal level, as well as access to the complete file of the state inquiry. For its part, the State indicated that there was no obstruction, because the waiver of jurisdiction was "in keeping with the law, authorized by the ranking superior [...] and taking into consideration the body of evidence," and indicated that it had made the case file available to the victims when they requested this.

287. This Court has understood that, among other matters, the following constitute obstacles to the progress of an investigation: coercion, intimidation or threats to witnesses, investigators or judges aimed at hindering the process, avoiding the clarification of the facts, and concealing those responsible for them;<sup>384</sup> irregularities and unjustified delays resulting from the competent authorities' lack of willingness and commitment to conduct the respective criminal proceedings;<sup>385</sup> lack of access of the victims, their next of kin or their representatives to the investigations and

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<sup>384</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, para. 193, *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 170, *Case of Kawas Fernández v. Honduras. Merits, reparations and costs.* Judgment of April 3, 2009. Series C No. 196, para. 107, *Case of the Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of November 30, 2016. Series C No. 328, para. 224, and *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 145.

<sup>385</sup> Cf. *Case of El Caracazo v. Venezuela. Reparations and costs.* Judgment of August 29, 2002. Series C No. 95, para. 116.

the proceedings;<sup>386</sup> alteration, concealment and destruction of evidence by State agents,<sup>387</sup> and also attempts at bribery or the theft of evidence;<sup>388</sup> failure of State entities to collaborate with the authorities responsible for the investigation,<sup>389</sup> especially the refusal to provide information on the grounds that it relates to a State secret;<sup>390</sup> intervention of the military jurisdiction in facts that constitute human rights violations,<sup>391</sup> and application of amnesty laws.<sup>392</sup>

288. In this case, the Court notes that, despite the delays that the decree of confidentiality could have caused to the investigations (which will be duly analyzed below in relation to the reasonable time), this did not prevent the investigation from continuing once it had been lifted. Thus, the Court notes that when the confidentiality of the file had been lifted various criminal cases were opened and several of those probably responsible were charged and are currently under investigation. Consequently, although due diligence was clearly not complied with, the Court does not observe that the confidentiality of preliminary inquiry 466/2006 signified a form of obstruction of the investigations at the state level.

289. In the same way, with regard to the investigation at the federal level, there are no indications that the decision not to exercise the authority to transfer the jurisdiction of the state investigation to the federal level prevented the opening of subsequent investigations at the federal level and, therefore, it is not considered an act of obstruction. However, this is without prejudice to the lack of due diligence in the processing of the evidence presented by the victims (*supra* para. 284), and the State obligation to investigate all those responsible and to avoid omissions in following up on logical lines of investigation (*infra* para. 293).

290. Lastly, with regard to the argument concerning the obstruction of the victims' access to the case files, neither the representatives nor the Commission have provided any evidence to support this. Moreover, the Court does not see any reason that would justify diverging from the general principle in relation to the burden of proof according to which, in principle, it is the plaintiff who bears the burden of proving the facts on which he bases his allegations.<sup>393</sup> Consequently, the

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<sup>386</sup> Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 116.

<sup>387</sup> Cf. *Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000. Series C No. 67, para. 57, *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, paras. 172 and 174, *Case of the Santa Bárbara Campesino Community v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299, paras. 241, 243, and 251, and *Case of the Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 328, paras. 231 and 232.

<sup>388</sup> Cf. *Case of Gutiérrez and family v. Argentina. Merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 271, para. 121.

<sup>389</sup> Cf. *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits Reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 269.

<sup>390</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 182.

<sup>391</sup> Cf. *Case of the Santa Bárbara Campesino Community v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299, paras. 244, 245, 246 and 251.

<sup>392</sup> Cf. *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 41, and *Case of Herzog et al. v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of March 15, 2018. Series C No. 353, para. 232.

<sup>393</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 144, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 163.

Court considers that it has insufficient evidence to determine whether access to the domestic case files was obstructed.

### B.1.3 Investigation of all those responsible

291. The representatives and the Commission allege that the State failed to follow lines of investigation concerning: (i) the participation of federal agents, and (ii) the responsibilities of the chain of command. Meanwhile, the State indicated that “the FGEM charged all the persons identified by the SCJN as possible participants in the sexual abuse that occurred against the eleven victims in this case,” and noted that “the SCJN only identified [...] police agents of the state of Mexico as possible participants, and not federal agents [...] because the transfer of those who had been arrested [...] was solely the responsibility of authorities of the state of Mexico.” In addition, it argued that, “by its investigations, it had complied with the identification of different levels of responsibility, including each and every one of the authorities involved in the chain of command,” and that “the Supreme Court concluded that it was impossible to prove the hypothesis that, during the operation, an order had been given to attack [...] the protesters.”

292. This Court has established that States have the obligation to conduct an investigation, using all available legal means and aimed at determining the truth, and the pursuit, capture, prosecution and punishment, as appropriate, of those responsible, whatever their participation in the facts.<sup>394</sup> Thus, they should avoid omission in following logical lines of investigation,<sup>395</sup> to ensure the proper analysis of the presumptions of responsibility resulting from the investigation.<sup>396</sup> Accordingly, in order to determine whether a State has complied with its obligation to investigate all those criminally responsible, this Court has referred to the need to analyze: (i) the existence of evidence of the participation of those presumed to be responsible, and (ii) whether there was diligence or negligence in the investigation of this evidence.<sup>397</sup>

293. In this case, the Court notes that several of the women victims in this case recounted that they had suffered different forms of violence and abuse at the hands of federal agents<sup>398</sup> when they were detained and handed over to state agents who transferred them.<sup>399</sup> Consequently, the Court considers that there was sufficient evidence to oblige the State to investigate the responsibility of federal agents for the facts that are the purpose this case. Regarding the State’s conduct, the Court has already noted that the FEVIM investigation was not executed with due

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<sup>394</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 177, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, reparations and costs*. Judgment of August 22, 2018. Series C No. 356, para. 151.

<sup>395</sup> Cf. *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 158, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, reparations and costs*. Judgment of August 22, 2018. Series C No. 356, para. 85.

<sup>396</sup> Cf. *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009. Series C No. 196, para. 96, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, reparations and costs*. Judgment of August 22, 2018. Series C No. 356, para. 85.

<sup>397</sup> Cf. *Case of Pacheco León et al. v. Honduras. Merits, reparations and costs*. Judgment of November 15, 2017. Series C No. 342, para. 94, and *Case of Omeara Carrascal et al. v. Colombia. Merits, reparations and costs*. Judgment of November 21, 2018. Series C No. 368, paras. 240 to 242.

<sup>398</sup> The SCJN established in its judgment that approximately 194 agents of the state Security Agency and 154 agents of the Federal Preventive Police participated on May 3, 2006, while, 1,815 state police agents and around 700 federal agents took part on May 4. Cf. SCJN judgment of February 12, 2009 (evidence file, folio 25).

<sup>399</sup> CNDH Recommendation No. 38/2006 of October 16, 2006 (evidence file, folios 29201, 29921, 29922, 29781, 28923, 28924, 29390, 29996, 29997 and 29140).

diligence, because it failed to process the items of evidence provided by the women victims in this case adequately, which meant that it failed to follow logical lines of investigation that could have resulted from this evidence. The Court has no information indicating that, at the present time, any investigation is open to determine the possible responsibility of federal agents. Although the State alleges that it has charged all the agents identified by the SCJN who took part in the transfers, the Court notes that the acts of sexual violence also occurred during the initial arrest and at the time of the handover, acts in which federal agents took part (*supra* paras. 75 to 105). Consequently, the Court considers that it is not sufficient that the State has investigated those persons listed by the SCJN as probably responsible owing to their participation in the transfers of the women; rather the State should have following the logical lines of investigation concerning the participation of federal agents in the crimes committed, especially in light of the significant evidence indicated.

294. Regarding the arguments concerning the failure to investigate the presumed responsibility based on the chain of command, the Court notes that Article 3 of the Inter-American Convention against Torture establishes that “[a] public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so” shall be held guilty of this crime. This means that, as indicated in the expert opinion of Susana SáCouto, “in cases of torture the obligation to investigate under the [American Convention] supplemented by the [Inter-American Convention against Torture] extends not only to the direct perpetrator but also to the State officials who order, instigate or incite its perpetration, or who, being in a position to prevent it, fail to do so.”<sup>400</sup> On this point, it should be recalled that it is not incumbent on the Court to analyze the presumptions concerning the perpetrators examined during the investigation into the facts and, thus, to determine individual responsibilities; that is the task of the domestic criminal courts. Rather, the Court must evaluate the acts or omissions of State agents, based on the evidence presented by the parties,<sup>401</sup> and verify whether, in the course of the measures taken in the domestic sphere, the State’s international obligations arising from Articles 8 and 25 of the American Convention were violated.<sup>402</sup> To this end, the Court will now analyze whether, in this case, there is any evidence that the civil authorities<sup>403</sup> who planned and supervised the operations ordered, instigated or induced the use of torture or who, being able to prevent it, failed to do so,<sup>404</sup> and whether that

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<sup>400</sup> Expert opinion of Susana SáCouto (evidence file, folio 37119). The UN Committee against Torture indicated the same, when stating that it was “a matter of urgency that each State party should [take] measures to investigate, [...] with particular attention to the legal responsibility of both the direct perpetrators and officials in the chain of command.” UN Committee against Torture, General Comment No. 2, January 24, 2008, Doc. UN CAT/C/GC/2, para. 7.

<sup>401</sup> Cf. *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. 87, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of February 16, 2017. Series C No. 333, para. 180.

<sup>402</sup> Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and Merits.* Judgment of November 28, 2006. Series C No. 161, para. 80, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, reparations and costs.* Judgment of August 22, 2018. Series C No. 356, para. 81.

<sup>403</sup> In this regard, the Committee against Torture has indicated that “those exercising superior authority - including public officials - cannot [...] escape criminal responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary preventive measures.” UN Committee against Torture, General Comment No. 2, January 24, 2008, CAT/C/GC/2, para. 26. See, similarly: UN, Committee against Torture, *Hajrizi Dzemajl et al. v. Yugoslavia*, December 2, 2002, Doc. UN CAT/C/29/D/161/2000, para. 9.2, and *Besim Osmani v. Republic of Serbia*, May 25, 2009, Doc. UN CAT/C/42/D/261/2005, para. 10.5.

<sup>404</sup> According to customary international law the responsibility of those who, being able to prevent torture, failed to do so, requires proving: (1) the existence of a superior-subordinate relationship between the accused and the perpetrator of the crime (that is, that the individual had the material capacity to prevent or to punish the perpetration of a crime); (2) that the superior knew or had reason to know that the subordinate was about to perpetrate such crimes or had already

evidence was sufficient to justify the opening of lines of investigation relating to the command responsibility of the superiors.

295. In this case, the Court considers that there was sufficient evidence to justify the opening of a line of investigation in relation to the command responsibility of the officials in charge of the operations of May 3 and 4.

296. First, the Court notes that there was sufficient evidence that the officials had the material capacity to prevent and punish the acts. Indeed, the Court notes that, despite “the climate of violence, confrontation and excesses” that, according to the SCJN, characterized the operations, the police maintained their organizational capacity,<sup>405</sup> which is demonstrated by testimony revealing that the police agents were able to adapt their conduct based on verbal orders or in the presence of the media (*supra* paras. 78 and 87). Second, there is evidence that the authorities knew or should have known that the acts were occurring. The SCJN judgment indicates that, owing to the way in which the sexual abuse occurred, “perhaps it was more difficult for the superior officers of the police to be aware of it in real time while it was occurring; thus, owing to the lack of visibility, the court cannot establish criminal omission for failing to make them stop.”<sup>406</sup> In this regard, the Court notes that it is not necessary for the superior to have specific details of the wrongful acts committed or about to be committed; rather, it is sufficient that he has some general information that alerts him to possible wrongful acts of his subordinates.<sup>407</sup> The Court observes that the operation was given extensive media coverage in real time and was supervised by land and air by the superior officers of those who were executing it; accordingly, even if those officers had no sure knowledge of the sexual abuse that was occurring, they did have general information indicating a risk that it might occur. Lastly, a third indication that would have justified the opening of lines of investigation into the command responsibility relates to the failure to take steps to prevent and/or to punish the acts. The Court notes that, in this case, there is no evidence that allows it to suppose that the authorities took the necessary steps to prevent or to punish the perpetration of the said wrongful acts.<sup>408</sup> The Court therefore concludes that there was sufficient evidence to justify opening lines of investigation to determine whether the authorities in charge of the operations failed to prevent or to investigate the acts of torture, even though they were in a position to do so.

297. This Court is not a criminal court, but it cannot overlook the fact that the State’s omission in relation to the chain of command should have been investigated based on the reports that would have reached the superior authorities, not only in the eventuality that they had ignored the

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done so, and (3) that he did not take all necessary and reasonable measures to prevent the crimes and/or to punish the perpetrator. *Cf.* Expert opinion of Susana SáCouto (evidence file, folio 37133).

<sup>405</sup> In this regard, the SCJN noted that “[t]he organizational capacity [...] revealed by the police calls into question their version that it was impossible to halt the violence that had been unleashed.” SCJN judgment of February 12, 2009 (evidence file, folios 120 and 310).

<sup>406</sup> SCJN judgment of February 12, 2009 (evidence file, folios 31199 and 31200).

<sup>407</sup> *Cf.* Expert opinion of Susana SáCouto (evidence file, folios 37136 and 37137).

<sup>408</sup> To the contrary, the SCJN considered “reprehensible [...] that, aware of the magnitude of the operation, measures were not taken to prevent the perpetration of [sexual abuse],” stressing also “the lack of foresight to include women police agents; measures to separate the women from the men following their detention, and the lack of planning to have video cameras or observers in the trucks.” It added that “the inquiry does not establish that any measures were taken when the violence broke out and, furthermore, that such conduct was penalized once this occurred. Indeed, the abuses did not stop; consequently, they were tolerated and, when investigated, the investigations conducted to date have not been effective and have not led to the punishment of that conduct.” SCJN judgment of February 12, 2009 (evidence file, folio 31199).

reports and had accepted the possibility of the result (*dolus eventualis* or legal intention), but also in the eventuality that they had underestimated the reports, rejecting the possibility of that result (conscious guilt). Furthermore, the State should not have rejected the latter element of criminal responsibility because, in light of the characteristics of the sexual abuse, which was not committed by a single individual, but in group, it is evident that the law enforcement agents who took part in the operation lacked the most elemental and appropriate training, and any duly organized and disciplined police force would never have permitted the perpetration of such heinous crimes by a group of its agents.

298. This Court does not advocate any form of objective criminal responsibility that would be contrary to the contemporary general principles of criminal responsibility and, consequently, pursuant to these universally recognized principles, reaffirms that only the person acting with intent or with imprudence or negligence commits a crime. The Court understands that, in this case, it is for the State's criminal judges to establish whether there was *dolus eventualis* (if the superior officers knew of the acts or evidence of them and ignored this, admitting the possibility of the result) or whether, to the contrary, they did not incur in *dolus eventualis*. In the latter case, which would be the most favorable to the superiors in the chain of command, the Court observes that there was no investigation, either, into their possible responsibility by guilt (imprudence owing to organizing the operation with an undisciplined and disorganized police force) or negligence (underestimating the reports that reached them). In the Court's opinion, it would appear that, at least, the latter possibility needed to be investigated, because the fact itself, revealing the extreme lack of discipline and preparation of the law enforcement agencies whose members were the perpetrators of the crimes, is an extremely clear indication of imprudence, because plainly the superior who organizes an operation of this nature, using a force with such internal disorder, incurs in a clear violation of his duty of care based on his function of command and decision. It should be pointed out that the SCJN indicated this also.<sup>409</sup>

299. Regarding the possibility of lesser criminal responsibility for those responsible in the chain of command, the Court indicates that the argument that an investigation into possible responsibility of the superior officers for violation of the duty of care was omitted because torture and rape require intent and do not admit negligence is invalid.

300. Pursuant to the principle that each participant in a crime is only responsible for his own wrongful act, it is true that the perpetrators, instigators and accessories to the crimes of torture and rape can only commit these crimes by *dolus eventualis* or *dolus directus* and, in particular, that rape is a crime that can only be perpetrated by the individual who commits it directly and personally (on his own). And also that the injuries suffered by the victims as a result of the crimes attributed to those agents cannot be considered "*concurso ideal*" [where one and the same act is an offence against several different statutory provisions], because those injuries are absorbed by the violence required by such crimes, and this is even clearer when, in general, the definition of those acts [injuries] indicates that they are aggravating factors of the crime, as is the possible result of death.

301. Despite the foregoing and, based on the principle that a criminal act is always personal, the State failed to comply with its obligation to investigate, at the very least, the criminal responsibility of the superiors in the chain of command, by not investigating their possible responsibility by guilt (negligence or imprudence) with regard to the victims' injuries that were verified, because these were crimes that were obviously established in domestic law, also based

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<sup>409</sup> See above, footnotes 245 and 246 of this judgment.

on direct guilt and, in this regard, even in the most favorable hypothesis for the superiors, the said injuries were not absorbed by any crime they might have committed that required violence.

302. Regarding the State's conduct, the Court has no information that, at this time, any investigation is underway or completed to determine the command responsibility of the superiors in charge of the operation, over and above the criminal action against the Deputy Director for Operations of the southern region of the state Security Agency that is currently underway (*supra* para. 143). Although the State argued that the command responsibility had been duly analyzed and discarded by the SCJN during its investigation into the events of May 3 and 4, the Court considers that the said investigation was not sufficient to comply with the obligation to investigate all those responsible. This is because it was not a jurisdictional procedure with the ability to determine criminal responsibilities and the judgment itself established the need to continue investigating those possibly responsible.<sup>410</sup> In addition, although the SCJN ruled out the existence of sufficient evidence of express orders by the authorities to attack those present, this Court notes that: (i) responsibility for the crime of torture may arise not only from the issue of orders, but also, as mentioned above, by instigation, incitement, or when, being in a position to prevent it, this is not done; (ii) the orders may be implicit rather than explicit,<sup>411</sup> and (iii) the instructions may not necessarily be criminal in themselves; rather, it is sufficient that there is a substantial probability that crimes are committed in the execution of the instruction.<sup>412</sup> None of these circumstances were ruled out by the SCJN.

303. Furthermore, the State did not initiate any investigation into the possible responsibility by intention of the authorities owing to their conduct following the events. The subsequent declarations affirming that the victims' complaints were false and were merely tactical inventions of "members of the guerrilla" (*supra* paras. 73 and 74) provided sufficient evidence to open the investigation of a possible offense against the administration of justice; in other words, of a possible offense of concealment, and this arises from the SCJN's observations.<sup>413</sup> Evidently, only one of these investigations was required, because if responsibility for the facts was found, then the offense of concealment would be ruled out.

304. Therefore, in light of the fact that: (i) the investigations conducted by the State were limited to the participation of state agents, when there was evidence of the participation of federal agents, and (ii) no investigation was conducted into all the possible forms of individual responsibility for the acts of torture that are established in the Inter-American Convention against Torture, including command responsibility, despite the existence of evidence in this regard, the Court finds that the State failed to investigate all the possible criminal responsibilities and did not follow all the logical lines of investigation, thus failing to comply with its duty to investigate with due diligence.<sup>414</sup>

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<sup>410</sup> To the contrary the SCJN indicated that the violence used was permitted, encouraged and endorsed (*supra* para. 125), and added that "it is reprehensible [...] that, knowing the magnitude of the operation, measures were not taken to prevent the perpetration of those conducts or to allow a record or testimony to be kept of what happened. For example, the lack of foresight to include women police agents and measures to separate the women from the men when they had been detained, and the lack of foresight to have video cameras or observers in the trucks." SCJN judgment of February 12, 2009 (evidence file, folio 31200).

<sup>411</sup> Cf. Expert opinion of Susana SáCouto (evidence file, folio 37130).

<sup>412</sup> Cf. Expert opinion of Susana SáCouto (evidence file, folio 37129).

<sup>413</sup> See footnote 247 of this judgment above.

<sup>414</sup> In this regard, even though it has been verified that the State did not investigate the responsibility of the authorities in charge of the operation based on their failure to take steps to prevent or to punish the acts of torture, the Court does

#### B.1.4 Conclusion concerning the duty to investigate with due diligence

305. Based on the acknowledgement of responsibility, as well as the findings in this judgment, the Court concludes that, owing to the initial flaws in the investigation, the failure to assess the evidence presented to the FEVIM by the women victims in this case, and also the failure to investigate all those who were possibly criminally responsible and to follow logical lines of investigation, the Mexican State did not act with the due diligence required of investigations into the torture and sexual violence suffered by the eleven women victims in this case.

#### **B.2 Reasonable time**

306. The Commission and the representatives argued that the State had violated the reasonable time established in Article 8(1). In this regard, the Court has reiterated that the reasonable time should be examined in each specific case in relation to the total duration of the proceedings, from the initial procedural act until the final judgment is handed down.<sup>415</sup> Thus, it has considered four elements to analyze whether the guarantee of reasonable time has been met, namely: (a) the complexity of the matter; (b) the procedural activity of the interested party; (c) the conduct of the judicial authorities, and (d) the effects on the legal situation of the person involved in the proceedings. The Court recalls that it is for the State to justify, based on these criteria, the reason why it has required the time that has elapsed to process the case and, if it does not do so, the Court has broad authority to make its own assessment in this regard.<sup>416</sup>

307. In this case, the State conducted two investigations, one at the federal level and the other at the state level. Regarding the former, the Court recalls that, after three years, the FEVIM waived jurisdiction in favor of the PGJEM, ending the preliminary inquiry without having indicted anyone. In the case of the state investigation which began on May 10, 2006, the Court notes that, although preliminary inquiry 466/06 resulted in the indictment of several persons and the launching of several criminal proceedings, to date, no final ruling has been issued. Consequently, the Court will now determine whether the time that has elapsed is reasonable based on the criteria established in its case law.

308. This Court has taken different criteria into account to determine the complexity of the proceedings.<sup>417</sup> In this case, the Court observes that the characteristics of the proceedings do not represent a particularly great complexity, considering that: (a) the probative difficulties resulted, to a great extent, from the lack of initial diligence in the gathering of evidence (*supra* paras. 272 and ff.), and (b) both the victims and the police agents who took part in the operations were

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not find it necessary to analyze whether there was also evidence indicating that the said authorities ordered, instigated or incited the perpetration of the acts of torture.

<sup>415</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2018. Series C No. 359, para. 180.

<sup>416</sup> Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 156, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2018. Series C No. 359, para. 180.

<sup>417</sup> Including, the complexity of the evidence, the plurality of procedural subjects or the number of victims, the time that has passed since the violation, the characteristics of the remedy established by domestic law, and the context in which the violation occurred. Cf. *inter alia*, *Case of Genie Lacayo v. Nicaragua. Preliminary objections*. Judgment of January 27, 1995. Series C No. 21, para. 78, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2018. Series C No. 359, para. 180.

easily identifiable.<sup>418</sup> Regarding the procedural activity of the interested parties, the Court notes that there is no evidence that the eleven women victims in this case took steps that obstructed the progress of the investigations; to the contrary, as revealed by the proven facts, the victims played an active role in furthering the proceedings, offering different items of evidence.<sup>419</sup> With regard to the conduct of the judicial authorities, the Court considers that there were delays in the investigations as a result of the inactivity of the authorities and the failure of the authorities in charge of the investigation to act with due diligence. Indeed, the Court notes that: (i) the confidentiality of the preliminary inquiry was ordered, and this remained in force for more than three years;<sup>420</sup> (ii) the restrictive interpretation of the crime of torture made by the judicial authorities, as well as the time that passed from the refusal of the arrest warrants requested by the Public Prosecution Service up until the moment in which the action was corrected and completed, led to an additional delay of three years in the prosecution of 26 of the 29 accused in criminal case 418/11; (iii) to date, all those responsible have not been investigated. Lastly, regarding the effect on the legal situation of those involved in the proceedings, the Court has established that, if the passage of time has a relevant impact on the legal situation of the individual involved, the proceedings must move forward with greater diligence so that the case is decided promptly.<sup>421</sup> In this case, the effects on the legal situation of the eleven women is evident because, owing to the type of violation analyzed, the delay resulted in greater difficulties to obtain evidence, thus favoring impunity.

309. Based on the above, the Court concludes that the State violated the judicial guarantees of due diligence and reasonable time established in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the eleven women victims in this case.

### **B.3 Gender-based discrimination based on the flaws in the investigation**

310. In the instant case, the Court has already referred to the flaws in the initial stages of the investigation, especially in the collection and handling of the evidence (*supra* paras. 272 and ff.). The refusal to accept the complaints made by the women, the absence of medical and gynecological care, the failure to conduct the pertinent medical and psychological appraisals – especially the gynecological tests – as well as the deficient handling of the evidence collected, reveal not only non-compliance with due diligence, but also that the State failed to conduct the

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<sup>418</sup> In fact, the State had, not only the lists drawn up by the SCJN in its judgment, but also the information gathered by the CNDH in the context of Recommendation 38/2006, and the police records of the operations.

<sup>419</sup> This Court finds it necessary to note that the refusal by some of the women victims in this case to submit for a second time to the appraisals requested by the PGR cannot be interpreted as an action that obstructed the progress of the proceedings, because the said appraisals must always be made with the victim's consent and, if this consent is not forthcoming, this should not prejudice the progress of the investigation; rather, it is for the State to carry out other procedures in order to clarify the facts and punish those responsible. This is particularly relevant in this case, because most of the women had already undergone the appraisals to which the State failed to grant probative sufficiency in order to avoid the re-victimizing experience that having to undergo such appraisals for a second time signifies for a woman victim of torture and rape.

<sup>420</sup> In this regard, although this did not entail a total paralyzation of the investigation, an analysis of the list of procedures provided by the State reveals that, for the three years that the inquiry was kept confidential, the intensity of the investigative activities was reduced considerably, so that, with a few exceptions, most of the procedures were of a formal nature such as the processing of documentation or the exchange of communications (evidence file, folios 33383 to 33394).

<sup>421</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2018. Series C No. 359, para. 185.

investigation with a gender perspective, as the case required. In addition, the investigation of the acts denounced by the women was characterized by discriminatory, stereotypical and re-victimizing statements and conducts, infringing the right of access to justice of the women victims in this case.

311. The Court has also referred to the stereotyped violence of which the women were victims, by being humiliated based on stereotypical and re-victimizing assertions by some authorities (*supra* para. 219). However, the effect that these assertions may have had on the diligence with which the investigations were conducted, especially at the initial stages, remains to be analyzed.

312. In this regard, during the public hearing before this Court, expert witness Julissa Mantilla explained that the humiliation of a victim by senior officials not only re-victimizes a woman, but also has an impact on the care and diligence with which the judicial officials undertake the investigation. This may have particularly serious effects when, as in this case, this occurs at the outset of the investigation, which is when the greatest speed and diligence is required of the authorities.<sup>422</sup>

313. In this case, the Court observes that it was stated that the women "for reasons of modesty, had not let doctors examine them," which was particularly vexatious because most of the women were denied a gynecological examination, even though some of them had expressly requested this, even having to resort to a hunger strike (*supra* para. 109). Furthermore, the women were disbelieved by denial of the sexual violence because no complaints had been filed, when this was not only irrelevant, because the obligation to investigate arises when evidence exists, irrespective of the existence of a complaint, but was also false, since several of the women had tried to file complaints about the facts and the authorities had not allowed this (*supra* para. 105). The Court also notes the use of expressions aimed at relieving the perpetrators of responsibility or justifying their acts; for example, by reducing the police abuse to a consequence of stress, as well as the perpetration of stereotypes relating to the lack of credibility of women, attributing the complaints to tactics of "insurgent groups" or "radicals" (*supra* para. 74). In short, the Court notes that statements of this type are not only discriminatory and re-victimizing, but also create an adverse climate for the effective investigation of the facts and encourage impunity.

314. The Court also notes that the women were also denigrated by the treatment they received from the officials in charge of the investigation. For example, during the public hearing before this Court, Bárbara Italia Méndez Moreno stated that, the whole time, she felt that questions were being raised with regard to her behavior and regarding what she had done to deserve what happened to her.<sup>423</sup> The attitude of one of the doctors (whose duty it was to treat the women and document the acts reported) towards Claudia Hernández was particularly disturbing, when he said that he did not believe her and called her a "radical" and "filth" (*supra* para. 104).

315. This Court has indicated, with regard to rape, that given the nature of this form of violence, the existence of graphic or documentary evidence cannot be expected and, therefore, the victim's

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<sup>422</sup> Cf. Expert opinion provided by Julissa Mantilla during the public hearing held before this Court. Similarly, expert witness Rebeca Cook indicated that "[d]enigrating victims sends a message that the State does not consider them worth protecting against violence or the State resources required to conduct an effective criminal investigation into their complaints of violence." She added that "stereotypical comments influence the conduct of all the public authorities, justifying the State's inaction and its failure to prevent, punish and/or eradicate violence against women" (merits file, folios 976 and 977).

<sup>423</sup> Statement by Bárbara Italia Méndez Moreno during the public hearing before this Court.

statement is fundamental proof of the fact.<sup>424</sup> In this case, the Court observes numerous examples of occasions on which the State authorities accorded excessive importance to the absence of physical evidence, which is particularly serious taking into account that, to a great extent, the absence of this evidence was due to the negligent actions of the same authorities who later required it. The Court has already determined that the refusal by some of the women victims in this case to undergo the application of the Istanbul Protocol a second time prejudiced the investigation, owing to the failure of the FEVIM to adopt other measures, such as taking into account the appraisals that other entities had conducted previously. The Court also emphasizes the statement of the Secretary General of Government of the state of Mexico that it was not possible to open an investigation owing to the absence of gynecological examinations or criminal complaints (*supra* para. 73), as well as the state Security Agency's report of May 17, 2006, submitted to the Governor and the PGJEM, which stated that "a possible victim of a violent rape would have injuries that could endanger her life and mental capacity and [...] she would have to be hospitalized."<sup>425</sup> These are examples of the excessive importance that the authorities assigned to the physical evidence, contravening the inter-American standards for the investigation of cases of sexual violence.

316. In addition, the Court also notes the re-victimizing effects of the stereotypical and discriminatory treatment that the women received. For example, the authorities in charge of the investigation failed to take steps to avoid subjecting them repeatedly and unnecessarily to the re-victimizing and invasive experience of the application of medical and psychological appraisals (*supra* paras. 282 and 283). The Court also notes that the FEVIM made a partial "social, family and economic report on the complainants; the victim's background, customs and practices" contrary to the wishes of the eleven women victims in this case.<sup>426</sup> In this regard, this Court has indicated that opening lines of investigation into the previous social or sexual conduct of the victims in cases of gender-based violence is merely a demonstration of policies or attitudes based on gender stereotypes. Furthermore, the victim's consent is essential for any expert appraisal or examination performed on the victim of torture and/or sexual violence. In this regard, the Court considers that the preparation of these reports was unnecessary, because there was no justification as to how the social, family and economic history of the victims would be relevant to verify the *corpus delicti* and those probably responsible, and was also re-victimizing, especially as these reports were prepared without the victims' consent.

317. Consequently, the Court finds that the investigation of the torture and sexual violence perpetrated against the women victims in this case was not conducted with a gender-perspective in accordance with the special obligations imposed by the Convention of Belém do Pará.

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<sup>424</sup> Cf. *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, para. 89, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of February 16, 2017. Series C No. 333, para. 248.

<sup>425</sup> Activities report of the General Inspectorate of the state Security Agency of May 17, 2006 (evidence file, folio 21743).

<sup>426</sup> In September 2008, the FEVIM ordered the preparation of a "social, family and economic report on the complainants, the victim's background, customs and practices." The November 7, 2008, report issued by the FEVIM established that, in light of the refusal of the women victims in the case to submit to this report, "a visit was made to the domiciles recorded in the preliminary inquiry." The report analyzed the urbanization of the area where the dwelling was located, the state and conditions of the dwelling, access to services and economic conditions of the inhabitants, all of which was documented with photographs. In December 2008, the complainants filed a complaint against the agent of the federal Public Prosecution Service in charge of the case because this report was prepared against their wishes. Cf. FEVIM report of November 7, 2008 (evidence file, folio 42606), and complaint of the eleven women against the background report filed before the Complaint Area of the PGR Internal Control Body, dated December 18, 2008 (evidence file, folios 24514 and 24515).

Therefore, the Court considers that the State violated the obligation to respect and to ensure, without discrimination, the rights contained in the American Convention (Article 1(1)), and recalls that the State has acknowledged the violation of the right to equality before the law recognized in Article 24 of the Convention.

#### **B.4 General conclusion**

318. Based on the above and in light of the acknowledgement made by the State, the Court concludes that the State violated the rights to judicial guarantees and to judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to the general obligations contained in Articles 1(1) and 2 of this instrument, and Article 7 of the Convention of Belém do Pará, as well as Articles 1, 6 and 8 of the Inter-American Convention against Torture, and recalls that the State acknowledged the violation of Article 24 of the Convention, to the detriment of Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Ana María Velasco Rodríguez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Claudia Hernández Martínez.

#### **IX-4**

#### **RIGHT TO PERSONAL INTEGRITY<sup>427</sup> OF THE NEXT OF KIN, IN RELATION TO THE OBLIGATION TO RESPECT AND TO ENSURE THESE RIGHTS**

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

319. The **Commission** alleged that the egregious nature of the facts that occurred and the situation of impunity due to the absence of a “prompt judicial response,” had violated the personal integrity of the victims’ next of kin. The **representatives** agreed with the Commission’s allegation concerning the violation of Article 5(1) of the Convention to the detriment of the family members of the eleven presumed victims, and described the specific effects on the members of each family unit. In general, they determined that several aspects of the life projects of the family groups were affected. Many of the members were obliged to abandon their studies or their jobs, to sell some of their possession to cover the expenses entailed by the judicial proceedings, and to make a significant economic effort in order to travel to where the victims were detained in order to visit them or to provide them with basic items for subsistence inside the prison. In their final written arguments, the representatives reiterated the arguments they had presented at previous stages and added “further details of the effects that the facts of this case had had on the victims’ next of kin, based on the new evidence produced.” The **State** acknowledged its international responsibility for the “violation of the right to personal integrity, recognized in Article 5(1) in relation to Article 1(1) of the American Convention, to the detriment of the victims’ next of kin as a result of what the victims had suffered.”

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

320. The Court has indicated on numerous occasions that the next of kin of the victims of human rights violations may also, in turn, be victims.<sup>428</sup> In this regard, the Court has indicated that it is

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<sup>427</sup> Article 5(1) of the Convention establishes that: “1. Every person has the right to have his physical, mental, and moral integrity respected.”

<sup>428</sup> Cf. *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, fourth operative paragraph, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 262.

possible to declare the violation of the right to mental and moral integrity of the next of kin of victims of certain human rights violations in application of a *iuris tantum* presumption in the case of mothers and fathers, daughters and sons, and husbands, wives and permanent companions, as well as brothers and sisters,<sup>429</sup> provided this accords with the particular circumstances of the case. Regarding the direct next of kin, it is for the State to disprove this presumption.<sup>430</sup> On this point, the Court has understood that the right to mental and moral integrity of some next of kin has been violated owing to the additional suffering they have undergone as a result of the particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent actions of the State authorities in relation to those violations.<sup>431</sup>

321. Such suffering gives rise to the presumption of a violation of the mental and moral integrity of the next of kin in cases of forced disappearances,<sup>432</sup> and also in the case of other egregious human rights violations, such as extrajudicial executions,<sup>433</sup> sexual violence and torture.<sup>434</sup> Thus, taking into account the State's acknowledgement of responsibility, the Court considers that the violation of the right to personal integrity of the direct next of kin of the eleven women victims of sexual violence and torture in this case may be presumed. The presumed violation of this right to the detriment of indirect next of kin will be examined below (paras. 323 and 324).

322. In this case, the State acknowledged its international responsibility for the violation of the right to personal integrity of all the next of kin of the eleven women victims of torture and unlawful and arbitrary detention in this case, among other violations.

323. Notwithstanding the said acknowledgment and the presumption applicable in this case, the Court notes that, based on the information and evidence provided to the case file, the personal integrity of the next of kin identified by the Commission and the representatives was affected by one or several of the following circumstances:<sup>435</sup> (i) lack of information regarding the detention of their family members, which led to feelings of anguish and uncertainty; (ii) involvement in different actions to seek justice or information to achieve, on the one hand, the release of their family members and, on the other, the punishment of those responsible for the sexual torture;

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<sup>429</sup> Cf. *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits Reparations and costs.* Judgment of November 20, 2012 Series C No. 253, para. 286; *Case of Osorio Rivera and family v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 227, and *Case of Terrones Silva et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 360, para. 226.

<sup>430</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 119, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, reparations and costs.* Judgment of August 22, 2018. Series C No. 356, para. 123.

<sup>431</sup> Cf. *Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359, para. 121.

<sup>432</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 119, and *Case of Terrones Silva et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 360, para. 226.

<sup>433</sup> Cf. *Case of La Cantuta v. Peru. Merits, reparations and costs.* Judgment of November 29, 2006. Series C No. 162, para. 218, and *Case of the Santa Bárbara Campesino Community v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2015. Series C No. 299, para. 274.

<sup>434</sup> Cf. *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, paras. 137 a 139, and *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, para. 297.

<sup>435</sup> Cf. Expert opinion of Ximena Antillón, provided by affidavit on November 1, 2017 (evidence file, folios 37224 to 37340)

(iii) the duration of the imprisonment and the knowledge of the sexual torture have had personal, physical and emotional effects, which have affected their life projects; (iv) the difficulties to visit their family members in prison due to humiliating treatment during security inspections; (v) the facts have affected their social relationships and have led to ruptures in the family dynamic, as well as changes in the assignation of roles within the family; (vii) the acts committed have stigmatized them and caused them to feel shame vis-à-vis society; (viii) the events have led to feelings of fear, insecurity and vulnerability in relation to the repression exercised by the State, and (ix) the effects they have experienced have been increased because the facts remain unpunished.

324. Consequently, the Court considers that, as a direct result of the deprivation of liberty and the sexual torture of the eleven women, the next of kin named below have undergone profound suffering and anguish to the detriment of their mental and moral integrity. Accordingly, the Court concludes that the State violated the right to personal integrity established in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the following next of kin:

<p><b>Next of kin of Yolanda Muñoz Diosdada</b></p>	<ol style="list-style-type: none"> <li>1. Cesar Adrian Pomposo Muñoz (son)</li> <li>2. Eduardo Pomposo Muñoz (son)</li> <li>3. José Guadalupe Pomposo Muñoz (son)</li> <li>4. Gregorio Pomposo Muñoz (son)</li> <li>5. Jennifer Pomposo Muñoz (daughter)</li> <li>6. Emma Muñoz Diosdada (sister)</li> <li>7. Gloria Muñoz Diosdada (sister)</li> <li>8. Jesús Muñoz Diosdada (brother)</li> <li>9. Juana Muñoz Diosdada (sister)</li> <li>10. Fernando Muñoz Diosdada (brother)</li> </ol>
<p><b>Next of kin of Norma Aidé Jiménez Osorio</b></p>	<ol style="list-style-type: none"> <li>1. María Félix Osorio Lira (mother)</li> </ol>
<p><b>Next of kin of María Patricia Romero Hernández</b></p>	<ol style="list-style-type: none"> <li>1. Hilda Hernández Ramírez (mother)</li> <li>2. Raúl Romero Macías (father)</li> <li>3. Arturo Adalí Sánchez Romero (son)</li> <li>4. Ariadna Sánchez Romero (daughter)</li> <li>5. Ascención Raúl Romero Hernández (brother)</li> <li>6. Leticia Romero Hernández (sister)</li> <li>7. Rubén Constantino Díaz (husband)</li> </ol>
<p><b>Next of kin of Mariana Selvas Gómez</b></p>	<ol style="list-style-type: none"> <li>1. Guillermo Selvas Pineda (father)</li> <li>2. Rosalba Gómez Rivera (mother)</li> </ol>
<p><b>Next of kin of Georgina Edith Rosales Gutiérrez</b></p>	<ol style="list-style-type: none"> <li>1. Adail Adriana Porcayo Rosales (daughter)</li> <li>2. Ameyatzin María de Jesús Antunez Rosales (daughter)</li> <li>3. Irasema Patricia Rosales Gutiérrez (sister)</li> <li>4. Bertha Rosales Gutiérrez (sister)</li> <li>5. Socorro Gutiérrez Almaraz (mother)</li> </ol>
<p><b>Next of kin of Ana María Velasco Rodríguez</b></p>	<ol style="list-style-type: none"> <li>1. Gustavo Hernández Velasco (son)</li> <li>2. Arturo Alberto Hernández Velasco (son)</li> </ol>

<b>Next of kin of Suhelen Gabriela Cuevas Jaramillo</b>	<ol style="list-style-type: none"> <li>1. Laura Elena Jaramillo Calvo (mother)</li> <li>2. Arturo Cuevas Ledesma (father)</li> <li>3. Carlos Enrique Cuevas Jaramillo (brother)</li> </ol>
<b>Next of kin of Barbara Italia Méndez Moreno</b>	<ol style="list-style-type: none"> <li>1. Ivan Arti3n Torres Urbina (permanent companion)</li> </ol>
<b>Next of kin of María Cristina Sánchez Hernández</b>	<ol style="list-style-type: none"> <li>1. Lucía Bautista Sánchez (daughter)</li> <li>2. Pedro Jesús Bautista Sánchez (son)</li> <li>3. Hugo Alfredo Cadena Sánchez (son)</li> <li>4. Karen Leticia Cadena Sánchez (daughter)</li> <li>5. José Alfredo Cadena Hernández (common law husband)</li> </ol>
<b>Next of kin of Angélica Patricia Torres Linares</b>	<ol style="list-style-type: none"> <li>1. Genaro Torres Lagar (father)</li> <li>2. Concepción Linares Olivos (mother)</li> <li>3. Miguel Ángel Torres Linares (brother)</li> <li>4. Laura Isela Torres Linares (sister)</li> <li>5. Jorge Torres Linares (brother)</li> </ol>
<b>Next of kin of Claudia Hernández Martínez</b>	<ol style="list-style-type: none"> <li>1. Juan Hernández Rivera (father)</li> <li>2. María Victoria Martínez Flores (mother)</li> <li>3. Anatalia Hernández Martínez (sister)</li> <li>4. Amelia Hernández Martínez (sister)</li> <li>5. Rosa Gloria Hernández Martínez (sister)</li> <li>6. Artemio Hernández Martínez (brother)</li> <li>7. Aar3n Jiménez Hernández (nephew)</li> <li>8. Agustín Jiménez Hernández (nephew)</li> <li>9. Karina Guadalupe Nonato Hernández (niece)</li> <li>10. Israel Nonato Hernández (nephew)</li> </ol>

**X**

**REPARATIONS**

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

325. Based on the provisions of Article 63(1) of the American Convention,<sup>436</sup> the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to repair this adequately, and that this provision reflects a customary rule that constitutes one of the fundamental principles of contemporary international law on State responsibility.

326. Reparation of the harm caused by the violation of an international obligation requires, provided this is possible, full restitution (*restitutio in integrum*), which consists in the re-

<sup>436</sup> Article 63(1) of the American Convention establishes that: “[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.”

establishment of the previous situation.<sup>437</sup> If this is not feasible, as in most cases of human rights violations, this Court will determine measures to guarantee the rights that have been violated and to redress the consequences of the violations.<sup>438</sup> Therefore, the Court has found it necessary to grant different measures of reparation in order to redress the harm comprehensively, so that in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition have special relevance for the harm caused.<sup>439</sup>

327. This Court has established that reparations should have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Therefore, the Court must observe the concurrence of these factors to rule duly and pursuant to the law.<sup>440</sup>

328. Based on the violations declared in the preceding chapter, the Court will proceed to analyze the claims presented by the Commission and the representatives, as well as the arguments of the State, in light of the criteria established in its case law concerning the nature and scope of the obligation to make reparation, in order to establish measures addressed at redressing the harm caused to the victims.<sup>441</sup>

329. International case law and, in particular, that of the Court has established repeatedly that the judgment constitutes, *per se*, a form of reparation.<sup>442</sup> However, considering the circumstances of this case and the suffering that the violations committed caused the victims, the Court finds it pertinent to establish other measures.

#### **A. Injured party**

330. This Court reiterates that, pursuant to Article 63(1) of the Convention, the injured party is considered to be a person who has been declared a victim of the violation of any of the rights recognized therein. Therefore, the Court considers that Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Ana María Velasco Rodríguez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Claudia Hernández Martínez and their relatives identified in paragraph 324 of this judgment, are the

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<sup>437</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 26, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 269.

<sup>438</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 26, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 269.

<sup>439</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala, Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 269.

<sup>440</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 270.

<sup>441</sup> Cf. *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016. Series C No. 330, para. 189, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 270.

<sup>442</sup> Cf. *Case of Neira Alegría et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Terrones Silva et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 360, para. 238.

“injured party” and, in their capacity as victims of the violations declared in Chapter IX, they will be the beneficiaries of the reparations ordered by the Court below.

## ***B. Preliminary considerations concerning reparations***

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

331. The **State** asked the Court to evaluate, based on the principle of complementarity, the actions that the State had already implemented as a result of its acknowledgement of responsibility and adoption of the Inter-American Commission’s Merits Report, “in order to limit its ruling on new reparations in this case, particularly in light of the requests for reparation made by the representative in the motions and pleadings brief.”

332. The **representatives** indicated that the State's acknowledgement of responsibility had not been reflected in the adoption of measures of reparation in favor of the victims. They alleged that it was paradoxical that Mexico would ask that that no measure of reparation of any type be ordered, with the exception of the publication of the judgment. They also indicated that most of the measures to which Mexico referred were not specifically addressed at combating the sexual torture of women by State agents. The also indicated that the State had provided almost no information on the positive impact of the measures and, therefore, they could not be considered measures of non-repetition.

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

333. In this case, the Court notes that, in the context of the procedure before the Inter-American Commission, the State proposed a comprehensive reparation plan that offered the victims procedures aimed at the elimination of their criminal records, payment of compensation, educational scholarships, health services, housing and investigation of the facts, among other measures.<sup>443</sup> Nevertheless, as the State itself has noted, in many cases these measures have not been implemented, either because the victims have not given their consent or for other reasons. In this regard, the Court has established that, for it to be inappropriate to order additional reparations to those already granted in the domestic sphere, it is not sufficient that the State indicate that reparations have been or can be granted through internal mechanisms. In addition, the measures must have been executed in such a way that the Court can evaluate whether they have effectively redressed the consequences of the action or situation that constituted the violation of human rights in the specific case, or the Court must be provided with sufficient information to determine whether those reparations are adequate and whether guarantees exist that the internal reparation mechanisms are sufficient.<sup>444</sup> These requirements have not been met in this case.

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<sup>443</sup> Cf. The Mexican State’s reports and their annexes at the merits stage presented between January and September 2016 (evidence file, folios 30291 to 30586); Minutes of the Sub-Secretariat of Human Rights of the Ministry of the Interior of January 27, 2016 (evidence file, folios 30587 to 30590); Minutes of the Sub-Secretariat of Human Rights of the Ministry of the Interior of February 11, 2016 (evidence file, folios 30591 to 30595); Minutes of the Sub-Secretariat of Human Rights of the Ministry of the Interior of July 11, 2016 (evidence file, folios 30596 to 30602).

<sup>444</sup> Cf. *Case of Duque v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of February 26, 2016. Series C No. 310, para. 126, and *Case of the Dismissed PetroPeru Workers et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 27, 2017. Series C No. 344, para. 208.

334. Nevertheless, as it has in other cases,<sup>445</sup> the Court will take into account the actions undertaken by the Mexican State as well as the measures available at the domestic level when ordering the required reparations and will include the considerations it deems pertinent on each specific measure of reparation.

**C. Obligation to investigate**

335. The **Commission** asked that the State “[c]ontinue the investigations, with due diligence and within a reasonable time, in order to clarify fully the acts that violated the American Convention and other inter-American instruments, and to identify and punish the different levels of responsibility, [...] including those derived from the chain of command, from the diverse forms of participation of the various law enforcement agencies at both the state and the federal level, as well as possible acts of concealment or omission.” Similarly, it stipulated that the State “should avoid any form of re-victimization” and ensure that the legal definition of the facts is in keeping with inter-American standards.

336. The **representatives** asked the Court to require the State to investigate, “seriously and impartially, all the human rights violations perpetrated against the eleven women, in order to identify all those responsible and impose the corresponding punishments, taking into consideration the perpetrators and the masterminds based on the chain of command of the different public institutions involved, and any other form of responsibility.” In this regard, they asked that, to ensure the effectiveness of the investigations and criminal proceedings, the State guarantee that the acts of violence would be defined as torture, for which there could be no exoneration of responsibility. They also asked that the State guarantee the protection and respectful treatment of all those involved in the proceedings, regardless of their capacity, and that it grant full access to the case file. Thus, they asked the Court to require the State “to remove all the obstacles, *de facto* and *de jure*, that maintain impunity in this case and to investigate, seriously and impartially, all the different forms of responsibility for all the human rights violations perpetrated against the eleven women.”

337. The **State** argued that it had “already arraigned all those persons who were identified as responsible” by the SCJN. However, it indicated that “there is no evidence whatsoever that a senior commander ordered the perpetration of any human rights violation” and that neither in the internal investigations nor in the proceedings before the Court had any evidence been presented in this regard. Consequently, it affirmed that it had complied with all the inter-American standards when conducting the investigations and, therefore, considered that the Court should consider this “an appropriate measure of reparation, merely allowing the criminal proceedings instituted by the State to continue until they are fully concluded.”

338. The Court has declared in this judgment, *inter alia*, that the State failed to comply with the obligation to investigate the acts of torture and sexual violence suffered by the eleven women victims in this case. This was due to the unjustified delay of 12 years from the time the facts occurred; the lack of diligence in processing the complaints and gathering evidence; the failure to investigate all the possible perpetrators and to follow logical lines of investigation, and the absence of a gender perspective in the investigations added to stereotyped treatment by the authorities in charge of the investigation. Although the Court appreciates the progress made by the State to date in order to clarify the facts, in light of the conclusions in this judgment, it establishes that the State shall, within a reasonable time and through officials trained in providing

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<sup>445</sup> Cf. *Case of Vásquez Durand et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of February 15, 2017, para. 198, and *Case of the Dismissed PetroPeru Workers et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 27, 2017. Series C No. 344, para. 209.

assistance to victims of discrimination and gender-based violence, continue or open the wide-ranging, systematic and thorough investigations required to determine, prosecute and punish, as appropriate, those responsible for the sexual violence and torture suffered by the eleven women victims in this case. In addition, it must investigate possible links between those directly responsible and their ranking superiors in the perpetration of the acts of torture, sexual violence and rape, individualizing those responsible at all levels of decision, whether municipal, state or federal.

339. This Court also considers that the State shall, within a reasonable time, determine, through its competent public institutions, the possible responsibilities of the officials who, through their actions, contributed to the perpetration of acts of re-victimization and institutional violence to the detriment of the eleven women and, as appropriate, apply the consequences established by domestic civil or criminal law.<sup>446</sup> In keeping with its consistent case law,<sup>447</sup> the Court finds that the State shall ensure the full access and capacity to act of the victims or their next of kin at all stages of the investigation and prosecution of those responsible, pursuant to domestic law and the provisions of the American Convention. Likewise, the final judgments in the corresponding proceedings must be published, so that Mexican society may know the facts that are the purpose of this case, as well as those responsible, after consulting the victims with regard to those aspects that could affect their intimacy and privacy.

#### ***D. Measures of rehabilitation and satisfaction, and guarantees of non-repetition***

##### **D.1 Measure of rehabilitation**

340. The **Commission** asked that the State “[p]rovide, free of charge, immediately, and for as long as necessary, medical and psychological or psychiatric care, as appropriate, to the victims in this case who request this and by mutual agreement with them.” The **representatives** asked the Court to require the State to guarantee the victims appropriate medical care provided by “trusted competent professionals [...],” from either the public or private sector, as requested by the victims. The representatives also asked that Mexico be required to provide the psychological treatment required by the eleven victims and their next of kin affected by the events. In addition, they asked that the care include the possibility of receiving treatment from professionals in alternative medicine, such as acupuncture and chiropractic. The **State** indicated that “[t]he measures of reparation requested by the representatives aimed at the rehabilitation of the victims have been executed and the State should be allowed to continue executing them through its own mechanisms”; also, that such measures had been available to the victims since 2013. However, it indicated that, in order to have access to these measures, the victims would have to exhaust the procedures established in the domestic sphere.

341. The Court has verified the severe violations of personal integrity suffered by the eleven women and their family members as a result of the facts of this case (*supra* paras. 320 to 324). Therefore, the Court finds it necessary to establish a measure of reparation that provides adequate care for the physical, psychological or psychiatric problems suffered by the victims as a

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<sup>446</sup> *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary objections, merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 350, para. 345.

<sup>447</sup> *Cf. Case of El Caracazo v. Venezuela. Reparations and costs.* Judgment of August 29, 2002. Series C No. 95, para. 118; *Case of Osorio Rivera and family v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 245, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 14, 2014. Series C No. 287, para. 559.

result of the violations established in this judgment, taking into consideration their gender particularities and case history.<sup>448</sup> Thus, the Court requires the State to provide, free of charge and on a priority basis, medical treatment for the eleven women victims in this case, which must include the provision of medication and, if applicable, transportation and other necessary and directly related expenses.<sup>449</sup> In addition, this must be provided, insofar as possible, in the health centers nearest to their places of residence,<sup>450</sup> for as long as necessary. The Court also requires the State to provide, free of charge and on a priority basis, immediate and appropriate psychological or psychiatric treatment to the victims who request this, including the free supply of any medication they may require, through its specialized health care institutions. When providing the psychological and/or psychiatric treatment, the particular circumstances and needs of each victim should be considered, as agreed with each of them following an individual evaluation.<sup>451</sup> The beneficiaries of these measures have six months from notification of this judgment to inform the State of their desire to receive psychological and/or psychiatric treatment,<sup>452</sup> and the State has three months from reception of the said request, to provide the psychological and/or psychiatric treatment requested.

## D.2 Measures of satisfaction

### D.2.a Publication and dissemination of the judgment

342. The **representatives** asked the Court to require the State to publish the official summary of the judgment in two of the newspapers with the most widespread circulation in the country, and in the most widely read newspaper in the state of Mexico. In addition, they asked that the complete judgment be published on “the websites of the Office of the Presidency, the PGR, the Governor of the state of Mexico and the PGJEM” for one year, on the opening page of these sites, “evident on opening the website, either the text itself or a direct link to the text”; and then be stored “permanently” in the section on international judgments and/or human rights. Regarding the publication on official websites, the representatives clarified that their objective was that it be published by the most senior levels of the State, in order to achieve the greatest dissemination of the message to internet users.

343. The **State** asked that, if the Court decided to grant this measures, it be allowed to publish the judgment on the website of the Ministry of Foreign Affairs and not on that of the Presidency of

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<sup>448</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, para. 42 and 45; *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 329, para. 332, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 291.

<sup>449</sup> Cf. *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 349, para. 231.

<sup>450</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 270; *Case of Ortiz Hernández et al. v. Venezuela. Merits, reparations and costs*. Judgment of August 22, 2017. Series C No. 338, para. 199, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2018. Series C No. 359, para. 211.

<sup>451</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 270; *Case of Ortiz Hernández et al. v. Venezuela. Merits, reparations and costs*. Judgment of August 22, 2017. Series C No. 338, para. 199, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 296.

<sup>452</sup> Cf. *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, para. 253; *Case of Ortiz Hernández et al. v. Venezuela. Merits, reparations and costs*. Judgment of August 22, 2017. Series C No. 338, para. 199, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 293.

the Republic, because the former is the entity that functions as a link between human rights bodies and the Federal Government. Thus, the Ministry of Foreign Affairs “would – by means of a press release – publish the relevant parts of the judgment, which would be distributed on official websites, including the social networks.” It also proposed that the publication be made, once, in the *Semanario Judicial de la Federación* and the Federation’s Official Gazette.

344. The Court finds it pertinent to require, as it has in other cases,<sup>453</sup> that the State make the following publications within six months of notification of this judgment: (a) the official summary of the judgment prepared by the Court, once, in the Official Gazette, in a newspaper with widespread national circulation, and in a widely read newspaper in the state of Mexico, in an legible font and appropriate letter size, and (b) the entire judgment, available for at least one year, on the websites of the Ministry of Foreign Affairs and the government of the state of Mexico, in a way that is accessible to the public from the opening page of the said websites.

345. The State must inform the Court immediately when it has made each of the publications required, regardless of the one-year time frame to present its first report established in the operative paragraphs of this judgment.

#### D.2.b Act to acknowledge responsibility and offer a public apology

346. The **representatives** asked the Court, first, to order the Mexican State to offer the women a public apology, at the same time undertaking to ensure that facts such as those of this case are never repeated. In particular, they proposed that the apology be made “in an announcement to be published by the same media in which the official summary of the Court’s judgment is published, signed by the most senior representatives of the Federal Government and of the government of the state of Mexico, and to be published on the same day, so that the judgment provides a context to the apology.” The **State** indicated that it had already made a public acknowledgement of its responsibility, and had issued a public apology to the victims in this case; it therefore considered that the publication of the judgment was sufficient to respond to the representative’s request.

347. This Court appreciates the acknowledgement of international responsibility made by the State before the Commission and the Court, which could represent partial satisfaction for the victims in light of the violations declared in this judgment.<sup>454</sup> However, the Court finds it necessary, in order to redress the harm caused to the victims and to avoid facts such as those of this case being repeated, to require that Mexico organize a public act to acknowledge international responsibility and make a public apology for the facts of this case.<sup>455</sup> In particular,

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<sup>453</sup> Cf., *inter alia*, *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79; *Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 22, 2013. Series C No. 265, para. 207; *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016. Series C No. 330, para. 197; *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of February 16, 2017. Series C No. 333, para. 300, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 299.

<sup>454</sup> Cf. *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287, para. 576, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 303.

<sup>455</sup> Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 261; *Case of Gutiérrez and family v. Argentina. Merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 271, para. 158; *Case of García Cruz and Sánchez Silvestre v. Mexico. Merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 273, para. 285; *Case of Véliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 257; *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs*.

the Court considers it necessary that the authorities make a public apology because the victims suffered institutional violence by different state and federal bodies. During the act, reference must be made to the human rights violations declared in this judgment. Also, it must take place in a public ceremony in the presence of senior officials of the State and the state of Mexico, and the victims.

348. The State and the victims and/or their representatives must reach agreement on how the public act is implemented, as well as on the details, such as the date and place.<sup>456</sup> Also, as it has in other cases,<sup>457</sup> the Court orders the State to disseminate this act as widely as possible, including by radio, television and social networks. The Court also establishes that the apology should also be made in writing, signed by the corresponding local and federal authorities, to facilitate its distribution.

#### D.2.c Scholarships

349. The **representatives** alleged that Angélica Patricia Torres Linares, Claudia Hernández Martínez and Suhelen Gabriela Cuevas Jaramillo were unable to continue their academic studies due to the consequences of the facts of this case.<sup>458</sup> Therefore, they asked the Court to require the State to guarantee scholarships to these three victims that covered the cost of completing their studies at the graduate or postgraduate level, in the establishments of their choice to which they are accepted, including the cost of enrollment, tuition, study materials, and other expenses related to their studies. Furthermore, regarding those family members whose academic plans were thwarted as a result of the facts of this case, they asked that Mexico be required to provide university scholarships for those sons and daughters who want them.

350. The State indicated that it had “proposed *motu proprio* to grant scholarships” and that it “has the structures and procedures required to provide this measure at the domestic level; thus the victims should exhaust these internal mechanisms.” It also indicated that such measures had been available to the victims since 2013.

351. The Court has established in this judgment that the facts of the case severely affected Angélica Patricia Torres Linares, Claudia Hernández Martínez, Suhelen Gabriela Cuevas Jaramillo and their next of kin, and these effects have continued over time and resulted in significant changes in their life projects, with an impact on their personal and professional development. In particular, the Court underlines that the events occurred when these three victims were pursuing university studies, which were interrupted owing to the severe psychological effects they suffered

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Judgment of August 27, 2014. Series C No. 281, para. 307, and *Case of Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2015. Series C No. 307, para. 240.

<sup>456</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 353, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 303.

<sup>457</sup> Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 445; *Case of the Yean and Bosico Girls v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of September 8, 2005. Series C No. 130, para. 235; *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of June 17, 2005. Series C No. 125, para. 226, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, reparations and costs.* Judgment of August 22, 2018. Series C No. 356, para. 163.

<sup>458</sup> Angélica Patricia Torres Linares abandoned her political science studies at the UNAM because she associated the violations with her studies. Claudia Hernández Martínez was completing her bachelor's degree in political science and, owing to the events, felt unable to return to the university. However, she is currently studying for a master's degree and for a doctorate. Suhelen Gabriela Cuevas Jaramillo's academic plans were cut short owing to the time spent in prison and the psychological and financial impact of the facts.

as a result of the facts. Consequently, the Court considers it appropriate to require the State to grant a scholarship in a Mexican public higher education establishment to Angélica Patricia Torres Linares, Claudia Hernández Martínez and Suhelen Gabriela Cuevas Jaramillo, as mutually agreed between them and the State, to continue their higher technical or university education, at either the graduate and/or postgraduate level, or to undertake professional training.<sup>459</sup> This scholarship must be granted as soon as the beneficiaries request the State to provide it and until the conclusion of their higher technical or university studies, including study materials. In principle, this measure should begin as soon as possible following notification of the judgment, so that the beneficiaries may commence their studies during the next academic year if they so desire. Nevertheless, in light of the particular severity of the psychological and emotional effects of torture and sexual violence that still persist in the victims, the Court finds it prudent to emphasize that the beneficiaries may advise the State of their intention to receive the scholarships when they consider that they are in conditions to resume their academic studies, within two years from notification of this judgment.

### **D.3 Guarantees of non-repetition**

#### D.3.a Raising police awareness of gender issues, and creation of a mechanism to measure the effectiveness of institutions and policies established by the State to regulate and monitor the use of force

352. The **Commission** asked the Court to order the State “to adopt measures of non-repetition aimed at educating both state and federal law enforcement agencies with regard to the absolute prohibition of torture and sexual or any other kind of violence against women, and sending a clear message repudiating this type of act.”

353. The **representatives** asked the Court to require the State to adapt its laws to avoid the arbitrary use of force in contexts of social protest, establishing a mechanism to exercise control of the use of force before, during and after police actions. They also asked that the State be required to adapt its domestic laws to avoid the use of force in contexts of social protest, by the creation of a body specialized in the institutional development and monitoring of the police forces.

354. The **State** indicated that, currently, it has legislative instruments adapting its legal framework concerning the use of force, and therefore argued that it “had already made the pertinent amendments to adapt its legal framework on torture and use of force.” Likewise, it argued that it “already has mechanisms and institutions that guarantee an external scrutiny of the Mexican police and that ensure the rights of the population from different perspectives, such as human rights, criminal law, administrative responsibility, and the right to the truth and information. Thus, the measure requested by the representatives is not viable.”

355. As verified by the Court in Chapter IX-1 of this judgment, the unlawful and excessive use of force by the State in the context of the events that took place on May 3 and 4, 2006, in Texcoco and San Salvador de Atenco resulted in violations of different rights recognized in the Convention. The Court appreciates the efforts made by the State, at both the state and the federal level, to establish limits to the use of force in contexts of social protest and to monitor the police forces.

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<sup>459</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 80, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 310.

However, it deems it pertinent to require the State to create and implement, within two years, a training plan for officers of the Federal Police and the police of the state of Mexico aimed at: (i) raising the awareness of members of the police forces: that they should include a gender perspective in police operations; regarding the discriminatory nature of gender stereotypes such as those used in this case, and with regard to the absolute duty to respect and protect the civilian population with whom they come into contact in the context of their work keeping public order, as well as (ii) training police agents on the standards for the use of force in contexts of social protest established in this judgment and in this Court's case law. This training plan should be incorporated into the regular training of members of the state and federal police forces.

356. The Court also requires that the State must establish an independent observatory at the federal level to follow up on implementation of the policies on accountability and the monitoring of the use of force of the Federal Police and the police of the state of Mexico, which can include the participation of members of civil society. This observatory must also produce information that leads to relevant institutional improvements. To this end, the State must generate information systems that permit: (i) evaluating the effectiveness of the existing mechanisms to supervise and monitor police operations before, during and after the use of force, and (ii) providing feedback on the required institutional improvements, based on the information obtained from the observatory. To comply with this measure, the State must provide evidence of the creation of the observatory, with the characteristics described, as well as its operationalization. However, the Court will not monitor its implementation.

D.3.b Guarantee the effectiveness of the Mechanism to Monitor Cases of Sexual Torture against Women

357. The **Commission** asked the Court to order the State to reinforce its institutional capacity "to ensure that investigations of cases of alleged sexual violence, in general, and of sexual torture by State agents, in particular, are compatible with the standards described" in its Merits Report.

358. The **representatives** alleged that the State had not taken adequate and effective measures to end the sexual torture of women perpetrated by State agents, because its policies had focused on responding to violence involving private individuals. The Mechanism to Monitor Cases of Sexual Torture, was created by the CONAVIM in September 2015, but it did not provide its first report until December 2016. Consequently, the representatives asked the Court to order the State to ensure that this Mechanism effectively "receives, analyzes and produces a report on the cases submitted to it within a reasonable time." They also asked that the State be ordered to make a "diagnosis of the phenomenon of the sexual torture of women in the country in order to recommend relevant public policies, also guaranteeing their continuation beyond the current administration." Lastly, they indicated that, contrary to the State's assertions, the Mechanism was not "meeting the objectives initially proposed."

359. Meanwhile, the **State** argued that, as a result of the representatives' requests, it had adopted a State policy to reinforce its institutions in order to respond adequately to cases of the sexual torture of women in Mexico. It recalled that, in response to the events of this case, it had created the Mechanism to Monitor Cases of Sexual Torture against Women in order to review and respond to cases of women who denounced sexual torture. The Mechanism had issued reports on sexual torture in Mexico, and had even made on-site visits to learn about the most important needs and demands of the victims of sexual torture. Consequently, the State argued that it was not necessary for the Court to order the reinforcement of the Mechanism because "it is meeting the objectives initially proposed, in conjunction with civil society organizations."

360. The Court observes that, in September 2015, the State established the Mechanism to Monitor Cases of Sexual Torture against Women. Mexico reported that the mandate of this monitoring mechanism “includes the issue of a joint report with recommendations on the cases reviewed, so that the competent authorities act applying the highest international standards for women’s human rights, or receive technical assistance to investigate sexual torture,” in order to review or respond to cases of women who file complaints of sexual torture in Mexico. Although it acknowledges the actions taken as a result of the Mechanism, the Court finds it pertinent to order the State, within two years, to draw up a plan, with its respective timetable, to strengthen the Mechanism to Monitor Cases of Sexual Torture against Women, which includes the allocation of the resources required to allow it to fulfill its mandate throughout national territory, and establishes deadlines for the presentation of annual reports.<sup>460</sup> In particular, the State must include among the Mechanism’s functions the tasks of making a diagnosis of the phenomenon of the sexual torture of women in the country and periodically drawing up proposals for public policies.

### ***E. Other measures requested***

361. The **Commission** and the **representatives** asked the Court to order Mexico: (i) to adapt its legal framework to combat torture. In addition, the representatives asked that the State be ordered: (ii) to create a national forensic institution to guarantee the effective and independent documentation of torture, including the sexual torture of women;<sup>461</sup> (iii) to establish a center of documentation and support for women survivors of sexual torture, to be administered and managed by two of the victims in this case,<sup>462</sup> and (iv) to establish a place to remember and learn about the violations committed in San Salvador de Atenco.<sup>463</sup>

362. The **State** argued that: (i) it had adopted amendments to the law concerning the prohibition of torture at both state and federal level, such as promulgation of the General Law to Prevent, Investigate and Punish Crimes of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (ii) it had taken a series of measures to “obtain justice” in cases of torture, in particular the promulgation of the PGR Standardized Protocol for the investigation of torture,<sup>464</sup>

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<sup>460</sup> Cf. *Case of Véliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 268.

<sup>461</sup> The representatives explained that “the routine checkups made by forensic physicians are usually inadequate to treat victims of torture, as in this case, because the doctors belong to the very same institution that is accusing the torture victims of committing criminal acts and, consequently, they have a conflict of interests and may receive orders from their superior not to record the traces of torture.” The failure to perform adequate and impartial medical examinations and tests is the main factor hindering the documentation of cases of torture; this is why they requested the Court to order the creation of a national forensic institution responsible for performing the medical and psychological examinations following requests by the corresponding judicial authorities.

<sup>462</sup> The representatives asked the Court to order the State to establish a center of documentation and support for women survivors of sexual torture. The center would be a non-governmental organization administered by two of the victims in this case, Bárbara Italia Méndez Moreno and Norma Aidé Osorio Jiménez, so that the victims may become agents of their own recovery and reparation. The measure would “have a reparative effect for the women victims in this case, and a positive impact on the life of other women who can seek legal counsel, psychological care, and other resources through the center, as well as being part of a project that allows, for the first time in Mexico, the systematization and collective development of different types of tools to deal with sexual torture in a space that inspires trust and provides active listening, where peer relationships and the common experience are reflected on.”

<sup>463</sup> The representatives had also asked that the State acknowledge the innocence of María Patricia Romero Hernández. As described in the facts (*supra* para. 115) and confirmed by the representatives in their final written arguments, in August 2017, the Judiciary of the state of Mexico declared her innocence, annulling her conviction.

<sup>464</sup> According to the State, the purpose of this protocol is “to establish action policies and procedures adapted to human rights standards for the investigation of torture to be used by the agents of the Public Prosecution Service, experts, and

the design of the special medical/psychological protocol for the investigation and documentation of torture based on the guiding principles of the Istanbul Protocol, the creation of the Special Unit to Investigate the Crime of Torture, and the signature of a technical cooperation agreement with the OHCHR to reinforce the prevention and detection of torture; (iii) the creation of the center requested by the representatives was not justified because instances, mechanisms, protocols, procedures and functions already existed that were performed by diverse entities of the Mexican State, and (iv) the measures already implemented were sufficient so that “the victims’ request for the creation of a space of remembrance should be declined.”

363. The Court has verified that the State has enacted the General Law to Prevent, Investigate and Punish Crimes of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, published in the Official Gazette of the Federation on June 26, 2017, and its article 24 establishes that torture may be committed “for any [...] purpose.” The Court also notes that this law has not been applied to the facts that are the purpose of this judgment. Therefore, the Court finds that it does not have to establish a measure of reparation related to this law, because it was not examined in this case.

364. Regarding the first measure requested by the representatives, the Court recognizes the progress made by the State as regards forensic medical care for victims of sexual torture, and thus does not find it pertinent to order that measure. However, the Court notes that the consistent refusal of the forensic physicians to identify signs of torture and sexual violence, as well as their lack of independence, together with their failure to file reports, contributes to impunity.<sup>465</sup> Therefore, the Court urges the State to ensure the independence of the medical and health care personnel in charge of examining and providing assistance to detainees so that they may perform the required medical assessments freely, respecting the standards established for the practice of their profession.<sup>466</sup>

365. Regarding the other measures requested, the Court considers that the delivery of this judgment and the reparations ordered in this chapter are sufficient and adequate to redress the violations suffered by the victims. Therefore, it does not find it necessary to order the said additional measures, without prejudice to the State deciding to adopt them and grant them at the domestic level.

## **F. Compensation**

366. The **Commission** asked the Court to order the State to establish comprehensive reparation for the victims, covering both pecuniary and non-pecuniary aspects.

367. The **representatives** asked the Court to order the State to pay financial compensation to the victims for pecuniary damage, covering both “loss of earnings” and consequential damage, as

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members of the police, and to serve as a guideline at the different stages of the criminal proceedings (the traditional and the accusatory), to ensure an exhaustive investigation of the facts, to take into account the special vulnerability of the passive subject and non-revictimization, as well as for the design of the special medical/psychological protocol for the investigation and documentation of torture based on the guiding principles of the Istanbul Protocol.”

<sup>465</sup> Cf. *Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187, para. 92; *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 264, and *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2016. Series C No. 316, para. 99.

<sup>466</sup> Cf. *Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187, para. 92, and *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2016. Series C No. 316, para. 99.

well as for non-pecuniary damage. They also clarified that neither Georgina Edith Rosales Gutiérrez nor her next of kin wish to receive financial compensation, and therefore requested the Court to grant these measures only in favor of the other ten victims in the case.

368. The **State** argued that the victims had “never” taken any steps or expressed interest in accessing the National Victims Support System or the Victims Support Executive Commission of the state of Mexico and availing themselves of the different forms of reparation established by law, and this could not be attributed to the State. It indicated that “pursuant to the principle of complementarity,” the victims should have recourse to these existing national entities and exhaust these procedures established by domestic law for reparations in order to determine the corresponding compensation.

### **F.1 Pecuniary damage**

369. This Court has developed in its case law that pecuniary damage supposes the loss of or detriment to the victims’ income, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.<sup>467</sup>

#### F.1.a Consequential damage

370. The **representatives** requested, for consequential damage, compensation for the procedural expenses that the victims had to incur, as well as the expenditure incurred by their families to be able to visit them, medical expenses, psychological therapy, and transportation and other costs related to their medical care. Since there are no vouchers to support the amounts requested for pecuniary damage, the representatives asked the Court to determine this in equity.

371. The Court notes that no vouchers were submitted for the disbursements made by the victims and their family members for procedural matters, visits to the places where they were detained, and the medical and psychological treatment received by the victims. However, the Court finds it reasonable to presume that the eleven victims and their families incurred these expenses as a result of the human rights violations committed by the State in this case. Therefore, based on the specific circumstances of the case, the Court finds it pertinent to establish, in equity, the sum of US\$5,000.00 (five thousand United States dollars), as compensation for consequential damage, and this must be delivered to each of the ten women victims in this case who have requested financial compensation; namely, Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Ana María Velasco Rodríguez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Claudia Hernández Martínez.

#### F.1.b Loss of earnings

372. The **representatives** asked the Court to require the State to pay for the loss of earnings of the victims Yolanda Muñoz Diosdada and María Patricia Romero Hernández. In the case of the former, they indicated that she earned approximately US\$433.00 a month selling denim articles in Texcoco at the time of the events; however, as a result of the facts she lost this job and had difficulties to be accepted in another. Yolanda continued to work as a salesperson subsequently,

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<sup>467</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 359.

but now she receives a monthly income of approximately US\$193.00. Regarding María Patricia Romero Hernández, the representatives indicated that, at the time of the events, she received approximately US\$96.00 a month working in the family butcher's shop and a taco kiosk. As a result of her imprisonment, she was unable to work from May 2006 until August 2008.

373. In light of the circumstances of this case and the specific consequences that the facts of the case had on the earnings of Yolanda Muñoz Diosdada and María Patricia Romero Hernández, the Court considers it reasonable to order the State to pay compensation for loss of earnings in favor of these two victims. Taking into account that the information provided by the representatives does not allow the Court to establish with certainty the amount of the loss of earnings suffered, the Court establishes the sums of US\$10,000.00 (ten thousand United States dollars) in favor of Yolanda Muñoz Diosdada and US\$2,000.00 (two thousand United States dollars) in favor of María Patricia Romero Hernández. Both sums must be paid by the State directly to these two victims.

## **F.2 Non-pecuniary damage**

374. The **representatives** asserted that, as a result of the sexual torture perpetrated by State agents, the victims experienced physical and psychological suffering and problems with regard to their families, their affective relationships, and their reputation, among other matters. Consequently, the representatives asked the Court to determine, in equity, the amount that the State should pay for non-pecuniary damage. They asked that this reparation be extended also to the next of kin of the victims who had also experienced severe suffering, as well as changes in the family dynamics, as a result of the human rights violations. They reiterated that this measure should not be granted in favor of either Georgina Edith Rosales or her family members, as they did not wish to receive financial reparations.

375. The Court has established in its case law that non-pecuniary damage may include both the suffering and affliction caused by the violation and also the impairment of values that are of great significance for the individual, as well as any changes of a non-pecuniary nature in the living conditions of the victims. In addition, since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated, for the purposes of comprehensive reparation to the victim, by the payment of a sum of money or the delivery of goods or services with a monetary value that the Court determines in reasonable application of sound judicial criteria and based on equity.<sup>468</sup>

376. The Court recalls that, in this case, it has determined that the State committed serious violations of the personal integrity, privacy and personal liberty of the eleven women, and of their next of kin. Considering the circumstances of the case, all the violations committed, the denial of justice, the suffering caused and experienced, the impact on the lives of the eleven women and their families, as well as the other consequences of a non-pecuniary nature they suffered, the Court deems it pertinent to establish, in equity, for non-pecuniary damage, the sums of: US\$70,000.00 (seventy thousand United States dollars) for each of the ten women victims in this case who have requested financial compensation, namely, Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Ana María Velasco Rodríguez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Claudia Hernández Martínez; US\$15,000.00 (fifteen thousand United States dollars) for each mother, father, daughter and son,

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<sup>468</sup> Cf. *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, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 372.

spouse or permanent companion of the said victims, identified in paragraph 324 of this judgment, and US\$10,000.00 (ten thousand United States dollars) in favor of each brother, sister, nephew and niece of these victims identified in paragraph 324 of this judgment.

### **G. Costs and expenses**

377. The representatives, in this case CEJIL, asked the Court to order the State to pay US\$21,067.78 for the concept of costs and expenses, corresponding to travel, translations, salaries and wages related to the representation of the victims. CEJIL indicated that "in the months following the presentation of the brief with motions, pleadings and evidence, CEJIL incurred numerous expenses related to the production of evidence and the public hearing in this case" and therefore asked that the Court order the State to pay an additional US\$8,749.19. In total, CEJIL requested payment of US\$29,816.97 for costs and expenses. Meanwhile, the Center Prodh indicated that it "did not wish to request reimbursement of costs and expenses."

378. The Court reiterates that, according to its case law,<sup>469</sup> costs and expenses form part of the concept of reparation, because the actions taken by the victims in order to obtain justice, at both the national and the international level, entail disbursements that must be compensated when the international responsibility of the State has been declared in a judgment. Regarding the reimbursement of costs and expenses, the Court must make a prudent assessment of their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction, as well as those incurred during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the equity principle, taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.<sup>470</sup>

379. This Court has indicated that "the claims of the victims or their representatives for costs and expenses, and the evidence supporting them, should be submitted to the Court at the first procedural moment granted them, that is, in the motions and pleadings brief; without prejudice to these claims being updated subsequently, on the basis of the new costs and expenses incurred owing to the proceedings before this Court."<sup>471</sup> In addition, the Court reiterates that it is not sufficient merely to forward probative documents; rather the parties are required to submit arguments relating the evidence to the fact that it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly established.<sup>472</sup>

380. The Court observes that CEJIL provided expense vouchers in relation to their representation in this case, demonstrating that they had incurred expenses with regard to this case that amounted to approximately US\$30,000.00 (thirty thousand United States dollars), owing to

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<sup>469</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 381.

<sup>470</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 381.

<sup>471</sup> *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, reparations and costs*. Judgment of August 22, 2018. Series C No. 356, para. 194.

<sup>472</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 277, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 382.

expenditure arising from the hearing of the case before the Court, as well as percentages of the salaries of various lawyers. Therefore, the Court decides to establish the payment of a total of US\$30,000.00 (thirty thousand United States dollars) for the concept of costs and expenses in favor of CEJIL. This amount must be delivered directly to this organization. At the stage of monitoring compliance with this judgment, the Court may establish that the State must reimburse the victims or their representatives for any reasonable expenses incurred during that procedural stage.<sup>473</sup>

#### ***H. Reimbursement of expenses to the Victims' Legal Assistance Fund***

381. In this case, in orders of May 21 and October 18, 2017, the President of the Court granted financial support from the Victims' Legal Assistance Fund of the Court to cover the travelling and accommodation expenses required for five victims, Norma Aidé Jiménez Osorio, Claudia Hernández Martínez, Bárbara Italia Méndez Moreno, Angélica Patricia Torres Linares and Suhelen Gabriela Cuevas Jaramillo to take part in the public hearing.

382. On January 15, 2018, a disbursements report was forwarded to the State as established in article 5 of the Rules for the Operation of this Fund. Thus, the State had the opportunity to present its observations on the disbursements made in this case, which amounted to US\$4,214.20 (four thousand two hundred and fourteen United States dollars and twenty cents). Mexico indicated that it had no observations to make in this regard.

383. Based on the violations declared in this judgment and compliance with the requirements for access to the Victims' Legal Assistance Fund, the Court orders the State to reimburse this Fund the sum of US\$4,214.20 (four thousand two hundred and fourteen United States dollars and twenty cents) for the expenditure incurred. This sum must be reimbursed within six months of notification of this judgment.

#### ***I. Method of compliance with the payments ordered***

384. The State shall make the payments of the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the persons indicated herein, within one year of notification of this judgment.

385. If any beneficiary should have died or should die before they receive the respective amount, this shall be delivered directly to their heirs, pursuant to the applicable domestic law.

386. The State shall comply with its pecuniary obligations by payment in United States dollars or the equivalent in its domestic currency, using the exchange rate in force on the New York Stock Exchange (United States of America), the day before payment to make the respective calculation.

387. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the period indicated, the State shall deposit these amounts in their favor in a deposit account or certificate in a solvent Mexican financial institution, in United States dollars, and in the most favorable financial conditions allowed by banking law and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the interest accrued.

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<sup>473</sup> Cf. *Case of Ibsen Cárdenas e Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 385.

388. The sums allocated in this judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, shall be delivered to the persons indicated integrally, as established in this judgment, without any deductions due to possible taxes or charges.

389. If the State should fall in arrears, including with reimbursement of the expenses to the Victims' Legal Assistance Fund, it shall pay interest on the amount owed corresponding to banking interest on arrears in the United Mexican States.

## **XI OPERATIVE PARAGRAPHS**

390. Therefore,

### **THE COURT**

#### **DECIDES,**

Unanimously,

1. To reject the preliminary objection filed by the State, as established in paragraphs 21 to 27 of this judgment.
2. To accept the partial acknowledgement of international responsibility made by the State, as established in paragraphs 34 to 42 of this judgment.

#### **DECLARES,**

Unanimously, that:

3. The State is responsible for the violation of personal integrity, privacy, and not to be subjected to torture, recognized in Articles 5(1), 5(2) and 11 of the Convention, in relation to the obligations to respect and to ensure these rights without discrimination established in Articles 1(1) and 2 of this treaty, Articles 1 and 6 of the Inter-American Convention against Torture and Article 7 of the Convention of Belém do Pará, to the detriment of Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Ana María Velasco Rodríguez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Claudia Hernández Martínez, as established in paragraphs 159 to 170 and 177 to 223 of this judgment.
4. The State is responsible for the violation of the right to freedom of assembly, recognized in Article 15 of the Convention, in relation to Article 1(1) of this treaty, to the detriment of Norma Aidé Jiménez Osorio, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, Angélica Patricia Torres Linares, Claudia Hernández Martínez, Mariana Selvas Gómez and Georgina Edith Rosales Gutiérrez, as established in paragraphs 171 to 176 and 224 of this judgment.
5. The State is responsible for the violation of the right to personal liberty recognized in paragraphs 1, 2, 3 and 4 of Article 7, and of the right of defense, recognized in subparagraphs (b), (d) and (e) of Article 8(2) of the Convention, in relation to Article 1(1) of this treaty, to the

detriment of Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Ana María Velasco Rodríguez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Claudia Hernández Martínez, as established in paragraphs 228 to 262 of this judgment.

6. The State is responsible for the violation of the rights to judicial guarantees and to judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention, in relation to the general obligations contained in Articles 1(1) and 2 of this instrument, Articles 1, 6 and 8 of the Inter-American Convention against Torture, and Article 7(b) of the Convention of Belem do Pará, to the detriment of Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Ana María Velasco Rodríguez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Claudia Hernández Martínez, as established in paragraphs 266 to 318 of this judgment.

7. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin referred to in paragraph 324 of this judgment, as established in paragraphs 320 to 324 of this judgment.

**AND ESTABLISHES,**

Unanimously that:

8. This judgment constitutes, *per se*, a form of reparation.

9. The State shall continue or open the wide-ranging, systematic and thorough investigations required to determine, prosecute and punish, as appropriate, all those responsible for the violence and sexual torture suffered by the eleven women victims in this case, pursuant to paragraphs 338 to 339 of this judgment.

10. The State shall provide, free of charge and immediately, the medical and psychological or psychiatric treatment, as appropriate, to the victims in this case who request this, as established in paragraph 341 of this judgment.

11. The State shall make the publications indicated in paragraphs 344 and 345 of this judgment within six months of its notification, as established herein.

12. The State shall organize a public act to acknowledge international responsibility and make a public apology with regard to the facts of this case, pursuant to paragraphs 347 and 348 of this judgment.

13. The State shall, within two years, establish a training program for Federal Police agents and the police of the state of Mexico, and set up a supervision and monitoring mechanism to measure and evaluate the effectiveness of existing policies and institutions with regard to accountability and the monitoring of the use of force of the Federal Police and the police of the state of Mexico, pursuant to paragraphs 355 and 356 of this judgment.

14. The State shall grant a scholarship in a Mexican public higher education establishment to Angélica Patricia Torres Linares, Claudia Hernández Martínez and Suhelen Gabriela Cuevas Jaramillo, so that they may pursue higher technical or university education, pursuant to

paragraph 351 of this judgment.

15. The State shall, within two years, elaborate a plan, with a timetable, to reinforce the Mechanism to Monitor Cases of Sexual Torture against Women, pursuant to paragraph 360 of this judgment.

16. The State shall pay, within one year of notification of this judgment, the amounts established in paragraphs 371, 373, 375 and 376 herein, as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, pursuant to paragraphs 378 to 380 of this judgment.

17. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the amount disbursed during the processing of this case, pursuant to paragraphs 381 to 383 of this judgment.

18. The State shall provide the Court with a report, within one year of notification of this judgment, on the measures adopted to comply with it.

19. The Court will supervise full compliance with this judgment in exercise of its authority and in fulfillment of its obligations under the American Convention on Human Rights, and will close this case when the State has complied fully with its provisions.

DONE, at San José, Costa Rica, on November 28, 2018, in the Spanish language.

## ANNEX 1

### EVIDENCE OF THE INDIVIDUAL FACTS RELATING TO EACH OF THE ELEVEN WOMEN VICTIMS IN THIS CASE

#### Evidence of the facts relating to Yolanda Muñoz Diosdada

The description of what happened to Yolanda Muñoz Diosdada can be found in the following evidence, unless otherwise specifically indicated: Entry medical report of Yolanda Muñoz Diosdada of May 4, 2006 (evidence file, folios 665 and 666); CNDH report of August 31, 2006, recording the application of the Istanbul Protocol to Yolanda Muñoz Diosdada (evidence file, folios 682, 684 to 687 and 695); statement by Yolanda Muñoz Diosdada before the FEVIM on June 15, 2006 (evidence file, folios 702 to 708); detailed record of the Deputy Inspector of May 6, 2006, with regard to Yolanda Muñoz Diosdada (evidence file, folios 668 and 669); detailed record of the Deputy Inspector of October 31, 2017, with regard to Yolanda Muñoz Diosdada (evidence file, folios 37165 to 37167); medical certificate of injuries to Yolanda Muñoz Diosdada of May 17, 2006 (evidence files, folio 673, 714 to 719); CNDH Recommendation 38/2006. Section on Yolanda Muñoz Diosdada (evidence file, folios 717 and 718), and affidavit made by Yolanda Muñoz Diosdada on October 31, 2017 (evidence file, folios 37164 to 37171).

#### Evidence of the facts relating to Norma Aidé Jiménez Osorio

The description of what happened to Norma Aidé Jiménez Osorio can be found in the following evidence, unless otherwise specifically indicated: Entry medical report of Norma Aidé Jiménez Osorio of May 4, 2006 (evidence file, folios 723 and 724); birth certificate of Norma Aidé Jiménez Osorio (evidence file, folio 14191); medical certificate of injuries to Norma Aidé Jiménez Osorio, issued by the CNDH on May 6, 2006 (evidence file, folios 808 and 809); CNDH report of August 31, 2006, recording the application of the Istanbul Protocol to Norma Aidé Jiménez Osorio (evidence file, folios 726, 730 to 733, 736, 739, 740 and 743); application of the Istanbul Protocol to Norma Aidé Jiménez Osorio by the *Colectivo contra la Tortura y la Impunidad* (evidence file, folios 750, 755 to 766, 790 and 791); statement by Norma Aidé Jiménez Osorio before the FEVIM on May 25, 2006 (evidence file, folios 803 and 804); detailed record of the Deputy Inspector of the National Human Rights Commission of May 6, 2006 (evidence file, folio 798); video of the statement made by Norma Aidé Jiménez Osorio (evidence file, folios 799 and 800); statement by Norma Aidé Jiménez Osorio during the public hearing before this Court, and CNDH Recommendation 38/2006 of May 6, 2006. Section on Norma Aidé Jiménez Osorio (evidence file, folios 818, 819, 821, 822 and 823).

#### Evidence of the facts relating to María Patricia Romero Hernández

The description of what happened to María Patricia Romero Hernández can be found in the following evidence, unless otherwise specifically indicated: Entry medical report of May 4, 2006 (evidence file, folios 831 and 832); detailed record of the CNDH of May 6, 2006 (evidence file, folios 834 and 835); detailed record of the Deputy Inspector of May 26, 2006 (evidence file, folio 841 and 842); CNDH report of August 31, 2006, recording the application of the Istanbul Protocol to María Patricia Romero Hernández (evidence file, folios 851 to 853, 856 and 861); application of the Istanbul Protocol to María Patricia Romero Hernández by the *Colectivo contra la Tortura y la Impunidad* (evidence file, folios 871, 872, 873, 875, 876, 888, 892 and 893); detailed record of the Deputy Inspector of October 31, 2017, with regard to María Patricia Romero Hernández (evidence file, folios 37059 to 37061); statement by María Patricia Romero Hernández before the FEVIM on May 25, 2008 (evidence file folios 906 and 907); medical certificate of injuries to María Patricia Romero Hernández issued by the CNDH on May 6, 2006 (evidence file, folios 910 and

911); CNDH Recommendation 38/2006. Section on María Patricia Romero Hernández, identified as A157 (evidence file, folios 29761 to 29763), and affidavit made by María Patricia Romero Hernández on October 31, 2017 (evidence file, folios 37058 to 37063).

Evidence of the facts relating to Mariana Selvas Gómez

The description of what happened to Mariana Selvas Gómez can be found in the following evidence, unless otherwise specifically indicated: Entry medical report of Mariana Selvas Gómez of May 4, 2006 (evidence file, folio 920); birth certificate of Mariana Selvas Gómez (evidence file, folio 14188); medical certificate of injuries to Mariana Selvas Gómez issued by the CNDH on May 17, 2006 (evidence file, folios 924 and 925); application of the Istanbul Protocol to Mariana Selvas Gómez by the *Colectivo contra la Tortura y la Impunidad* (evidence file, folios 963, 967 to 971, 986, 994 and 996); CNDH report of August 31, 2006, recording the application of the Istanbul Protocol to Mariana Selvas Gómez (evidence file, folios 938 to 940, 947 and 949); Detailed record of the Deputy Inspector of the National Human Rights Commission of May 5, 2006, with regard to Mariana Selvas Gómez (evidence file, folios 953 to 955); detailed record of the Deputy Inspector of May 24, 2006, with regard to several persons on hunger strike (evidence file, folios 1596 to 1599); detailed record of the Deputy Inspector and CNDH health professionals of June 1, 2006, with regard to psychological support to several detainees (evidence file, folios 1018 and 1019); detailed record of the Deputy Inspector of October 31, 2017, with regard to Mariana Selvas Gómez (evidence file, folios 37152 to 37154); video of the statement made by Mariana Selvas Gómez (evidence file, folios 1009 and 1010); statement by Mariana Selvas Gómez before the FEVIM on May 25, 2006 (evidence file, folios 1014 to 1016); CNDH Recommendation 38/2006. Section on Mariana Selvas Gómez, identified as A179 (evidence file, folios 1025 to 1028), and affidavit made by Mariana Selvas Gómez on October 31, 2017 (evidence file, folios 37151 to 37157).

Evidence of the facts relating to Georgina Edith Rosales Gutiérrez

The description of what happened to Georgina Edith Rosales Gutiérrez can be found in the following evidence, unless otherwise specifically indicated: Entry medical report of Georgina Edith Rosales Gutiérrez of May 4, 2006 (evidence files, folios 1038 and 1039); video of the statement by Georgina Edith Rosales Gutiérrez (evidence file, folios 1111 and 1112); CNDH medical certificate of the injuries of Georgina Edith Rosales Gutiérrez of May 19, 2006 (evidence file, folios 1121 and 1122); detailed record of the Deputy Inspector of May 5, 2006 with regard to Georgina Edith Rosales Gutiérrez (evidence file, folio 1041); CNDH report of August 31, 2006, recording the application of the Istanbul Protocol to Georgina Edith Rosales Gutiérrez (evidence file, folios 1048, 1050, 1051, 1058 and 1060); application of the Istanbul Protocol to Georgina Edith Rosales Gutiérrez by the *Colectivo contra la Tortura y la Impunidad* (evidence file, folios 1076, 1078 to 1081, 1103 and 1104); statement by Georgina Edith Rosales Gutiérrez before the FEVIM on May 25, 2006 (evidence file, folios 1115 to 1117); detailed record of the Deputy Inspector of October 31, 2017, with regard to Georgina Edith Rosales Gutiérrez (evidence file, folios 37065 to 37069); detailed record of the Deputy Inspector of May 24, 2006, with regard to several persons on hunger strike (evidence file, folios 1596 to 1599); detailed record of the Deputy Inspector and CNDH health professionals of June 1, 2006, with regard to psychological support to Georgina Edith Rosales Gutiérrez (evidence file, folio 1128); CNDH Recommendation 38/2006. Section on Georgina Edith Rosales Gutiérrez, identified as A160 (evidence file, folios 1132 to 1137), and affidavit made by Georgina Edith Rosales Gutiérrez on October 31, 2017 (evidence file, folios 37064 to 37150).

Evidence of the facts relating to Ana María Velasco Rodríguez

The description of what happened to Ana María Velasco Rodríguez can be found in the following evidence, unless otherwise specifically indicated: Entry medical report of Ana María Velasco Rodríguez of May 4, 2006 (evidence file, folios 1145 and 1146); detailed record of the Deputy Inspector of the National Human Rights Commission of May 12, 2006, with regard to Ana María Velasco Rodríguez (evidence file, folios 1149 and 1150); detailed record of the Deputy Inspector of May 5, 2006, with regard to Ana María Velasco Rodríguez (evidence file, folio 1153); CNDH medical certificate of the injuries of Ana María Velasco Rodríguez of May 5, 2006 (evidence file, folios 1156 and 1157); CNDH report of August 31, 2006, recording the application of the Istanbul Protocol to Ana María Velasco Rodríguez (evidence file, folios 1171 to 1173); video of the statement by Ana María Velasco Rodríguez (evidence file, folios 1210 and 1211); statement by Ana María Velasco Rodríguez during the preliminary inquiry TOL/DR/I/466/2006 (evidence file, folios 1213 and 1214); detailed record of the Deputy Inspector of October 31, 2017, with regard to Ana María Velasco Rodríguez (evidence file, folios 37158 to 37161); statement and expansion of the complaint made by Ana María Velasco Rodríguez before the FEVIM on June 15, 2006 (evidence file, folios 1222 and 1224); report of the Forensic Medicine Service of the Federal District Superior Court of Justice of May 12, 2006 (evidence file, folio 1228); CNDH Recommendation 38/2006. Section on Ana María Velasco Rodríguez, identified as A199 (evidence file, folios 1234 to 1238), and affidavit made by Ana María Velasco Rodríguez on October 31, 2017 (evidence file, folios 37158 to 37163).

#### Evidence of the facts relating to Suhelen Gabriela Cuevas Jaramillo

The description of what happened to Suhelen Gabriela Cuevas Jaramillo can be found in the following evidence, unless otherwise specifically indicated: Entry medical report of Suhelen Gabriela Cuevas Jaramillo of May 4, 2006 (evidence file, folios 1244 and 1245); CNDH medical certificate of the injuries of Suhelen Gabriela Cuevas Jaramillo of May 17, 2006 (evidence file, folios 1250 and 1251); detailed record of the Deputy Inspector of the National Human Rights Commission of May 5, 2006, with regard to Suhelen Gabriela Cuevas Jaramillo (evidence file, folio 1247); detailed record of the CNDH Deputy Inspector of June 8, 2006, with regard to Suhelen Gabriela Cuevas Jaramillo (evidence file, folios 1254 to 1256); CNDH report of August 31, 2006, recording the application of the Istanbul Protocol to Suhelen Gabriela Cuevas Jaramillo (evidence file, folios 1264 and 1265, 1269 and 1277); statement by Suhelen Gabriela Cuevas Jaramillo before the FEVIM on May 25, 2006 (evidence file, folios 1285 and 1286); application of the Istanbul Protocol to Suhelen Gabriela Cuevas Jaramillo by the *Colectivo contra la Tortura y la Impunidad* (evidence file folios 1303 to 1306, 1330 and 1331); detailed record of the Deputy Inspector of May 24, 2006, with regard to several persons on hunger strike (evidence file, folios 1596 to 1599); detailed record of the CNDH Deputy Inspector and health professionals of June 1, 2006, regarding psychological support for Suhelen Gabriela Cuevas Jaramillo (evidence file, folio 1289); CNDH Recommendation 38/2006. Section on Suhelen Gabriela Cuevas Jaramillo, identified as A45 (evidence file, folios 1345 to 1349), and statement by Suhelen Gabriela Cuevas Jaramillo during the public hearing before this Court.

#### Evidence of the facts relating to Bárbara Italia Méndez Moreno

The description of what happened to Bárbara Italia Méndez Moreno can be found in the following evidence, unless otherwise specifically indicated: Entry medical report of Bárbara Italia Méndez Moreno of May 4, 2006 (evidence file, folios 1358 and 1359); detailed record of the CNDH Deputy Inspector of May 5, 2006, with regard to Bárbara Italia Méndez Moreno (evidence file, folios 1361 to 1363); detailed record of the CNDH Deputy Inspector of May 5, 2006, regarding gynecological examination of Bárbara Italia Méndez Moreno (evidence file, folio 1445); CNDH medical certificate of the injuries of Bárbara Italia Méndez Moreno of May 5, 2006 (evidence file, folios 1366 and 1367); application of the Istanbul Protocol to Bárbara Italia Méndez Moreno by the *Colectivo*

*contra la Tortura y la Impunidad* (evidence file, folios 1391 to 1393, 1397, 1402 to 1405 and 1428 to 1430); video of the statement made by Bárbara Italia Méndez Moreno (annex to the initial petition of April 29, 2008 (evidence file, folio 1435); statement made during the public hearing held before the Inter-American Commission on March 6, 2013 (evidence file, folio 1437); expansion of the complaint made by Bárbara Italia Méndez Moreno before the FEVIM on June 14, 2006 (evidence file, folios 1439 to 1443); detailed record of the Deputy Inspector of the National Human Rights Commission of May 16, 2006 (evidence file, folios 1601 and 1602); CNDH Recommendation 38/2006. Section on Bárbara Italia Méndez Moreno, identified as A108 (evidence file, folios 1454 to 1457), and statement by Bárbara Italia Méndez Moreno during the public hearing before this Court.

Evidence of the facts relating to María Cristina Sánchez Hernández

The description of what happened to María Cristina Sánchez Hernández can be found in the following evidence, unless otherwise specifically indicated: Entry medical report of María Cristina Sánchez Hernández of May 4, 2006 (evidence file, folios 1463 and 1464); statement by María Cristina Sánchez Hernández before the FEVIM on June 15, 2006 (evidence file, folios 1466 and 1468); CNDH medical certificate of the injuries of María Cristina Sánchez Hernández of May 17, 2006 (evidence file, folios 1471 and 1472); detailed record of the CNDH Deputy Inspector of May 5, 2006, with regard to María Cristina Sánchez Hernández (evidence file, folio 1466); detailed record of the Deputy Inspector of October 31, 2017, with regard to María Cristina Sánchez Hernández (evidence file, folios 37173 and 37174); preliminary statement by María Cristina Sánchez Hernández before the Second Criminal Trial Court of the Toluca Judicial District, state of Mexico, on May 10, 2006 (evidence file, folio 32380); CNDH Recommendation 38/2006. Section on María Cristina Sánchez Hernández, identified as A169 (evidence file, folios 1484 a 1486), and affidavit made by María Cristina Sánchez Hernández on October 31, 2017 (evidence file, folios 37172 to 37177).

Evidence of the facts relating to Angélica Patricia Torres Linares

The description of what happened to Angélica Patricia Torres Linares can be found in the following evidence, unless otherwise specifically indicated: Entry medical report of Angélica Patricia Torres Linares, initially identified as Marisol Larios Carvajal, of May 4, 2006 (evidence file, folios 1492 and 1493); detailed record of the Deputy Inspector of the National Human Rights Commission of May 6, 2006, with regard to Angélica Patricia Torres Linares, initially identified as Marisol Larios Carvajal (evidence file, folios 1495 to 1497); CNDH medical certificate of the injuries of Angélica Patricia Torres Linares, initially identified as Marisol Larios Carvajal of May 6, 2006 (evidence file, folios 1500 and 1501); detailed record of the CNDH Deputy Inspector of May 12, 2006, regarding Angélica Patricia Torres Linares, initially identified as Marisol Larios Carvajal (evidence file, folio 1516); statement by Angélica Patricia Torres Linares during the preliminary inquiry TOL/DR/I/466/2006 (evidence file, folios 1505 to 1509); statement by Angélica Patricia Torres Linares before the FEVIM on June 19, 2006 (evidence file, folios 1511 to 1514); CNDH Recommendation 38/2006. Section on Angélica Patricia Torres Linares, initially identified as Marisol Larios Carvajal, identified as A189 (evidence file, folios 1520 to 1522), and statement by Angélica Patricia Torres Linares during the public hearing before this Court.

Evidence of the facts relating to Claudia Hernández Martínez

The description of what happened to Claudia Hernández Martínez can be found in the following evidence, unless otherwise specifically indicated: application of the Istanbul Protocol to Claudia Hernández Martínez by the *Colectivo contra la Tortura y la Impunidad* (evidence file, folios 1528, 1533 to 1536, 1538 to 1540 to 1548, 1567, 1568 and 1578); expansion of the complaint filed by

Claudia Hernández Martínez before the FEVIM on June 14, 2006 (evidence file, folios 1587 to 1590); video of the statement made by Claudia Hernández Martínez (evidence file, folio 1585); preliminary statement by Claudia Hernández Martínez before the Second Criminal Trial Court of the Toluca Judicial District, state of Mexico, on May 10, 2006 (evidence file, folio 32321), and statement made by Claudia Hernández Martínez during the public hearing before this Court.

I/A Court HR. *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 28, 2018.

Eduardo Vio Grossi  
Acting President

Humberto A. Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri  
Secretary

So ordered,

Eduardo Vio Grossi  
Acting President

Pablo Saavedra Alessandri  
Secretary