

INTER-AMERICAN COURT OF HUMAN RIGHTS

ROSENDO CANTÚ *ET AL.* V. MEXICO

JUDGMENT OF AUGUST 31, 2010

(Preliminary Objections, Merits, Reparations, and Costs)

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

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

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

also present,

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

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

¹ As stipulated in Article 79(1) of the Court's Rules of Procedure that entered into force on June 1, 2010, “[c]ontentious cases submitted to the consideration of the Court before January 1, 2010, will continue to be processed in accordance with the preceding Rules of Procedure until the delivery of a judgment.” Consequently, the Court's Rules of Procedure mentioned in this judgment correspond to the instrument approved by the Court at its forty-ninth regular session, held from November 16 to 25, 2000, partially amended at its eighty-second regular session held from January 19 to 31, 2009.

INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. On August 2, 2009, in accordance with the provisions of Articles 51 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Court an application against the United Mexican States (hereinafter "the State" or "Mexico"), which originated from the petition filed on November 10, 2003, by Valentina Rosendo Cantú (hereinafter "Rosendo Cantú" or "the alleged victim"), the *Organización Indígena de Pueblos Mixtecos y Tlapanecos A.C.* [the Indigenous Organization of the Mixtec and Tlapanec People] and the *Centro de Derechos Humanos de la Montaña 'Tlachinollan' A.C.* [Tlachinollan Human Rights Center of the Mountain], (hereinafter, "Tlachinollan"), and the *Centro de Derechos Humanos Miguel Agustín Pro Juárez A.C.* [The Miguel Agustín Human Rights Center]. On October 21, 2006, the Inter-American Commission issued Admissibility Report No. 93/06² and, on March 27, 2009, it approved Report on Merits No. 36/09,³ pursuant to Article 50 of the Convention, in which it made a series of recommendations to the State. This report was notified to Mexico on April 2, 2009 and the State was granted two months to provide information on any actions taken to implement the recommendations. On May 7, 2009 the State requested a one-month extension of the time limit to comply with the recommendations indicated. The Inter-American Commission ordered the requested extension for June 17, 2009, and requested the State to report on the measures adopted to satisfy the recommendations. After the period lapsed "without the State having presented information regarding the implementation of the recommendations," on July 31, 2009, the Commission decided to submit the case to the Court. The Commission appointed Florentín Meléndez, Commissioner at the time, and Executive Secretary, Santiago A. Canton, as delegates, and the Deputy Executive Secretary, Elizabeth Abi-Mershed, and the lawyers, Isabel Madariaga, Rosa Celorio, Fiorella Melzi, and Lilly Ching, specialists of the Secretariat, as legal advisors.

2. According to the Inter-American Commission, the application refers to the alleged international responsibility of the State for the "rape and torture" of Mrs. Rosendo Cantu that took place on February 16, 2002; the "lack of due diligence in the investigation and punishment of the perpetrators" of these facts; "the consequence caused by the facts in the case to the daughter of the [alleged] victim"; "the failure to make adequate reparation to the [alleged] victim and her next of kin"; the "use of the military justice system to investigate and prosecute human rights violations," and the difficulties encountered by indigenous people, particularly indigenous women, to obtain access to justice and health care."

3. Based on the above, the Inter-American Commission asked the Court to declare the State responsible for the violation of Articles 5 (Right to Personal Integrity), 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), 11 (Right to Privacy [Honor and

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

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

Dignity]), and 19 (Rights of the Child) of the American Convention, in relation to the general obligation to respect and ensure human rights established in Article 1(1) thereof, to the detriment of Mrs. Rosendo Cantu. In addition, it indicated that Mexico is responsible for the violation of Article 5 (Right to Personal Integrity) of the Convention to the detriment of Yenys Bernardino Rosendo, daughter of Mrs. Rosendo Cantu. In addition, it noted that Mexico is responsible for the violation of Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter also “the Convention of Belém do Pará”) and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “the Convention against Torture”), all to the detriment of Mrs. Rosendo Cantu. Based on the abovementioned, the Inter-American Commission asked the Court to order the State to make certain reparations.

4. On October 28, 2009, the *Organización del Pueblo Indígena Tlapaneco/Me´phaa*⁴ [Organization of Tlapaneco/Me´phaa Indigenous People] (hereinafter, “OPIM”), *Centro de Derechos Humanos de la Montaña “Tlachinollan” A.C.* [the Center for Human Rights of the Tlachinollan Mountain A.C. (Tlachinollan)], and the Center for Justice and International Law (hereinafter “CEJIL”, all of the above, hereinafter, “the representatives”) forwarded their brief of pleadings, motions, and evidence (hereinafter “brief of pleadings and motions”), in accordance with Article 24 of the Rules of Procedure. The representatives substantially agreed with the violations alleged by the Inter-American Commission, adding to its request that the Court declare a violation of Articles 5 (Right to Humane Treatment [Personal Integrity]), 11 (Right to Privacy [Honor and Dignity]), 8 (Judicial Guarantees), and 25 (Judicial Protection) of the American Convention, to the detriment of the next of kin of Mrs. Rosendo Cantu; Article 24 (Right to Equal Protection) in relation to the other rights argued, and Article 2 of the Convention (Domestic Legal Effects), in relation with Articles 8 and 25 of the same, 1, 6, and 8 of the Convention against Torture, and 7 of the Convention of Belem do Para, to the detriment of Mrs. Rosendo Cantu. Lastly, the representatives asked that the Court order the State to adopt various measures of reparation, such as certain costs and expenses.

5. On February 17, 2010, the State presented a brief in which it filed a preliminary objection, answered the application, and made observations on the pleadings and motions brief (hereinafter “answer to the application”). Mexico asked the Court to consider the preliminary objection founded and to declare its lack of jurisdiction to determine violations of the Convention of Belém do Pará. It also asked the Court to declare the inexistence of the violations of the rights established by the American Convention and the Convention against Torture alleged by the Commission and the representatives. The State named Mrs. Zadalinda González and Reynero as Agent in the present case.

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

⁴ The parties use the terms me´paa or me´phaa to refer to the community or the language of Mrs. Rosendo Cantú. The Court observes that there are distinct linguistic variants of Tlapaneco that in Spanish are written in distinct ways depending on the geographical location of the community in question. According to the Instituto Nacional de Lenguas Indígenas del Estado [National Institute of Indigenous Languages of the State], the variant which corresponds to Barranca Bejuco is “me´paa” (http://www.inali.gob.mx/clin-inali/html/v_tlapaneco.html#4). Nevertheless, the Court uses the two abovementioned forms in an indistinct manner, in conformity with that used by the parties throughout the case at hand.

II

PROCEEDINGS BEFORE THE COURT

7. The Commission's application was notified to the representatives and to the State on August 27, 2009, respectively.⁵ Subsequent to the presentation of the brief of pleadings and motions, the representatives requested information regarding the alleged supervening facts, to which the Commission and State had the opportunity to respond. During the proceedings before this Court, in addition to the presentation of the principal briefs (*supra* paras. 1, 4, and 5), and others sent by the parties, in an order of April 23, 2010, the President of the Court (hereinafter "the President") ordered the submission of testimony, rendered before a public notary (hereinafter, "*affidavit*"), the testimony of three witnesses proposed by the Commission and by the representatives, as well as the expert opinions of six expert witnesses proposed by the Commission and by the representatives.⁶ Moreover, for the sake of procedural efficiency, the President accepted the incorporation of the *affidavits* of two witnesses and two experts, proposed by the Commission and by the representatives in the present case that were rendered in the case of *Fernández Ortega et al. v. México*.⁷ With regards to the aforementioned, the parties had the opportunity to make their observations. Likewise, the President convened the Commission, the representatives, and the State to a public hearing to hear the statement of one of the alleged victims and a testimony, both proposed by the Commission and the representatives; and the expert opinion of one expert witnesses proposed by the representatives, together with the final oral arguments of the parties on the preliminary objection and the merits, reparations, and costs.⁸ Within the cited public hearing, and given the circumstances of this case, Mrs. Rosendo Cantu gave her testimony in private.⁹

8. The public hearing was held on May 27, 2010, during the Court's LXXXVII Regular Period of Sessions of the Court.¹⁰

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

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

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

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

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

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

9. In addition, the Court received eleven *amicus curiae* briefs from the following persons and institutions: i) three students of the Graduate Studies Department of the Law School of the *Universidad Autónoma de México* (UNAM), concerning the right of access to justice of the indigenous population in the state of Guerrero, the military criminal jurisdiction, and the possible reparations;¹¹ ii) the General Council of Spanish Lawyers and the Foundation of the General Council of Spanish Lawyers, on rape as torture, the military justice system, and the medical treatment which women victims of violence should receive;¹² iii) the Faculty at the Law School, the University of the Andes, which refers to the importance of the context in the present case;¹³ iv) the organizations Bar Human Rights Committee and Solicitor's International Human Rights Group, regarding rape as torture and the standards of the investigation in cases of rape;¹⁴ v) *the Washington Office on Latin America* [Oficina en Washington para Asuntos Latinoamericanos] (hereinafter, "WOLA"), in regard to the militarization in the state of Guerrero and of the human rights abuses perpetrated by soldiers in Mexico;¹⁵ vi) the organization Lawyer's Rights Watch Canada, regarding military justice in Mexico and the access to justice for indigenous persons;¹⁶ vii) the organization Women's Link Worldwide concerning rape as a form of torture and the standards of protection for minors of age whom are victims of the same;¹⁷ viii) the *Programa de Litigio Internacional del Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer* [International Litigation Program of the Committee for Latin America and the Caribbean for the Defense of the Rights of Women] (CLADEM), regarding, *inter alia*, the rape and the prohibition of torture, the discrimination against indigenous people of the south of Mexico, as well as the standards of proof and reparations for cases of rape and torture against indigenous women;¹⁸ ix) James C. Hopkins, Associate Professor at the University of Arizona, in relation with the obligation by the State of Mexico to consult with the indigenous people in cases of military occupation and the responsibility of the State in the case of its non-

of the Secretariat of the Interior; and Rafael Barceló Durazo, Added Diplomat in Political Matters and Human Rights of the Mexican Embassy and Costa Rica.

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

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

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

¹⁴ The original brief was received in English by the Secretariat of the Court on June 17, 2010, and is signed by Philip Haywood, Brony Poynor, and Ajanta Kaza of the organization Bar Human Rights Committee and David Palmer and Ana Paula de Souza of the organization Solicitor's International Human Rights Group. One copy of the brief was received on June 10, 2010. The Secretariat of the Court requested, on June 18, 2010, the submission, in Spanish, of the *amicus curiae*, a requirement which was satisfied with the sending of the brief in Spanish on June 28, 2010.

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

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

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

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

compliance with its international obligations on the matter,¹⁹ and x) *Fundar, Centro de Análisis e Investigación A.C.*, [Fundar, Center for Analysis and Investigation] which submitted two briefs, one on the indigenous rights recognized by the State and the other on the alleged inexistence of remedies against the rejection of the jurisdiction of ordinary justice in favor of the military justice system.²⁰ These briefs were duly forwarded to the parties so that they could make any observations they deemed pertinent.

10. On June 28, 2010, the Inter-American Commission, the representatives, and the State sent their final written arguments. In this regard, the Court ordered a period of until July 16, 2010 for the parties to make observations regarding the documents presented by the State and the parties along with their final written arguments. The 13, 15, and 16, of July, 2010, respectively, the Inter-American Commission, the State, and the representatives submitted their observations.

III PRELIMINARY OBJECTION

11. In the answer to the application, the State filed the objection of "lack of jurisdiction of the [Inter-American Court] to examine violations of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women." Subsequently, at the public hearing, the State "withdr[ew] the preliminary objection invoked in the answer to the application and the brief of the representatives."

12. The Commission and the representatives requested the Court to dismiss the preliminary objection filed by Mexico and affirmed the subject-matter jurisdiction of the Inter-American Court to rule on the alleged violations of Article 7 of the Convention of Belém do Pará.

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

IV JURISDICTION

14. The Inter-American Court has jurisdiction to hear this case under Article 62(3) of the Convention, because Mexico has been a State Party to the American Convention since March 24, 1981, and accepted the compulsory jurisdiction of the Court on December 16, 1998. In addition, the State ratified the Inter-American Convention to Prevent and Punish Torture on June 22, 1987, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women on November 12, 1998.

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

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

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

V PROVISIONAL MEASURES

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

VI PARTIAL ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY

16. During the public hearing, Mexico made a partial acknowledgement of its international responsibility as follows:

the Mexican State acknowledges before the Court: first, that the absence of specialized medical care for Mrs. [...] Rosendo Cantú when she filed criminal charges, constitutes a flagrant violation of Article 8(1) of the American Convention. Second, that the lack of specialized attention to Mrs. [...] Rosendo Cantú, given that she was a minor at the time the criminal charges were filed, constitutes non-compliance of the Mexican State to protect the rights of the child enshrined in Article 19 of the American Convention on Human Rights. Third, that there have been delays and absence of due diligence in the investigations, and therefore, there have been different violations of Articles 8(1) and 25 of the American Convention on Human Rights. Fourth, that given the delay in the investigations there exists a violation of Article 5(1) of the same legal instrument with regard to the psychological integrity of Mrs. [...] Rosendo Cantú. These facts and their impact on the compliance of the obligations derived from the American Convention on Human Rights are the only responsibilities acknowledged by the Mexican State.

17. Notwithstanding the acknowledgement of international responsibility, the State asked the Court to assess and rule, "in the context of its examination of the State's obligations in light of Articles 8(1) and 25 of the Convention," on the following aspects: i) the actions of the ministerial [investigative] authorities within the legal framework in force; ii) the interventions with a gender perspective carried and the respect for judicial guarantees; iii) the invitation offered to the victim to participate in the investigations and the weight of the victim's statement within the ministerial procedures; iv) the procedural momentum rendered by the State in the investigation; v) the recent actions taken by the Military Public Prosecutor's Office, and vi) the alleged claim filed by Mrs. Rosendo Cantú before the municipal authorities and medical personnel. In addition, Mexico indicated that it would not "submit any arguments concerning the use of the military

²² On April 9, 2009, the President at the time, in consultation with the other Judges of the Court, declared an Order for urgent measures wherein the State was ordered to adopt the necessary measures to protect the life and personal integrity of the alleged victims in the case of *Fernandez Ortega et al. v. Mexico*, among other people. Said Order was later ratified by the Court on April 30, 2009. *Cf. Matter of Fernández Ortega et al. Provisional Measures regarding Mexico*. Order of the President of the Inter-American Court of Human Rights on April 9, 2009, and *Matter of Fernández Ortega et al. Provisional Measures regarding Mexico*. Order of the Inter-American Court of Human Rights on April 30, 2009

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

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

justice system in relation to jurisdictional competences in this case, because the [Court has already made a final ruling on this aspect]." Lastly, it asked the Court to "dismiss any violation of Articles 5(1) and 11 of the American Convention, as well as Articles 1, 6, and 8 of the Convention [Against Torture]."

18. In its final written arguments, the State, *inter alia*, reiterated its acknowledgement of international responsibility in relation with "the delay in specialized and medical care for Mrs. Rosendo Cantu, in her capacity as a women and minor of age, as well as in the delay of the investigation of the facts of the case, [which] constitute omissions attributable to the State of Mexico that imply violations to Articles 8(1) and 25 of the American Convention on Human Rights, in connection with Articles 5(1) and 19 of the same instrument." Mexico addressed the following terms:

Absence of opportune and specialized medical care

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

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

[T]he responsibility of the State of Mexico for not providing timely and specialized medical care should be restricted exclusively to the days immediately after the criminal complaint was filed."

Lack of specialized attention to Mrs. Rosendo Cantu in her capacity as a women and minor, at the time the criminal complaint was filed

[T]he State of Mexico recognized that the ministerial [investigative] authorities were ignorant in providing Mrs. Rosendo Cantu specialized medical care, in her capacity as a minor [...], which constituted non-compliance with the obligation to protect the rights of the child recognized in Article 19 of the American Convention [...] and in light of other instruments [...] such as [...] the Convention on the Rights of the Child.

Delay in the development of the investigations

[T]he Mexican State acknowledges its responsibility [...], for a delay in the development of the investigation of the facts complained of on March 8, 2010 by Mrs. Rosendo Cantu. Indeed, the investigations have taken eight years, without the competent authorities reaching definitive conclusions on the historical truth of the facts and determining those responsible."

Impact to the mental integrity of Mrs. Rosendo Cantu arising from the delay in the development of the investigations

[T]he State of Mexico recognizes that the delay in the investigation into the facts and the lack of substantive results after eight years from the commencement of the investigations, has resulted in damage to the psychological integrity of Mrs. [...] Rosendo Cantu.

19. The Commission "assesse[d] the partial acknowledgement of international responsibility made by Mexico [...] and consider[ed] that it is a positive step towards compliance with its international obligations." Nevertheless, it observed "that several of the arguments submitted by the State [...] contradict the facts supposedly acknowledged" and "that, owing to the terms of said acknowledgement, the State has not fully assumed the legal implications in relation to the facts, or the pertinence of the reparations requested by the parties." Consequently, it considered necessary that the Court "decide in a Judgment, the matters that remain in dispute, namely, those facts directly or indirectly refuted by the State, the assessment and legal consequences of both the facts effectively acknowledged as well as those proven by the evidence provided by the parties during the proceedings, and the reparations that are found to be pertinent."

20. The representatives indicated that “the acknowledgment of responsibility presented by the State [...] is limited on the one hand, and confusing on the other hand.” They highlighted that said acknowledgment does not include the submission of the investigation regarding sexual abuse against Mrs. Rosendo Cantu to the military jurisdiction, despite the fact that the State “recognizes it was recently charged [...] with similar facts” and that “the preliminary investigation was resubmitted to the military jurisdiction when the case was already in the hands of [the] Court,” after the notification of the Judgment in the case of *Radilla Pacheco*. On the other hand, regarding the violation of Article 5 of the Convention, the representatives indicated that it only includes the suffering caused by the delay in the investigations, “although in this case there were violations to the personal integrity of the victim of utmost gravity,” and they emphasized that, it excludes “the violation of the personal integrity of the next of kin” caused by the delay in justice. Given the abovementioned, the representatives concluded that the international responsibility acknowledgement of the State is contradictory, and that “instead of attempting to rectify the damage caused, and as such, the dignity of the victim, it appears that it is directed at the Court being lenient when it declares its Judgment.”

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

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

23. Regarding the facts, the Court observes that the State partially acknowledged its international responsibility in a sufficiently clear and specific manner, in relation to the delay in the provision of specialized medical care to Mrs. Rosendo Cantu, the lack of specialized attention considering that she was a girl child, the delay in the investigation of the facts of the case and the impact that said delay caused to the personal integrity of the alleged victim. Based on those facts, Mexico acknowledged its international responsibility for the violations of the rights to judicial guarantees and judicial protection established in Articles 8(1) and 25 of the American Convention, as well as the right to psychological integrity established in Article 5(1) thereof, and the rights of the child, recognized in Article 19 of treaty at hand, to the detriment of Mrs. Rosendo Cantu. Finally, with regard to the claims concerning reparations, based on its acknowledgement of responsibility, the State indicated that the Court should order those measures that were in line with international law and its jurisprudence.

24. The Inter-American Court decides to accept the State's acknowledgment of responsibility and assesses it as a partial admission of the facts and partial acceptance of the claims of law in the Commission's application and in the brief of pleadings and

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

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

motions of the representatives. In regard to the consequential reparations, the Court will examine and declare, in Chapter XI of the present Judgment, on that which is pertinent.

25. The Inter-American Court assesses the acknowledgment of the State and considers that it constitutes a positive contribution to the development of this process, to the force of the principles which inspire the American Convention, and to the obligatory conduct required of States on this matter, in virtue of the compromises that they assume as Parties to the international instruments on human rights.²⁷

26. Lastly, the Court notes that the dispute between the parties remains with regard to the facts and claims relating to the alleged violations of the rights to personal integrity, judicial guarantees, honor and dignity, equality before the law, and judicial protection, established in Articles 5, 8, 11, 24, and 25 of the American Convention, respectively, in relation to the general obligation to respect and ensure rights established in its Article 1(1); to the obligation to adopt domestic legislative measures established in Article 2 of this international instrument, as well as those obligations arising from Articles 1, 6, and 8 of the Convention against Torture, and Article 7 of the Convention of Belém do Pará. Based on the abovementioned, the Court finds it necessary to deliver a Judgment in which it determines the facts and all aspects of the merits of the matter, as well as their possible consequences in regards to reparations.

VII EVIDENCE

27. Based on the provisions of Articles 46, 47, 49, and 50 of the Rules of Procedure, as well as in its jurisprudence regarding evidence and its assessment,²⁸ the Court will examine and assess the documentary evidence submitted by the parties on different procedural occasions, as well as the statements, the testimony, and the expert reports provided by *affidavit* and during the public hearing. To this end, the Court will abide by the principles of sound judicial discretion, within the corresponding normative framework.²⁹

A. Documentary, testimonial, and expert evidence

28. The Court received the statements made before public notary by the following witnesses and expert witnesses:³⁰

1. *Obtilia Eugenio Manuel*, member of the *Organización del Pueblo Indígena Tlapaneco* [Organization of Tlapaneco Indigenous Peoples], witness proposed by the Inter-American Commission. She testified about: i) the access to justice of indigenous women victims of violence in the Municipality of Ayutla, and ii) the search for justice of Mrs. Rosendo Cantu.

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

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

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

³⁰ Mexico did not offer witnesses nor experts, and as such the President understood that the State tacitly relinquished offering any said evidence. Cf. *Case of Rosendo Cantú et al. v. México. Summons to a Public Hearing*, *supra* note 6, Considering Clause 4.

2. *Victoriano Rosendo Morales*, father of Mrs. Rosendo Cantú, witness proposed by the representatives. He testified about: i) the impact that the rape had on his life and lives of his next of kin, allegedly suffered by his daughter in the hands of soldiers; ii) the alleged impunity in which the case still remains; iii) the alleged consequences derived from this fact in the life of Mrs. Rosendo Cantu and her family, and iv) the measures the State should adopt to repair the alleged harm caused.

3. *María Cantú García*, mother of Mrs. Rosendo Cantú, witness proposed by the representatives. She testified about: i) the impact of the rape on her life and the lives of her next of kin, allegedly suffered by her daughter in the hands of soldiers; ii) the alleged impunity in which the case still remains; iii) the alleged consequences derived from this fact in the life of Mrs. Rosendo Cantú and her family, and iv) the measures the State should adopt to repair the alleged harm caused.

4. *Jan Perlin*, lawyer, former Director of the Diagnostic Project on Access to Justice for Indigenous Peoples in Mexico of the Office of the High Commissioner for Human Rights of the United Nations, expert witness proposed by the Inter-American Commission. She provided an expert report on: i) the situation of access to justice of the indigenous peoples in Mexico, and ii) the improvements that should be adopted in this regard.

5. *Paloma Bonfil Sánchez*, ethno-historian, researcher and consultant on gender and indigenous women, expert witness proposed by the Inter-American Commission. She provided an opinion on the alleged discrimination against indigenous women in Mexico.

6. *Federico Andreu Guzmán*, lawyer, General Counsel for the International Commission of Jurists, expert witness proposed by the Inter-American Commission. He provided an opinion on the use of the military justice system to investigate and prosecute offenses that are not related to military functions, and in particular, violations of human rights.

7. *Marcos Arana Cedeño*, medical specialist in public health and comprehensive care for women, witness proposed by the Inter-American Commission. Rendered his expert opinion on: i) the alleged obstacles that indigenous women face regarding access to health care in Mexico, and ii) the minimum requirements for gathering of evidence in cases of sexual violence that health care professionals should follow.

8. *Clemencia Correa González*, professor and expert in the treatment of political violence, with emphasis on gender violence; expert witness proposed by the representatives. Her expert opinion was on: i) the alleged consequences for Mrs. Rosendo Cantú caused by the sexual torture of which she was a victim; ii) the alleged personal, family, and communitarian/social impact suffered by Mrs. Rosendo Cantú and her family for the alleged rape, the alleged failure to access medical care, and the impunity of the case; iii) the alleged repercussions of the alleged violations of human rights and the impunity in the alleged impact to the social fabric of the community, and iv) the necessary measures to repair the harm that was caused.

9. *Héctor Ortiz Elizondo*, legal anthropologist, expert witness proposed by the representatives. Rendered expert opinion on: i) the perception of sexual violence and discrimination against women of the indigenous communities; ii) the cultural impact in the indigenous community that the alleged rape of Mrs. Rosendo Cantú, in the hands of soldiers and in a context of alleged militarization and repression,

as well as the supposed impunity in the case, and iii) the possible measures of necessary reparations.

29. In addition, due to economic efficiency, the testimony and expert reports rendered before a public notary in the case of *Fernández Ortega et. al. v. México* were incorporated into this case by the following witnesses and experts:³¹

1. *Cuauhtémoc Ramírez Rodríguez*, member of the board of the *Organización del Pueblo Indígena Tlapaneco* [Organization of the Tlapaneco Indigenous People], witness proposed by the Inter-American Commission and the representatives. He testified about: i) the circumstances surrounding the alleged rape of which Mrs. Fernández Ortega was presumably a victim; ii) the alleged use of rape as a form of harassment practiced by the Army against the social movements in Guerrero; iii) the supposed effects that Mrs. Fernández Ortega's alleged rape had on the work of the *Organización del Pueblo Indígena Tlapaneco/Me'paa* [Organization of Tlapaneco/Me'phaa Indigenous People], and iv) the alleged threats and harassment against those involved in the search to obtain justice in the case.

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

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

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

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

1. *Valentina Rosendo Cantú*, alleged victim, proposed by the Inter-American Commission and the representatives. She testified regarding: i) the alleged facts which occurred on February 16, 2002; ii) the measures taken to clarify the historical truth of the facts and to identify, prosecute, and punish those responsible; iii) the response and attitude of the authorities regarding the

³¹ Regarding these statements and expert opinions, the President determined that the Court would only take into consideration those aspects related, exclusively, with the present case. Cf. *Case of Rosendo Cantú et al. v. México. Summons to a Public Hearing, supra* note 6, Considering Clauses 27 and 29.

measures taken; iv) the alleged obstacles faced in the pursuit of justice; v) the alleged obstacles faced in the attempts to obtain medical care; vi) the alleged consequences in her personal life and to her family of the alleged violations of human rights in the present case, and vii) the measures that the State should adopted to repair the violations committed.

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

3. *Roxana Arroyo Vargas*³², professor and expert in gender and issues of human rights of women, proposed by the representatives. Rendered her expert report on: i) the alleged discrimination suffered by women victim's of violence; ii) the lack of access to justice suffered by indigenous women victim's of violence, and iii) the necessary measures available to obtain adequate reparations in the present case.

B. Assessment of the documentary evidence

31. In this case, as in others,³³ the Court admits the probative weight of those documents forwarded by the parties at the appropriate procedural opportunity, which were not contested or opposed, and the authenticity of which was not questioned.

32. On the one hand, the Court will examine, in the first place, the observations made by Mexico on some documents offered in the application and in the brief of pleadings and motions, and will then rule on those that were provided by the representatives and the State following their brief of pleadings and motions and brief in response to the application, respectively.

33. The State raised objections to certain texts,³⁴ newspaper articles,³⁵ which were submitted as documentary evidence by the Commission and by the representatives. It

³² Subsequent to the offering of the final list of deponents, witnesses, and experts, on May 4, 2010, the representatives requested the substitution of the expert Facio Montero, whom "was not able to participate in the hearing due to force majeure," for the expert Roxana Arroyo Vargas, so she could provide her expert opinion in said hearing. Given that the Inter-American Commission and the State expressed their conformity with the request made by the representatives and the eventual usefulness of the proposed expert, the Court accepted the proposed substitution and convened said expert to the public hearing to render her testimony whose purpose was identified as being that of the expert Facio Montejo. *Cf. Case Rosendo Cantú et al. v. México*. Order of the Inter-American Court of Human Rights of May 19, 2010, Operative Paragraph 2.

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

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

asked the Court not to admit these documents because “their content bears no relationship to the purpose [*litis*] of this case,” and that “their inclusion is intended to provide a context to the facts of the case.”

34. In relation to investigative articles or texts, the Court has already indicated that these are written documents that contain the authors’ voluntary declarations or statements for public distribution. In this regard, the assessment of their content is not

Newsletter of the Mexico Project, Special Edition on Ayutla, May 2009 (case file of annexes to the brief of pleadings and motions, tome I, annex 7, folios 5267 to 5278); Amnesty International. *Promoting the rights of indigenous peoples in Mexico. Organization of the Indigenous Me’phaa People. Human Rights Defenders* [Promover los derechos de los pueblos indígenas de México. Organización del Pueblo Indígena Me’phaa. Defensores y Defensoras de Derechos Humanos], October 2008 (case file of annexes to the brief of pleadings and motions, tome I, annex 8, folios 5280 to 5283); United Nations Development Programs. *Report on Human Development in 2004*, cited in the Report of the Civil Society Organizations on the Situation of ESCR [Economic, Social and Cultural Rights] in Mexico. Alternative Report IV Periodic Report of the State of Mexico on the application of ICESCR [International Covenant on Economic, Social and Cultural Rights], April 2006 (case file of annexes to the brief of pleadings and motions, tome I, annex 13, folios 5298 to 5309 and annex 18, folios 5393 to 5405); National Network of Civil Human Rights Organizations. *All rights for all*. [Todos los derechos para todos.] The human rights situation in Mexico, followed the recommendations of the Report of the Inter-American Commission on Human Rights on Mexico, September 30, 1999 (case file of annexes to the brief of pleadings and motions, tome I, annex 14, folio 5311 to 5329); National Institute of Statistics and Geography (INEGI) in collaboration with UNIFEM. *The women in Guerrero: Statistics on gender inequality and violence against women* [Las mujeres en Guerrero: Estadísticas sobre desigualdad de género and violencia contra las mujeres] (case file of annexes to the brief of pleadings and motions, tome I, annex 15, folios 5331 to 5369 and annex 19, folios 5407 to 5445); Centro de Derechos Humanos Fr. Francisco de Vitoria. *Annual Report on the situation of ESCR in Mexico 2007-2008* [Informe Anual sobre la situación de los DESC en México 2007-2008]. March 2009 (case file of annexes to the brief of pleadings and motions, tome I, annex 16, folios 5372 to 5382); National Womens Institute, UNFPA, the PAHO/WHO, UNDP, UNICEF, UNIFEM and INEGI. *The gender approach in the production of health statistics, Chapter V: Health and morbidity* [El enfoque de género en la producción de las estadísticas de salud, Capítulo V: Salud and morbilidad] (case file of annexes to the brief of pleadings and motions, tome I, annex 17, folios 5384 to 5392); Valdéz-Santiago, Rosario et al. *Health systems to address the violence against indigenous women in the main ethnic groups of Mexico* [Los sistemas de salud frente to the violencia hacia las mujeres indígenas en las principales etnias de México] (case file of annexes to the brief of pleadings and motions, tome I, annex 21, folios 5450 to 5457); National Public Health Institute. *Survey of Health and Indigenous Women’s Rights*. [Encuesta de Salud and Derechos de las Mujeres Indígenas]. ENSADEMI 2008. Chapter 7 (case file of annexes to the brief of pleadings and motions, tome I, annex 22, folios 5459 to 5467), and PRODESCA, Guerrero Network of Civil Human Rights Organizations and the National Network of Civil Human Rights Organizations, *All Rights for All* [“Todos los Derechos para Todos and para Todas”]. *Report on the human rights situation and violence against women in the state of Guerrero*. Chilpancingo, Guerrero, November 2006 (case file of annexes to the brief of pleadings and motions, tome IV, annex 202, folios 7193 to 7227).

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

subject to the formalities required for testimonial evidence. However, their probative weight depends on whether they corroborate or refer to aspects of the specific case.³⁶ Consequently, and given the general nature of the State's opposition, the Court decides to admit them and will assess them, were appropriate, taking into account the body of evidence, the observations of the State, and the rules of sound judicial discretion.

35. Regarding the newspaper articles forwarded by the representatives, this Court has found that they may be assessed when they refer to well-known public facts or statements made by State officials,³⁷ or when they corroborate aspects of the case.³⁸ The Court has verified that it is not possible to distinguish the date of publication of some of these documents. Nevertheless, none of the parties objected to the documents on this basis or questioned their authenticity. The Court decides to admit the documents that are complete or that, at least, allow their source and date of publication to be determined, and will assess them taking into account the body of evidence, the State's observations, and the rules of sound judicial discretion.

36. Likewise, the Court adds other documents to the body of evidence, in application of Article 47(1) of the Court Rules of Procedure, because it deems them useful to the resolution of this case.³⁹

37. On the other hand, with regard to the documents provided by the representatives and the State following the submission of the brief on pleadings and motions and the brief in response to the application, respectively, the Court finds it opportune to recall that Article 46 of the Rules of Procedure, which regulates the admission of evidence, establishes:

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

[...]

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

³⁷ For purposes of this Judgment, the Court will use the terms officials, employees, and public servants without distinction.

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

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

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

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

39. In its answer to the application, submitted on February 17, 2010, the State confirmed the rejection of jurisdiction in favor of the Military Public Prosecutor's Office, outlined the normative (legislative) grounds for this action, and indicated that it was in keeping with the laws in force. Additionally, in its written brief of final arguments, it explained that "the military public prosecutor is, currently, the only competent authority under the Mexican legal system in force, and it will continue as such until there is a legislative reform in this regard."

40. For its part, the Inter-American Commission referred back to its observations in its Report on Merits and in the application concerning the military criminal justice system and underscored that "the intervention of the military criminal justice system in the investigation of a complaint of rape [allegedly] perpetrated against a civilian" cannot be justified.

41. The Court considers that this fact forms part, effectively, of the purpose of this case and admits, pursuant to the terms of Article 46(3) of the Rules of Procedure, the copy of note No. 344/2009 of October 29, 2009, relating to Preliminary Investigation FEIDS VI/002/2009, provided by the representatives, and will consider the information contained therein, to the extent that is appropriate.

42. In addition, during the public hearing, Mexico submitted a copy of the tomes VIII, IX, and X of the case file of Preliminary Investigation No. SC/180/2009/II-E of the Military Public Prosecutor's Office.⁴¹ Moreover, at the end of the hearing, Mexico submitted numerous documents relating to "public, institutional, and legislative policy measures" adopted by the State.⁴²

43. The representatives observed, regarding the documents "described in numerals 2 to 30 of the 'Act of Documents Received,' as well as all the procedures carried out before the military jurisdiction prior to February 17, 2010," should have been presented by Mexico along with its answer to the application. That said, they requested the Court to "reject [the aforementioned documents], given that none [of them] can be considered supervening evidence."

44. Regarding the documents provided by Mexico during the public hearing that relate to different State actions and policies concerning violence against women, the Court notes that they were not submitted at the appropriate time; that is, in the answer to the application. Moreover, Mexico failed to justify the late presentation by alleging *force majeure*, serious impediment, or supervening events; in other words, any of the

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

⁴¹ Cf. Record of receipt of documents of May 27, 2010, (case file on the merits, tome VII, folios 1496 to 1498).

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

reasons set out in the Rules of Procedure that, exceptionally, allow evidence to be submitted after the answer to the application. Despite this, since they are pertinent and necessary for determining the facts of this case and the possible consequences, in accordance with Article 47 of the Rules of Procedure, the Court decides to admit said documentation. In regard to the copies of Preliminary Investigation SC/180/2009/II-E of the Military Public Prosecutor's Office, the Court notes that the actions taken by the State prior to the date the answer to the application was forwarded to the Court had already been incorporated into the case file on said opportunity (*supra* para. 5). Regarding the actions related to the preliminary investigation subsequent to February 17, 2010, the Court notes that, in effect, they form part of the purpose of the present case and could not be provided prior. Based on the aforementioned, the Court admits said documents as supervening evidence because they are relevant, in the terms of Article 46(3) of the Rules of Procedure.

45. On the other hand, the State and the representatives provided documents that accompanied their final written arguments. Mexico provided, among other documents, up-to-date copies of the actions taken by the Military Public Prosecutor's Office in the Preliminary Investigation SC/180/2009/II-E of the Military Public Prosecutor's Office, and a copy of Mexican Official Norm NOM-046-SSA2-2005 "Domestic Violence, Sexual Violence, and Violence against Women. Criteria for Prevention and Attention."⁴³ On their behalf, the representatives submitted documents related to costs and expenses.

46. In relation to the documents presented by the State that refer to domestic norms, the representatives argued that the State "has [not] alleged a 'force majeure' or 'serious impediment' that exempted it from not introducing this documentation at the opportune procedural time," to which they requested the Court not to admit it. Likewise, they affirmed that "[t]he referenced norms are general regulations regarding public policies related to equality and nondiscrimination, access to health care, rights of the child and of women," which "were not applicable to the case [because] they are not pertinent to the examination of State conduct." Regarding the Preliminary Investigation SC/180/2009/II-E of the Military Public Prosecutor's Office, they affirmed that "the referenced documentation is evidence of the continuity of the violation of the fair trial [judicial guarantees] and judicial protection of [Mrs.] Rosendo Cantú, demonstrating not only that the military forum is not competent, but also that it is biased, inadequate, and ineffective." As a consequence, they requested the Court to disregard the documentation presented by the State and that it be before the presentation of its brief in answer to the application, and that in relation to the documentation subsequent to said brief, the Court consider it "additional evidence" of the responsibility of the State in this case.

47. With regards to the Preliminary Investigation SC/180/2009/II-E of the Military Public Prosecutor's Office, submitted by the State with its written brief of final arguments, the Court notes that they correspond to the actions carried out as of May 26, 2010, namely, subsequent to the date of the answer to the application, and for such reasons they were not able to be presented prior. For this reason, said documents will be considered evidence of supervening facts in the terms of Articles 46(3) of the Rules of Procedure and admitted where appropriate. On the other hand, in relation to Mexican Official Norm NOM-046-SSA2-2005, the Court reminds that said document was offered among the documents presented by the State during the hearing⁴⁴ and whose admission has been ruled on by the Court (*supra* para. 44). In relation to the other documents provided by the State together with their final written arguments, given their relevance and utility in the clarification of the facts of the present case and in the eventual consequences, pursuant to Article 47 of the Rules of Procedure, the Court decides to admit them. The Court will take into consideration the observations of the parties with

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

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

regard to said documents, together with the body of evidence, in application of the rules of sound judicial discretion.

48. In relation with the documents presented by the representatives in their written brief of final arguments, the State observed that the representatives "are attempting to rectify an aspect they omitted almost nine months ago in their brief of final arguments, which was time-barred and in contravention of the rules of the present contentious proceeding, information related to the cost of processing the matter since 2008." Likewise, the State made observations on the merits regarding said documents (*infra* para. 283).

49. In regard to the documents noted in the prior paragraph, submitted by the representatives regarding costs and expenses, the Court will only consider those documents forwarded with the final written arguments that refer to new costs and expenses incurred due to the proceedings before this Court, namely, those incurred subsequent to the brief of pleadings and motions (*infra* para. 285).

C. Assessment of the statements of the alleged victims and of the testimonial and expert evidence

50. Regarding the statements of the alleged victims and the witnesses, and the expert opinions provided during the public hearing and by means of sworn statements, the Court finds them pertinent only to the extent that they comply with the purpose defined by the President of the Court in the order requiring them (*supra* para. 28, 29, and 30), and in conjunction with the other elements of the body of evidence, taking into account the observations made by the parties.⁴⁵

51. The Court observes that the State was two days late in presenting its observations on the affidavits sent to it on March 13, 2010. Nevertheless, given that the delay was minor and that its acceptance does not create a procedural imbalance that would prejudice the parties or affect legal certainty, the Court admits the State's brief.

52. The State did not contest the testimony of the alleged victim, but it did note that said testimony alone cannot count as conclusive evidence, but rather that it must be considered as a part of all the evidence in the proceeding, given that the victim has a direct interest in the outcome of the litigation. The Court observes, in accordance with its jurisprudence, that the testimony rendered by the alleged victims cannot be assessed standing alone, but rather together with all the evidence of the proceeding,⁴⁶ because they are useful in that they serve to provide more information regarding the alleged violations and their consequences. Taking the foregoing into account, the Court admits the testimony of Mrs. Rosendo Cantú, noting that its probative weight will be considered only insofar as it corresponds to the purpose defined by the President of the Court (*supra* para. 30), taking into account the entire body of evidence, the State's observations, and the rules of sound judicial discretion.

53. In regards to the declarations of the witnesses and experts, the State expressed, in a general manner, that none was admitted with the purpose of proving that military personnel sexually abused Mrs. Rosendo Cantú. It noted that "[t]he testimonials, statements, and expert opinions that indicate that Mrs. [...] Rosendo Cantú was raped by agents of the State should be dismissed because [the] Court did not admit them with said purpose in the *sub judice* proceeding. Moreover, in none of those cases were the

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

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

declarants directly aware of the facts. The acknowledgment is indirect and is only submitted to allege the existence of the facts indicated by Mrs. [...] Rosendo Cantú.”

54. In particular, with regards to the testimony of Mrs. Eugenio Manuel, the State affirmed that “she makes reference to facts that do not form part of the *litis* of the present case and intends to connect two distinct procedures followed by this [...] Court.” Likewise, the State contradicted that which was referenced by the witness “in the sense that there was an unjustified delay on behalf of the State agents of the Public Prosecutor’s Office at the time the claim was filed.”

55. Regarding the testimony by Mrs. Rosendo Morales, the State requested that the Court set aside the content “that refers to the events that they mention have recently occurred in regards to his granddaughter and daughter, when they deal with events related to the implementation of provisional measures ordered by the Inter-American Court.” Likewise, it requested the Tribunal not to consider “the facts that she addresses in her testimony and are not known to her.”

56. Because of the testimony of Mrs. Cantú Garcia, the State also requested that the Court set aside “that which does not have to do directly with the [*litis*] of the case and does not apply to her.

57. The State requested that the Court dismiss outright the testimony of Mrs. Gutierrez Moreno “for contextualizing the form in which the facts alleged by the petitionaries occurred, in contravention with the system of individual petitions” and for not referring to the facts and circumstances attended by the witness.

58. In regards to the testimony of Mr. Ramirez Rodriguez, the State affirmed “it should be dismissed outright because it intends for the Court to analyze, in contravention of the system of individual petitions, the alleged context in which the alleged facts occurred.” In addition, the State affirmed that the witness “was not clear on the facts of the present case and confused the development of the investigation with the case [...] Fernandez Ortega” and as such, it does not satisfy the “requirements for the testimony to have the full probative weight.”

59. The Court notes that the State contested some of the testimonial statements, principally on the basis that the witnesses refer to facts that are outside the purpose of this case, or that there is evidence that contradicts their affirmations, or that they had not been direct witnesses of the facts. These observations refer to the merits of the dispute; therefore, in the corresponding section of the Judgment, the Court will assess these statements by the witnesses insofar as they correspond to the purpose defined by the President of the Court (*supra* para. 28 and 29), taking into account the body of evidence, the State’s observations, and the rules of sound judicial discretion.

60. In regard to the expert opinions, the State requested that the Court dismisses any mention made by Correa González, Ortiz Elizondo, and Arroyo Vargas, during the public hearing and per *affidavit*, regarding the rape of Mrs. Rosendo Cantú, because the opinions are outside of the scope for which they were summoned and are facts that do not involve them directly.

61. Moreover, the State requested the Court to dismiss the expert opinion of Mrs. Perlin “because the expert value and objectivity in which it was rendered may be compromised given that she ‘currently practices law in the state of New York’ and has not once carried out a field study in the state of Guerrero.” Moreover, the State affirmed that eight pages of the expert opinion “are based entirely on the [Diagnostic Report on Access to Justice by Indigenous Peoples of Mexico: Case Study of Oaxaca], attempting to [...] associate the aforesaid [...] in an unjustified manner with the case before us” and that “the lack of objectivity of the expert opinion[] is accentuated even more because she refers at times to the brief of pleadings [and] motions” in this case.

62. In regards to the expert opinion of Mrs. Bonfil Sánchez, the State affirmed that the affirmations lack substance regarding “whether social, bureaucratic, and normative practices that should be revised in regards to whether they constitute discriminatory action’s by commission or omission, against the dignity, identity, integrity, and security of indigenous women of the country,” as well as “various cases [...] before the Inter-American Court [...], and before national tribunal[s].” It requested, as such, that these affirmations be dismissed and it emphasized that it does not correspond to an expert witness to testify regarding the measures of reparation.

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

64. The expert report of Mr. Ortiz Elizondo was objected by the State in regards to the section of reparation and satisfaction measures, given that the Court “is the only instance able to make a pronouncement on reparations and the nature of these measures, not the experts.”

65. In regards to the expert opinion of Mrs. Correa Gonzalez, apart from that previously mentioned, (*supra* para. 60), the State opposed the reference to reparation measures and to the specific citation on those guilty of the crime of rape, “which has not yet been proven.”

66. Regarding the expert opinion of Mr. Stavenhagen, the State requested that whenever the testimony consists solely of the experts personal opinion, the Court assess it in those terms.

67. Lastly, the State requested the Court to abstain from considering the expert testimony of Messers. Carbonell Sánchez and Andreu Guzmán, because the approach developed in the statements have been assessed by the Court in relation to the case of *Radilla Pacheco*.

68. The Court considers it appropriate to indicate that, contrary to the witnesses, who should avoid giving personal opinions, the expert witnesses provide technical or personal opinions related to their specialized knowledge or experience. In addition, expert witnesses may refer both to specific points of the *litis* [litigation] and to any other relevant point of the litigation, provided they circumscribe their comments to the purpose for which they were summoned⁴⁷ and that their conclusions are sufficiently founded. First, the Court notes that the expert opinions of Mr. Carbonell Sánchez, Perlin, Andreu Guzmán, Correa González, Ortiz Elizondo, Bonfil Sánchez, Arroyo Vargas and Arana Cedeño refer to the purpose for which they were ordered (*supra* para. 28, 29, and 30). Furthermore, specifically with regard to the expert opinion of Messers. Andreu Guzmán and Carbonell Sánchez, the Court observes that Mexico’s observations refer to the merits of the case, so that the pertinent aspects will be considered, in the corresponding section of the Judgment. On the other hand, in regard to the expert opinion of Mrs. Perlin, Mexico objected both to her qualifications as an expert and also to the content of her opinion. Regarding the former, from the evidence attached, the Court observes that said expert witness has broad international experience on issues of access to and administration of justice and has headed a project to make a specific diagnosis project in Mexico of the issue that is the purpose of her opinion as an official of the United Nations Office of the High Commissioner for Human Rights in Mexico; a project

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

with which the State's local and federal authorities collaborated.⁴⁸ Finally, the fact that the diagnosis of access to justice for indigenous peoples that she headed referred to a state other than Guerrero, is not a circumstance that, in itself, and in the absence of any other grounds, would disqualify the expert opinion. Based on the foregoing, the Court decides to admit these expert opinions and will assess them together with the rest of the body of evidence, taking into account the State's observations and the rules of sound judicial discretion.

VIII

ARTICLES 5 (RIGHT TO HUMANE TREATMENT)⁴⁹ AND 11 (RIGHT TO PRIVACY)⁵⁰, IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS),⁵¹ OF THE AMERICAN CONVENTION AND 1, 2, AND 6 OF THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE,⁵² AND 7 OF THE CONVENTION OF BELEM DO PARA.⁵³

69. In order to respond to the alleged violations of the rights established in Articles 5 and 11 of the American Convention and the alleged non-compliance of the obligations enshrined in other related Inter-American treaties, the Court will establish: a) the facts of the present case related to the alleged rape; b) the arguments of the parties in this

⁴⁸ Cf. *Curriculum vitae* of expert witness Perlin (case file of annexes to the application, tome I, annex 26, folios 689 to 696).

⁴⁹ Article 5 of the American Convention establishes, in what is pertinent, that:

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

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

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

⁵¹ Article 1(1) establishes that: "[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

⁵² The Inter-American Convention to Prevent and Punish Torture establishes, *inter alia*, that:

Article 1

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

Article 2

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

Article 6.

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

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

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

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

- a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation[, and]
- b. apply due diligence to prevent, investigate and impose penalties for violence against women[.]

respect, and will examine: c) if arising from the evidence at the disposition of the Tribunal, the Court can establish the international responsibility of the State, d) the eventual legal classification of the facts related to the rape, and e) the alleged affliction to the personal integrity that relate to the search for justice.

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

70. The facts of the present case occurred in the context of a significant military presence in the state of Guerrero,⁵⁴ aimed at repressing unlawful activities such as organized crime. It has been reported that fundamental rights were violated during the repression of such activities.⁵⁵ In the state of Guerrero, most of the population belongs to indigenous communities, who conserve their traditions and cultural identity and reside in the poorest and most marginalized municipalities.⁵⁶ In general, the indigenous population is in a situation of vulnerability, and this is reflected in various forums, such as in the administration of justice and health care services. Especially, the members of this population are defenseless because they do not speak Spanish and do not have interpreters, because of the absence of financial resources to hire a lawyer, to travel to health care centers or to the organs of justice, and also because they are often victims of abusive practices or practices that violate due process.⁵⁷ Owing to this situation, members of the indigenous communities do not use the organs of justice or the public agencies engaged in the protection of human rights, because they distrust them or because they fear reprisals,⁵⁸ and in the case of indigenous women, the situation is even worse, because filing complaints concerning certain acts has become a challenge that requires them to overcome many obstacles, such as rejection from their community and other “harmful traditional practices.”⁵⁹

⁵⁴ Cf. *Report 2003*, United Nations Office of the High Commissioner for Human Rights in Mexico, *supra* note 34, folio 293); *Report regarding violence against women in the Municipalities of the Mountain region of Guerrero* [Diagnóstico sobre violencia contra las mujeres en los Municipios de la región de la Montaña de Guerrero], Secretariat for Women's Affairs in the state of Guerrero and others (file of annexes presented by the State during the public hearing, tome VI, annex 13, folio 19709), and sworn statement made before a public notary by the expert witness Stavenhagen on March 29, 2010, (case file on the merits, tome II, folio 1178), and press release No. 026 issued by the Secretariat of National Defense on March 7, 2002 (case file of annexes to the answer to the application, tome I, folio 7617).

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

⁵⁶ Cf. *Model of Reference of Cases of Gender Violence for the state of Guerrero* [Modelo de Referencia de Casos de Violencia de Género para el Estado de Guerrero], Secretariat of Women's Affairs for the state of Guerrero, December 2008 (file of annexes presented by the State at the public hearing, tome V, annex 8, folios 19249 and 19250); *Report*, Secretariat for Women's Affairs of the state of Guerrero and others, *supra* note 54, folio 19696; and sworn statement made before a public notary by expert witness Rodolfo Stavenhagen, *supra* note 54, folio 1178.

⁵⁷ Cf. *Reference Model 2008*. Secretariat of the Women's Affairs by the state of Guerrero, *supra* note 56, folio 19249, and *Development of Networks for the detection, support, and reference of cases of violence against indigenous women of Guerrero* [Desarrollo de Redes de detección, apoyo y referencia de casos de violencia contra las mujeres indígenas de Guerrero], Secretariat for Women's Affairs of the state of Guerrero and National Network of Shelters, December 2008 (file of annexes submitted by the State at the public hearing, tome V, annex 7, folios 19081 to 19090).

⁵⁸ Cf. *Report 2003*, United Nations Office of the High Commissioner for Human Rights in Mexico, *supra* note 34, folios 293 and 294; sworn statement of expert Rodolfo Stavenhagen rendered before a public notary, *supra* note 54, folio 1179, and sworn statement of expert Bonfil Sanchez rendered before a public notary, *supra* note 54, folios 1413 and 1416.

⁵⁹ Cf. *Network Development 2008*, Secretariat for Women's Affairs of the state of Guerrero and National Network of Shelters, *supra* note 57, folio 19087, and sworn statement rendered by expert witness Rodolfo Stavenhagen before a public notary, *supra* note 54, folio 1179 to 1181.

71. Among the forms of violence that affect women in the state of Guerrero, there exists “institutional violence by the Military.”⁶⁰ The presence of the Army performing police work in the state of Guerrero has been a polemic issue because it conflicts with individual and communitarian rights and freedoms, and has placed the population, particularly the women, in a situation of extreme vulnerability.⁶¹ According to the Secretariat for Women’s Affairs in the state of Guerrero in this setting, “[i]ndigenous women continue to suffer the consequences of a patriarchal structure that is blind to gender equity, particularly within institutions such as the Armed Forces or police, whose members are trained to defend the nation, and to combat or attack criminals, but who are not sensitized to the human rights of the community and of women.”⁶² In this context, between 1997 and 2004, complaints were filed in six cases of the rape of indigenous women attributed to members of the Army in the state of Guerrero, which were all heard in the military justice system,⁶³ and there is no evidence that those responsible have been punished in any of these cases.

72. Mrs. Rosendo Cantú is an indigenous woman and a member of the Me´phaa indigenous community,⁶⁴ originally from the Caxitepec community, state of Guerrero.⁶⁵ At the time of the facts, she was 17 years of age,⁶⁶ and she was married to Mr. Fidel Bernardino Sierra⁶⁷ with whom she lived with, approximately one-hour walking distance from Barranca Bejuco,⁶⁸ with their daughter, Yenys Bernardino Rosendo, born November 23, 2001.⁶⁹ The community of Barranca Bejuco is located in an isolated mountainous area, and consequently, access is difficult.⁷⁰

73. Mrs. Rosendo Cantú stated that on February 16, 2002, at around three in the afternoon, she was at a stream near her home where she had gone to wash clothes. When she went to bathe, eight soldiers, accompanied by a civilian they had detained, approached her and surrounded her. Two of them questioned her about “the hooden

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

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

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

⁶³ Cf. *Report*, Secretariat for Women’s Affairs of the state of Guerrero and others, México, *supra* note 54, folios 19716 and 19717, and sworn statement rendered before a public notary by expert witness Stavenhagen, *supra* note 54, folio 1180.

⁶⁴ Cf. Sworn statement rendered by Mrs. Rosendo Cantú in the public hearing on May 27, 2010: brief of complaint filed by Mrs. Rosendo Cantú and Mr. Bernardino Sierra before the National Human Rights Commission (NHRC) on February 27, 2002 (case file of annexes to the answer to the application, tome I, annex 1, folio 7556).

⁶⁵ Cf. Complaint filed by Mrs. Rosendo Cantú before the Public Prosecutor of the Common Jurisdiction of the Judicial District of Allende, Ayutla de los Libres, Guerrero, on March 8, 2002 (case file of annexes to the application, tome V, annex 1, folios 9262 and 9268 to 9270), and birth certificate of Mrs. Rosendo Cantú (case file of annexes to the brief of motions and pleadings, tome I, annex 23, folio 5469).

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

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

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

⁶⁹ Cf. Birth Certificate of Yenys Bernardino Rosendo (case file of annexes to brief of motions and pleadings, tome II, annex 27, folio 5469).

⁷⁰ Cf. Written final arguments of the State (case file on the merits, tome IV, folio 2004).

men" ["los encapuchados"] and they showed her a picture of a person and a list of names of other people while one of them threatened her with a weapon. She indicated that "because of the fear that they do something to her" she responded that she did not know of the people they questioned her about. The soldier, who aimed at her, hit her in the stomach with the weapon, making her fall to the ground and lose consciousness for a moment. She narrated that when she regained consciousness, she sat up and one of the soldiers grabbed her by the hair and insisted about the required information, telling her that if she did not answer they would kill her along with all of the people in Barranca Bejuco. She stated that, afterwards, "using [...] violence they scratched her face," they took off her skirt and her underwear, and they knocked her to the floor, and one of them sexually penetrated her, and once he was done, the other soldier who had questioned her proceeded to sexually penetrate her.⁷¹

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

75. On February 18, 2002, Mrs. Rosendo Cantú, accompanied by her husband, went to a health care clinic in the community of Caxitepec to be seen for the blows she had received, and no evidence exists that she indicated having been raped.⁷⁴ The doctor gave her some painkillers and anti-inflammatory pills for the pain.⁷⁵ On February 26, 2002, they went to Ayutla de los Libres to be attended at the Hospital, to which they had to walk for eight hours.⁷⁶ There, she was attended by the "general consultation service, with the record of trauma to her abdomen," where it was stated that "10 days prior, a trunk of wood had fallen [there], causing the pain," without stating she had been raped.

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

⁷² Cf. Statement of Mr. Bernardino Sierra before the Public Prosecutor of the Common Jurisdiction Specialized in Sexual Offenses and Domestic Violence, on April 22, 2002 (case file of annexes to the application, tome I, annex 10, folio 357bis); statement of Mrs. Fidel Bernardino Sierra rendered before the Chief Agent of the Office of the Public Prosecutor of the Common Jurisdiction of Morelos Judiciary District, Specialized in Sexual Offenses and Domestic Violence, on May 9, 2002 (case file of annexes to the brief of pleadings and motions, tome II, annex 56, folio 5739).

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

⁷⁴ Cf. Clinical history of the family Bernardino Rosendo, II notes of the evolution of Mrs. Rosendo Cantú on February 18, 2002 (case file of annexes to the answer to the application, tome, folio 7756).

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

⁷⁶ Cf. Communication addressed to the Constitutional Governor of the state of Guerrero, *supra* note 71, folio 343 to 345, and sworn statement of Mrs. Rosendo Cantú in the public hearing, *supra* note 64.

In said consultation, "lab studies" were requested,⁷⁷ which consisted of a general urine exam.⁷⁸

76. On February 27, 2002, Mrs. Rosendo Cantú and Mr. Bernardino Sierra filed a complaint "against members of the Mexican Army [...] for violating human rights" before the National Human Rights Commission⁷⁹ (hereinafter "the National Commission" or "NHRC"). On March 7th of the same year, the Director General of the National Commission informed the alleged victim of the admission of the complaint, and consequently, the initiation of the Preliminary Investigations and corresponding proceedings.⁸⁰ On March 11, 2002, Mrs. Rosendo Cantu and her husband requested the intervention of the Constitutional Governor of Guerrero, wherein aside from requesting justice be served, they asked that disciplinary actions be made to the health care services "which they had a right to in the Caxitepec clinic."⁸¹

77. On March 7, 2002, the Mexican League for the Defense of Human Rights [*Liga Mexicana por la Defensa de los Derechos Humanos*] filed a claim before the Commission for the Defense of Human Rights for the state of Guerrero (hereinafter also, "Human Rights Commission of Guerrero" or "CODDEHUM"), in regard to the case of Mrs. Rosendo Cantú, for "alleged violations [...], which consist of torture, wounds, and rape by members of the army."⁸² That same day, the Secretary of National Defense issued a press release stating that "members of the Mexican Army and Armed Forces, engaged in a permanent campaign against drug trafficking in the state of Guerrero, did not at said time or location, carry out an operation in the area of the Barranca [...] Bejuco community."⁸³ On March 8, 2002, the Inspector General of the Human Rights Commission of Guerrero, took the statement of Mrs. Rosendo Cantú and her husband, and in addition, found out that in the records of the Public Prosecutor's Agency in Allende there was no criminal complaint for the rape of Mrs. Rosendo Cantú.⁸⁴ That same day the agent of the Public Prosecutor's Office of Allende received the communication dated March 7, 2002 of the Inspector General to start the preliminary investigation, to which he stated "that [Mrs.] Rosendo Cantú [...] was the victim of acts of torture and rape on

⁷⁷ Cf. Medical note provided by physician of the General Hospital of Ayutla on February 26, 2002, (case file of annexes to the answer to the application, tome I, appendix 1, folio 7624); Evidence provided by a social worker of the General Hospital of Ayutla on February 27, 2002, (case file of annexes to the answer to the application, tome I, appendix 1, folio 7625); note of the Director of the General Hospital of Ayutla, submitted to the Inspector General of the CODDEHUM on March 12, 2002, (case file of annexes to the answer to the application, tome I, appendix 1, folio 7623); sworn statement of the doctor of the area of general medicine, who attended to Mrs. Rosend Cantú on February 26, 2002 at the General Hospital of Ayutla, rendered on March 7, 2002 before the Military Public Prosecutor's Office adjoined to the 35th Military zone (case file of annexes to the brief of pleadings and motions, tome II, annex 42, folio 5692).

⁷⁸ Cf. Results of the general urine exam provided by the laboratory of clinical analysis of the General Hospital of Ayutla on February 27, 2002 (case file of annexes to the answer to the application, tome I, appendix 1, folio 7626).

⁷⁹ Cf. Brief of complaint filed by Mrs. Rosendo Cantú and Mr. Bernardino Sierra before the NHRC, *supra* note 64, folios 7556 to 7561.

⁸⁰ Cf. Communication of acceptance issued by the Director General of the National Human Rights Commission on March 7, 2002 (case file of annexes to the answer to the application, tome I, annex 1, folio 7581).

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

⁸² Cf. Act of receipt of complaint by President of the Mexican League for the Defense of Human Rights of March 7, 2002 (case file of annexes to the answer to the application, tome I, annex 1, folio 7583).

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

⁸⁴ Cf. Procedures carried out by the Inspector General of CODDEHUM on March 8, 2002 (case file of annexes to the application, tome I, annex 1, folios 7587 to 7591).

[...] February 16 of the year in course, in accordance with the complaint presented before the National Human Rights Commission."⁸⁵

78. On March 8, 2002, Mrs. Rosendo Cantú, accompanied by Mr. Lugo Cortés and others, turned to the Allende Public Prosecutor's Office to file a complaint for the crime of rape.⁸⁶ That same day the Public Prosecutor initiated Preliminary Investigation ALLE/SC/02/62/2002 "for the crime of [...] rape."⁸⁷ Initially, "they did not want to relieve the complaint [...] stating that the attorney in charge of said complaints related to sexual violence, [...] was out business hours [...] and that she had been instructed by her superior to not take in the complaint." Given the abovementioned, the Inspector General of the CODDEHUM "had to insist that [...] it was necessary to take in the complaint," a procedure which was finally taken on by "an agent of the Public Prosecutor's Office outside of Me'paa, [that] did not speak their language [without the assistance of an] expert translator,"⁸⁸ to which Mrs. Rosendo Cantú's husband had to assist with the translation of what she could not communicate in Spanish.⁸⁹ The Inspector General, moreover, requested that "she would undergo a medical gynecological exam by a female doctor," as it was the wish of the victim.⁹⁰ The agent of the Public Prosecutor, only counting on a male forensic expert, whom was located outside of the district, requested that the Director of Expert Services of Chilpancingo Guerrero, "to assign [an] expert in gynecological matters be designated, preferably female, as requested by the victim, so as to carry out the physical examination and issue the corresponding report."⁹¹

79. On March 12, 2002, Mrs. Rosendo Cantú went to the Ayutla Hospital accompanied by an agent of the Human Rights Commission of Guerrero, for a medical gynecological examination. The [female] doctor requested several laboratory tests.⁹² On March 15, 2002, the General Office for Expert Services reported to the agent of the Public Prosecutor's Office, as a response to the request made on March 12, 2002, that they did not have personnel specialized in gynecology, rather that they only had "medical experts in legal medicine (general medicine)."⁹³ On March 19, 2002, Mrs. Rosendo Cantú was

⁸⁵ Cf. Order No. 722/2002 issued by the CODDEHUM on March 7, 2002, received by the Clerk of the Public Prosecutor of the Common Jurisdiction on March 8, 2002 (case file of annexes to the answer to the application, tome I, annex 1, folio 5767).

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

⁸⁷ Cf. Complaint filed by Mrs. Rosendo Cantú before the Public Prosecutor of the Common Jurisdiction, *supra* note 65, folio 9262, and information card issued by the Public Prosecutor of the Judicial District of Allende, addressed to the President of the CODDEHUM on March 11, 2002, (case file of annexes to the answer to the application, tome 1, annex 1, folio 7658).

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

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

⁹⁰ Cf. Certificate of procedures issued by the CODDEHUM on March 8, 2002 (case file of annexes to the answer to the application, tome I, annex 1, folios 7604 and 7607), and sworn statement rendered by Mr. Lugo Cortés during the public hearing, *supra* note 88.

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

⁹² Cf. Medical note of March 12, 2002, sent by a female doctor of the Emergency Services of the General Hospital of Ayutla (case file of annexes to the brief of pleadings and motions, tome I, annex 3, folio 5118). The doctor requested the following laboratory tests: "EGO," pregnancy test, HIV test and cultures of cervical secretion. Nevertheless, there is only proof of the urine studies, "VDRL," and a pregnancy test.

⁹³ Cf. Order No. PGJE/DGSP/ND/XXVIII-2/207/2002 issued by the General Office of Investigatory Services on March 15, 2002 (case file of annexes to the application, tome I, annex 7, folio 348).

administered a gynecological evaluation at the installations of the Public Prosecutor in Tlapa of Comonfort, by a medical examiner connected with said common public prosecutor's agency.⁹⁴

B. Arguments of the parties

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

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

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

⁹⁴ Cf. Order No. 130/2002 issued by medical examiner assigned to the Judicial District of Morelos on 19 March 2002 (case file of annexes to the answer to the applicaiton, tome V, annex 1, folio 9297).

83. The representatives agreed with the Commission in considering that the alleged rape suffered by Mrs. Rosendo Cantú "should be deemed an act of torture," given that the three elements were met: i) it was an intentional act; ii) that caused severe suffering, and iii) committed with an end or purpose. Given the aforementioned, the representatives requested the Court to declare the State responsible for the violation of Article 5(2) of the American Convention and Articles 1, 6, and 8 of the Inter-American Convention Against Torture. They also noted that the irregularities of the investigation and the impunity in which the case remains, demonstrate the non-compliance of the State regarding its obligation to guarantee the right to a serious and effective investigation against acts of torture, as such violating Articles 5(2) of the American Convention, 7(b) of the Convention of Belem do Para, and 1, 6, and 8 of the Convention Against Torture.

84. The representatives added that "the rape of [the alleged victim] constituted one of the most aggressive intrusions to a woman's privacy." The State agents who raped her invaded her body in the most arbitrary way, affecting her most intimate sphere, thereby "denying her right [...] to choose with whom and how to establish personal relationships, because they obliged her to have sexual relations [...] violently and against her will." In addition, it had the effect of humiliating and expressing domination over her, her husband, and all of the indigenous men and/or members of organized groups," thereby affecting her honor and reputation. They noted that "it is apparent that the harm to the reputation of [the alleged victim] also has discriminatory roots and is based on stereotypes of gender, because it is aimed at diminishing her value as a woman due to the aggression to which she was subject." They added that the rape affected her self-image and her reputation, particularly after she filed the complaint and as a direct consequence of the impunity in which the case remains, thereby violating the rights to honor and dignity. Based on the aforementioned, they asked the Court to declare that the State was responsible for the violation of Article 11(1) of the Convention and Article 7 of the Convention of Belem do Pará to the detriment of Mrs. Rosendo Cantu.

85. Mexico regretted the consequences of a rape for both the victims and their close family members. However, it stated that neither "the crime nor those responsible have been proven, hence the State cannot acknowledge and accept that the rights to personal integrity and to honor and dignity [...] have been violated to the detriment of Mrs. Rosendo Cantú." The determination of the existence of rape is not of the Court's competence, given that it is a responsibility that falls on the domestic investigatory organs. In the present case, the investigating authorities did not establish that she had been raped despite the efforts made. Likewise, based on what the Commission and the petitioners have stated, the State deemed that "it cannot be implied or inferred that there were sufficient elements to corroborate the existence of a situation of real and imminent risk to the life or safety of Mrs. Rosendo Cantú at the time the facts she denounced occurred," or that "the motive for the alleged conduct was to send a message to [her] and her community."

86. Particularly regarding to the evidence of the reported rape, the State pointed out that: i) the statement of the alleged victim does not, in itself, constitute conclusive evidence, rather it should be assessed jointly with other evidentiary measures which are not provided in this case; ii) the statement of Mrs. Estela Bernardino Sierra lacks evidentiary weight because she was not present at the time of the facts; iii) the expert evidence that denoted signs of violence in any way, prove the relationship between military soldiers and the alleged victim; iv) the presence of soldiers in the area during the period in which the facts took place corresponds to duties related to the prevention and fight against drug trafficking, and v) the reports from multilateral organisms referenced by the Commission that indicate complaints of sexual abuse by indigenous women in the state of Guerrero, and given that they were not identified, cannot serve as persuasive evidence before the Court. There is no conclusive evidence of rape and the burden of proof falls on the party making the allegation. The reversal of the burden of proof only takes place based on two assumptions that in this case do not exist, namely:

i) that there exists a systematic pattern of violations that is convincingly proven, and ii) that it is proven that the victim is under the detention of the State. Lastly, it highlighted that which was indicated in the report of the National Human Rights Commission, that concludes that “determinative elements did not exist to legally confirm the alleged rape by members of the military” for the facts alleged.

87. Notwithstanding the aforementioned, in regard to the codification of rape as a crime of torture, the State expressed that due to the lack of determination of the perpetrators of the facts, it cannot be “affirmed that State agents were involved.” It added that “an attempt is being made to confuse the Court by indicating that a rape, in and of itself, constitutes torture.” To be able to classify an act as torture, a detailed analysis must be made of the circumstances in which the conduct occurred, the purpose, the degree of severity, and the consequences. Since “in the present case, the constituent subject and objective elements of torture have not been provided,” the State asked that the Court declares the inexistence of violations of Articles 5 of the American Convention and 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, in relation with Articles 1(1) and 2 of the American Convention.

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

C. Evidence of the rape of Mrs. Rosendo Cantú

i) Testimony of Mrs. Rosendo Cantú

89. First, the Court finds it evident that rape is a particular type of violence, which is generally characterized by taking place in the absence of persons other than the victim and the aggressor or aggressors. In view of the nature of this type of violence, one cannot await graphic or documentary evidence, thus the victim’s testimony becomes the fundamental proof of that which occurred.

90. The alleged victim testified about the facts on several occasions, at both the domestic level and in the proceedings before the Inter-American System. Among others, on February 26, 2002, Mrs. Rosendo Cantú and Mr. Bernardino Sierra filed a complaint before the National Human Rights Commission (*supra* para. 76); On March 6, 2002, Mrs. Rosendo Cantu rendered a statement before the Military Public Prosecutor’s Office, within the Preliminary Investigation 35ZM/05/2002 (*infra* para. 147); on March 8, 2002, she gave a statement before the Human Rights Commission of Guerrero and before the Common Public Prosecutor’s Office of the Judicial District of Allende (*supra* para. 77); on March 11, 2002, Mrs. Rosendo Cantu and her husband presented a request for intervention to the Constitutional Governor of Guerrero (*supra* para. 76), and on August 14, 2009, she carried out an expansion of her ministerial statement within the Preliminary Investigation FEIDSVI/002/2009.⁹⁵ Lastly, on May 27, 2010, she rendered a statement before this Court,⁹⁶ wherein she stated:

⁹⁵ Cf. Appearance and ratification of the brief of Mrs. Rosendo Cantú before the Public Prosecutor of the Common Jurisdiction, adjoined to the Special Prosecutor Special Prosecutor’s Office of Sexual Offenses and

On February 16, 2002, at a stream five minutes walking distance away from my home [...] I was [...] washing, and was almost done [...] when I heard a footsteps and turned to see, and it was eight soldiers, and one of them, angrily, asked me where “the hooded men” [“los encapuchados”] were, and I answered with fear that I didn’t know, that I knew no one. [...] The two soldiers came towards me and the other six surrounded me, and I remained in the middle with the two soldiers. One of [them] pointed his weapon at my chest, and he threatened to shoot me if I did not tell him anything; one of the soldiers took out a photograph of a person, and he asked me again if I did not [...] know the person in the picture, and I answered no; that same soldier took out a list of names of eleven people, and he asked me if I knew those names. I answered no, [...] he said how is it possible that you don’t know them, aren’t you from Barranca Bejuco, I answered no that I was from Caxitepec, and that I had barely just been married to a man from Barranca Bejuco, and that same soldier that was pointing at me, hit me in the stomach with his weapon, I fell on the rock where I was washing and I fainted and when I regained consciousness, I sat up [...] and another soldier who was showing me the list of people, angrily [pulled] my hair [...] how are you not from Barranca, [...] and I answered that I wasn’t [...], if you don’t say anything we are going to kill everyone in Bejuco, and well, I didn’t want to say anything because [...] I was very afraid that they would kill me and that soldier grabbed me with force, scratched my face, and pressured me to say where the hooded men [los encapuchados] where, and that is when one of the soldiers abused me, he got on top of me [...] against my will [...] he abused me and the six soldiers that were there teased and laughed at me like their peers did, and there is where the two soldiers abused me against my will, and I could not escape because the six soldiers had me surrounded, [...] and I asked for help, and well, no one could hear me because it is a place where there is no people, [...] very solitary and when they finished abusing me, I escaped semi-undressed, arrived at my house, and I told my sister-in-law [...] what had happened to me [...] and I was crying, punched in the stomach, and my face was bleeding from the scratch they gave me [...] and then my husband arrived, [...] [whom] during that time had been at work [...] and I told him I was sexually abused by the soldiers.

91. Of the various statements made by Mrs. Rosendo Cantu, despite some imprecisions⁹⁷, it is noted that there is consistency among the narrations regarding the rape. The Court considers that it is not unusual that the retelling of acts of this nature contain some aspects that could be considered, *a priori*, lack of precision in the narration. In this regard, the Court takes into consideration that the facts narrated by Mrs. Rosendo Cantú refer to a traumatic moment which she suffered, and the impact, when recalling it, can lead to determined imprecision; said statements were rendered at different moments between 2002 and 2010. The Court also highlights that, in addition, in the present case at the time of the facts Mrs. Rosendo Cantú was a child.⁹⁸

92. It is not the first time that an international human rights court should note possible differences in the statements of individuals relating the sexual abuse of which they have been victims.⁹⁹ Nevertheless, from a reading of the mentioned statements, the Court considers that the differences in the narration are not substantive and from them, consistently, one can derive the following facts: i) on February 16, 2002, she was alone at a stream near her home where she went to wash clothes, in an isolated area; ii) at approximately three in the afternoon, eight armed members of the Army approached her and encircled her; iii) two of them, while threatening her with weapons, asked her for information regarding people whose names were included in a list and regarding another

Domestic Violence on August 14, 2009 (case file of annexes to the answer to the application, tome V, folios 9735 to 9737).

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

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

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

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

whose photo they showed her; iv) she told them she did not know those people; v) the soldiers threatened to kill her and everyone in her community; vi) they hit her in the abdomen with a weapon, to which she fell to the ground and lost consciousness and subsequently they grabbed her by the hair and scratched her face, and vii) in that forum of forceful coercion, alone and surrounded by eight armed soldiers, she was raped consecutively by two soldiers who had requested information from her, while the other soldiers watched the rape take place.

93. On the other hand, from the circumstances pertaining to the situation of Mrs. Rosendo Cantu, the Court has not found elements that would impair the credibility of her statements. The alleged victim is an indigenous woman, and at the time she was a minor, who was living in an isolated mountainous area, who had to walk several hours to receive medical care for the physical harm suffered, and to file a complaint about a rape before various authorities that spoke a language she did not command, that would, in all probability, have negative repercussions in her social and cultural medium, such as the possible rejection by her community. In this sense, she pressed charges and was persistent with her claim, knowing that in the area in which she lives there is a continuing presence of soldiers, some of whom had been criminally charged with committing a serious crime.

94. Likewise, the Court noted that the facts were made known to the National Human Rights Commission by the victim. Similarly, apart from the various complaints to the corresponding authorities, the alleged victim herself and her husband informed the facts to the Constitutional Governor of Guerrero, asking for his intervention (*supra* para. 76). These complaints correspond to the attempts made by the alleged victim to report to the various authorities what she had suffered, to which, in accordance with the criteria of the Court, strengthens the credibility of Mrs. Rosendo Cantú's statement.

95. Notwithstanding the aforementioned, the Court notes that the first time Mrs. Rosendo Cantú appeared at a health care clinic after the event occurred, on February 18, 2002, (*supra* para. 75), she told the doctor that she was hit with military weapons, and when asked if she had been raped, she said no.¹⁰⁰ On the other hand, on February 26 of the same year, she went to the Hospital of Ayutla where she also did not state that she had been raped, rather she told the doctor that "10 days [ago], a piece of wood had fallen on her abdomen, causing her extreme pain [there]."¹⁰¹ The Court considers that the fact that she did not indicate that she had been raped in the two initial medical consultations should be contextualized to the circumstances of the case and of the victim. First, sexual assault is a type of crime that the victim does not tend to report. This occurs specifically in indigenous communities, given the cultural as well as social particularities that the victim must face (*supra* para. 70), in some cases, as in the present, because of fear.¹⁰² Likewise, Mrs. Rosendo Cantú, at the time the facts occurred, was a girl child who was forced to live an experience in which, in addition to being physically and sexually assaulted, she received death threats against her community by the soldiers who attacked her. Based on this, it is the criteria of the Court, that not having told the first doctor that she was raped and not having indicated that she was

¹⁰⁰ Cf. Clinical history of the Bernardino Rosendo family, *supra* note 74, folio 7756; testimonial statement of the doctor that attended to Mrs. Rosendo Cantú on February 18, 2010, before the Investigation Officer of the Special Military Public Prosecutor, on May 31, 2010 (case file of annexes to the final written arguments of the State, tome I, folio 21916); testimonial statement of the doctor that attended to Mrs. Rosendo Cantú carried out before the CODDEHUM on March 22, 2002 (case file of annexes to the application, tome I, folios 7731 and 7732).

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

¹⁰² Cf. Of the psychiatric medical report of Mrs. Rosendo Cantú, carried out on March 11, 2002, within the case file open with the NHRC, it states that "Mrs. [Rosendo Cantú] manifested that she is very afraid that people like the [psychiatrist] look for her to speak with her, because she thinks they are going to take her to jail, even though she cannot explain why," (case file of annexes to the answer to the application, tome I, folio 7694).

raped by soldiers at the second doctor's visit, does not discredit her statements regarding the existence of said rape. Lastly, said omission may be due to the lack of sufficient safety or trust to relate what had happened.

96. On the other hand, the Court notes that there exist other convincing elements in the body of evidence in the present case.

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

97. First, the Court finds that it has been proven that there was a military presence in the area at the time of the incident. The State recognized in the public hearing and in its final written arguments "the presence of soldiers in the area" during the period in which the facts took place, as a "response to tasks to prevent and fight drug trafficking that was occurring [...] in the area"¹⁰³ (*supra* para. 86).

98. On the other hand, the case file of the present case contains cartography reports, presented in the Preliminary Investigation SC/180/2009-II-E, from which it is clear that the "Rios" Operations Base, belonging to the 41st Infantry Battalion of the Mexican Army, was located near Mexcaltepec, approximately 9 kilometers from Barranca Bejuco.¹⁰⁴ Moreover, the Court finds that it has been proven that, according to the statements made by infantry soldiers taken on March 9 and 11, 2002, within the Preliminary Investigation 35ZM/05/2002, that on February 16, 2002, a group of soldiers left to undertake an operation to destroy the plantations of poppy [drugs] in the "stream in the valley that leads to the Caxitepec community,"¹⁰⁵ returning to their base approximately between four and five in the afternoon,¹⁰⁶ in other words, one hour after the incident.

iii) Other persuasive elements

99. On the other hand, the Court also finds that the credibility of Mrs. Rosendo Cantú's story appears to be supported by a medical psychiatric report carried out on March 11, 2002,¹⁰⁷ which was incorporated into the conclusion of the case file 2002/597-

¹⁰³ The State indicated "the military presence in the area is a fact that has been thoroughly explained in the matter *sub judice*. This refers to the tasks of prevention and the fight against drug trafficking carried out in the area and is convincingly proven in the military reports that exist in the case file," (case file on the merits, tome IV, folio 1969).

¹⁰⁴ *Cf.* Cartography expert report presented on May 14, 2010, in the preliminary investigation SC/180/2009/II-E, tome X of the military case file presented by the State in the public hearing (case file of documents presented during the public hearing, tome I, folio 18114), and cartography expert report presented on June 14, 2010, during the preliminary investigation SC/180/2009/II-E, tome XIV of the military case file presented by the State with the final written arguments (case file of annexes to the final written arguments of the State, tome II, folios 21989 to 22010).

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

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

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

4 of the National Human Rights Commission of December 11, 2002.¹⁰⁸ Said psychiatric report states, among other information, that Mrs. Rosendo Cantu suffered “acute post-traumatic stress” and an “episode of greater mild depression” as a “consequence of traumatic life experiences,” and indicated that she was “exposed to a traumatic experience even though there is a lack of physical evidence that said experience constitutes rape.”¹⁰⁹ Moreover, she concluded that “she was exposed to a traumatic event where her physical integrity was threatened,” which she “[r]elives in a continuous manner [given that] she relives the sensation that they are raping her.”¹¹⁰

100. In addition, the Court has the testimony of Mrs. Estela Bernardino Sierra and Mr. Fidel Bernardino Sierra, who though they were not direct witnesses of the facts, they were present for the moments soon after the facts took place. Of the statement of the first witness, it is revealed that when she first saw the alleged victim after the event, she was crying, half naked, and with blood on her face, and that she indicated that she had been raped and that those responsible were soldiers, information to which Mr. Fidel Bernardino Sierra also makes reference in a similar manner.¹¹¹

101. Apart from the abovementioned, the Court has information of specific medical examinations performed on Mrs. Rosendo Cantú following the rape. On March 6, 2002, the Military Public Prosecutor’s Office carried out a “statement of injuries,” in which it determined that Mrs. Rosendo Cantu, “had a scratch, approximately two centimeters from the right eye, on the cheekbone, approximately one centimeter in size, being the only injury visible at plain view.”¹¹² The statement of injuries carried out on the alleged victim by the Human Rights Commission of the state of Guerrero on March 8, 2002, determined that she had “at the height of the bottom of her eyelid, a bruised area, irregularly shaped, of a purplish color, [approximately] one centimeter in size; in regards to the blow to which the complainant states she received in her belly, there are no physical wounds, yet nevertheless she states that she feels pain when she walks.”¹¹³ As such, the medical gynecological certificate carried out on Mrs. Rosendo Cantú on March 19, 2002, that is, more than one month after the facts occurred, indicated that, among other data, she “had wounds corresponding to physical violence[,] non-recent scars of 5mm in diameter under her right lower eyelid[, at] the tender touch she has medium

¹⁰⁸ Cf. Order of Conclusions of the National Human Rights Commission, case file No. 2002/597-4, of December 11, 2002, addressed to Mrs. Rosendo Cantú (case file of annexes to the answer to the application, tome I, annex 1, folios 7792 and 7793).

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

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

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

¹¹² Certificate of injuries issued by the Agent of the Military Public Prosecutor’s Office adjoined to the 35th Military Zone, on March 6, 2002 (case file of annexes to the answer to the application, tome II, annex 1, folio 7830).

¹¹³ Certificate of injury for Mrs. Rosendo Cantú, procedure signed by the Inspector General of the CODDEHUM on March 8, 2002, case file No. CODDEHUM-VG/065/2002-II (case file of annexes to the answer to the application, tome I, annex 1, folio 7598).

intensity pain in the hypogastric region."¹¹⁴ This data coincides with the narration of the aggression Mrs. Rosendo Cantu states she suffered.

102. In the present case, the Court notes that, apart from the statements of Mrs. Rosendo Cantú, the Court has circumstantial evidence regarding the alleged facts. The Court has established that use of circumstantial evidence, the signs and the presumptions to found a Judgment, are legitimate, "when from it, a consistent conclusion regarding the facts can be inferred."¹¹⁵ In this regard, the Court has indicated that the burden of proof that founds the argument is the responsibility of the plaintiff, in principle; nevertheless, the Court has highlighted that, contrary to domestic criminal law regarding violations of human rights, the State's defense cannot rest on the plaintiff's inability to present evidence, when it is the State who controls the means to clarify the facts within its territory.¹¹⁶

103. It appears in the case file of the present case, that once the facts were made known to the authorities, the victim did not receive any psychological attention in order to obtain better information to clarify the facts, nor were various examinations carried out, among others, evidentiary tests, used to determine the veracity of what had occurred (*infra* para. 179). In this regard, it is important to note that which was acknowledged by the State as of the complaint filed on March 8, 2002, in the sense that from then there was a delay in the provision of specialized medical care to Mrs. Rosendo Cantú, as one month passed and she was not seen until March 19, 2002, when she was examined by a medical examiner adjoined with the agency of the Common Public Prosecutor's Office. The State did not present the Court with advances in the investigation initiated by the authorities that would suggest otherwise in light of the evidence that indicates the existence of rape by the soldiers. The Court states that, to the contrary, the defense of the State is supported by a lack of awareness of whether the rape occurred and by whom it was perpetrated, which is attributable to its own authorities. From the moment the State had knowledge of the existence of a rape committed against an individual who is a member of a particularly vulnerable group given her status as indigenous and as a girl child, it had the obligation to carry out a serious and effective investigation so as to confirm the veracity of the facts and to determine those responsible for the facts.

104. Given that more than eight years have passed since the facts occurred, the State has not provided any evidence in the proceedings of the present case that would contradict that the rape of Mrs. Rosendo Cantu took place, the Court considers it reasonable to grant weight to the evidence and the presumptions that arise from the case file (*supra* para. 102) regarding the occurrence of a rape by the soldiers against Mrs. Rosendo Cantú. To conclude the contrary would mean that the Court permits the State to seek protection in their negligence and ineffective criminal investigation so as to diminish their responsibility for the violation of Article 5 of the Convention.¹¹⁷

105. As indicated by the Court since its first contentious case, for an international tribunal the criteria for the assessment of evidence is less formal than in the domestic

¹¹⁴ Cf. Medical gynecological certificate of March 19, 2002, sent by the medical examiner of the Office of the Attorney General of Justice of the State, by means of Order No. 130/80/02/62/2002 (case file of annexes to the application, tome I, annex 17, folio 490).

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

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

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

legal system.¹¹⁸ Its procedure, being one of an international tribunal, presents particularities and characteristics which pertain only to it, to which all the procedural elements of domestic courts do not automatically apply to it. International protection of human rights should not be confused with criminal justice.¹¹⁹ For the effects and purposes of the Judgment before this Court, the elements of proof that arise from the body of evidence are sufficient to derive the aforementioned conclusions. The standards or requirements of proof are not those of a criminal court, given that it is not the Court's role to determine the individual responsibilities nor to assess, under that criteria, the same evidence.

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

D. Juridical classification of the facts related to the rape

107. Since the Court has found it proven that Mrs. Rosendo Cantú was the victim of acts of gender-based violence committed by agents of the State, it must decide how this should be classified from a juridical point of view.

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

109. The Court, following international jurisprudence and taking into account the provisions of said Convention, has considered previously that sexual violence is committed by means of acts of a sexual nature, committed on a person under circumstances against their will, and that in addition to involving physical invasion of the human body, they may include acts which do not involve penetration or even any physical contact.¹²¹ In particular, rape constitutes a paradigmatic form of violence against women, and its consequences go far beyond affecting the victim.

110. The Court will examine whether the facts of the present case are subsumed under the crime of torture, as affirmed by the Inter-American Commission and the representatives. As such, the Court recalls that, in *Bueno Alves v. Argentina*,¹²² pursuant to the definition established in the Inter-American Convention to Prevent and Punish Torture, it understood that it is confronted with an act of torture when the mistreatment fulfills the following requirements: i) intentional; ii) causes severe physical or mental suffering, and iii) is committed with any objective or purpose.

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

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

¹²⁰ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women. Preamble.

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

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

i) Intentionality

111. Regarding the existence of an intentional act, from the evidence in the case file it has been verified that the mistreatment was inflicted deliberately against the victim. In effect, the Court considers it proven that one of the attackers hit Mrs. Rosendo Cantú in the abdomen with his weapon, causing the victim to fall to the ground and hit her head on a rock, then she was thrown by the hair and her face was scratched, and with force, while rifles were pointed at her, she was penetrated sexually by two soldiers while the other six observed the rape.

ii) Severe physical or mental suffering

112. In order to analyze the severity of the victim's suffering, the Court must take into account the specific circumstances of each case. As such, characteristics of the action, the duration, the method used, or the way in which the suffering was inflicted, the potential physical and mental effects, and also the status of the person who endured this suffering, including age, gender, and physical condition, among other personal details, must be considered.¹²³

113. Regarding the physical suffering, the Court recalls that there are two medical certificates issued twelve and twenty-three days after the incident, which indicate evidence of physical injuries (*supra* para. 101). Furthermore, the Court also has testimonial evidence indicating that subsequent to the incident Mrs. Rosendo Cantú was hurt, with physical aches, to which she even summoned the assistance of a two doctors (*supra* para. 100).¹²⁴

114. Regardless of the above, the Court has established that an act of torture can be perpetrated both by acts of physical violence and by acts that produce acute mental or moral suffering for the victim.¹²⁵ In addition, this Tribunal has recognized that rape is an extremely traumatic experience that can have severe consequences and cause significant physical and psychological damage that leaves the victim "physically and emotionally humiliated," a situation that is difficult to overcome with the passage of time, contrary to other traumatic experiences.¹²⁶ This reveals that the severe suffering of the victim is inherent in rape, even when there is no evidence of physical injuries or disease. Indeed, the after-effects of rape will not always be physical injuries or disease. Women victims of rape also experience complex consequences of a psychological and social nature.

115. In the present case, Mrs. Rosendo Cantú was subjected to an act of physical violence and control by soldiers who intentionally sexually penetrated her. Her vulnerability and the coercion that the agents of the State exercised over her was enhanced by the participation of the other six soldiers, who were also armed, which exacerbated the context of sexual violence perpetrated against the victim. The Court finds it evident that the suffering endured by Mrs. Rosendo Cantú, by being obliged to undergo sexual acts against her will while other six people observed, was extremely intense, even more so considering she was a child. This psychological and moral suffering was aggravated in view of the circumstances in which the rape occurred,

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

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

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

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

because she could not ignore the likelihood that the violence suffered could be further increased by the State agents who witnessed the rape, owing to the possibility that they would also rape her.

116. In that sense, the expert witness Correa Gonzalez mentioned that Mrs. Rosendo Cantu felt powerless, an inability to react, and humiliation given the aggression and rape by the soldiers, feelings that were aggravated by the presence of the other soldiers during the rape. Likewise, she expressed that, at the time the event took place, she felt desperation and anguish. She indicated “seeing how she was left —beaten, without clothing, raped— [...] was such a traumatic experience that she was unable to accept what had occurred.” In addition, in the days after the rape, she felt shame and physical and emotional powerlessness. Also, the expert referred to the psychological and psychosomatic effects as a consequence of the rape.¹²⁷

iii) Purpose

117. The Court considers that, in general terms, as in the case of other acts of torture, rape has other objectives, including intimidating, degrading, humiliating, punishing, or controlling the person who is raped.¹²⁸ The rape of Mrs. Rosendo Cantú occurred in the context of a situation in which the soldiers were questioning the victim and did not obtain a response to the information they required (*supra* para. 73). Without denying the possibility that there were also other objectives, the Court considers it proven that, in the present case, the rape had the specific purpose of punishing the victim because she failed to provide the required information.

118. On the other hand, the Court finds that rape may constitute torture even when it is based in a single fact alone and takes place outside State facilities.¹²⁹ This is so because the objective and subjective elements that classify an act as torture do not refer either to the accumulation of facts or to the place where the act is committed, but to the intention, the severity of the suffering, and the purpose of the act, requisites that, in the present case, have been fulfilled. Based on the aforementioned, the Court concludes that the rape in the present case entailed a violation of the personal integrity of Mrs. Rosendo Cantú, constituting an act of torture pursuant to Article 5(2) of the American Convention and Article 2 of the Inter-American Convention to Prevent and Punish Torture.

119. Regarding the alleged violation of Article 11 of the American Convention based on the same facts, the Court has specified that, even though this provision is entitled “Right to Privacy” [entitled Protection of Honor and Dignity in Spanish], its contents include, among others, the protection of private life.¹³⁰ Moreover, the concept of private life is a wide-ranging term, which cannot be defined exhaustively,¹³¹ but includes, among other protected forums, sexual life,¹³² and the right to establish and develop relationships with other human beings.¹³³ The Court finds that the rape of Mrs. Rosendo Cantú violated

¹²⁷ Cf. Statement rendered by expert witness Correa González before a public notary (case file on the merits, tome III, folios 1249, 1250, 1252, and 1254).

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

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

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

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

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

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

essential aspects and values of her private life, represented an intrusion in her sexual life, and annulled her right to decide freely with whom to have intimate relations, causing her to lose complete control over this most personal and intimate decisions, and over her basic bodily functions.¹³⁴

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

121. Based on the foregoing, the Court concludes that the State is responsible for violating the rights to personal integrity and to private life and personal dignity enshrined in Articles 5(2) and 11(1) and 11(2) of the American Convention, in relation to Article 1(1) thereof, and Articles 1, 2, and 6 of the Inter-American Convention to Prevent and Punish Torture, and for the non-compliance of the obligation enshrined in Article 7(a) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, to the detriment of Mrs. Rosendo Cantú.

122. On the other hand, the Court finds that it is not necessary to rule on other allegations based on the same facts and decides to carry out an analysis of the eventual violations of the procedural obligations derived from the provisions mentioned in Chapter IX of this Judgment, which correspond to Articles 8 and 25 of the American Convention.

E. Personal Integrity of Mrs. Rosendo Cantú and her next of kin

i) Personal Integrity of Mrs. Rosendo Cantú

123. The Commission stated that Mrs. Rosendo Cantú reported to the authorities despite the cultural, economic and social, as well as language barriers, that she was the victim of a rape. Since she filed her complaint eight years ago, she has faced an administrative system of justice that does not work for her, an indigenous and adolescent woman. The lack of clarification of the facts and the subsequent impunity increase the levels of discrimination, subordination, and racism against the alleged victim. The State's response offered to Mrs. Rosendo Cantú has caused emotional detriment and constitutes such humiliation and degradation in violation of her right to personal integrity and private life. Moreover, the impunity in the cases of gender-based violence has a particular level of violence, danger, fear, and restriction of their activities. In addition, [the Commission] stated that the “life of Mrs. Rosendo [Cantú] broke down as a result of the rape and the subsequent denial of justice, the treatment that [...] she received[, and] the lack of measures of support and investigation that resulted in her revictimization.” Based on the abovementioned, it asked the Court to declare the State responsible for violation of Article 5(1) and 11, to the detriment of Mrs. Rosendo Cantú, in relation with Article 1(1) of that instrument.

124. On their behalf, the representatives argued the existence of a violation of personal integrity to the detriment of Mrs. Rosendo Cantú for the lack of an adequate investigation and because of the impunity that remains in the case, given that she had to go to all the instances available: communal, municipal, state, and federal, in the pursuit of justice, without those responsible being either prosecuted or punished, causing her to feel helpless, frustrated, anguished, and desperate, in light of the

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

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

indifference of the State, and aggravating the wound suffered from the rape. They argued that for Mrs. Rosendo Cantú to have filed charges implied that she crossed all the barriers that an indigenous women must suffer hoping only to seek justice, and once this was behind her she found a discriminatory and revictimizing system of justice, being that she was "subjected to intimidating and aggressive procedures that caused additional harm to her psychological integrity." The presence of soldiers in the area after the filing of the complaint generated intense fear and caused the community to stop providing the support it had initially provided. Moreover, the impunity that exists in relation to the facts created a feeling of despair for her, and it has allowed the symptoms that stemmed from the consequences of the rape to resurface in regards to the upcoming court appearances. Similarly, the investigation of the events carried out by those responsible caused her to feel indignation, fear, and a lack of confidence. Lastly, Mrs. Rosendo Cantú was a victim of discrimination and violence given that she was prevented from accessing justice in conditions of equality. As a consequence, they requested the Court to declare that the State is responsible for the violation to the personal integrity of the victim for the suffering caused, as a consequence of the absolute impunity that remains of the aggression to which she was subject, considering her indigenous worldview and the effects that the events have caused in her community.

125. Likewise, they indicated that the State also violated the right to personal integrity of Mrs. Rosendo Cantú because of the lack of appropriate medical care in equity conditions and the health related afflictions she suffered due to the rape in the hands of military members. The State was obligated to adopt positive measures to guarantee the personal integrity of the victim, taking into account that she had been subject to sexual violence that affected her health. The State blocked her access to primary health services immediately after the rape because she was, on two separate occasions, denied immediate medical care subsequent to the facts. In addition, they were not able to rely on doctors specialized in gynecology and after the rape, Mrs. Rosendo Cantú showed severe physical pains and was faced with the risk of a possible pregnancy or infection of a sexually transmitted disease. This lack of attention evoked an additional impact on her mental integrity, in that she felt devalued and anguished. She also did not receive adequate nor quality treatment when she had access to medical services, and her condition as an indigenous girl child, victim of a rape, was not taken into account, to which she had to go to a private clinic in the city of Chilpancingo to obtain attention more specialized in gynecology, thus denying her access to adequate, accessible, and free/gratuitous health care. In addition, they argued that Mrs. Rosendo Cantú also did not receive psychological attention to assist her in attempts to counterbalance the effects of the rape and the harm her health suffered,¹³⁶ given that "the medical care that [should be] provided to a women who is the victim of sexual violence and torture [...] should consist [...] of comprehensive attention, able to detect and mitigate the consequences of the aggression." Based on all of the above, they requested that the Court declare the State responsible for the violation of the rights contained in Article 5, in relation with Articles 1(1), 5, 19, and 24 of the American Convention, 1, 6, and 8, of the Convention Against Torture, and 7 of the Convention of Belém do Pará.

126. The State in the public hearing and in its final written arguments, recognized that the ministerial investigation had taken eight years, without the authorities having been able to arrive at the truth of the facts which occurred and to determine those responsible to date; but, this acknowledgment must be assessed in light of the complexity of the case and the conduct of the parties. Likewise, it pointed out "that the delay in the provision of specialized and medical care to Mrs. Rosendo Cantu, given her condition as a women and minor of age, as well as the delay in the integration of the investigation of the facts of the case, constitute omissions attributable to the State of Mexico which imply violations to Articles 8(1) and 25 of the Convention [...], in connection with Articles 5(1) and 19 of the same instrument, to the detriment of Mrs. Rosendo Cantu" and the

¹³⁶ Cf. Histopathological report given by the Laboratory Cuauhtémoc of Chilpancingo on September 21, 2002 (case file of annexes to the brief of pleadings and motions, tome II, annex 52, folio 5729).

lack of substantive results after eight years since the investigations began has had an impact on her psychological integrity. Notwithstanding the aforementioned, the State affirmed that there is no violation to the right to personal integrity in relation with the right to health due to the alleged lack of primary medical care regarding the initial occasions she sought medical care. To the contrary, Mrs. Rosendo Cantú received primary medical care in an immediate manner when she went before the health system in the state of Guerrero, where she reported abdominal pain. In this manner, the “medical health personnel was at the service of the alleged victim at all times, to assess and diagnose her, and where applicable, provide the appropriate medication pursuant to the health norms in force in the state.”

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

128. Likewise, the Court notes that from the statements provided by Mrs. Rosendo Cantú, there are evident impacts to her personal integrity related to the treatment she received when she filed the complaint before the authorities¹³⁷ and the obstacles she faced in the search for justice, and the feelings of fear given the military presence.¹³⁸

129. Notwithstanding the acknowledgment of responsibility of the State, the representatives argued that Mrs. Rosendo Cantú’s personal integrity was impacted “because she was prevented from accessing primary health care services [...] immediately after the rape,” the first time on February 18, 2002, “under the argument that there was no technical equipment and that the doctor was afraid of the soldiers” and on February 25, 2002, “when she went to the Ayutla General Hospital and did not have a doctor’s appointment.” On its behalf, the State contested this argument stating that Mrs. Rosendo Cantú “received medical care [...] in an immediate manner when she presented herself before the health care system in the state of Guerrero.”

130. Of the evidence in the case file, it states that Mrs. Rosendo Cantú went to the clinic of Caxitepec on February 18, 2002, and to the Ayutla Hospital on February 26, of the same year. Of the corresponding medical report, it is evident that on February 18,

¹³⁷ Mrs. Rosendo Cantú stated: “when i went to file a complaint at the offices of the Public Prosecutor in Ayutla [...] there they did not want to let me enter because they said that there was no person who could take my statement and there was also an attorney there who told us that the workday was over, [...] and that is when the Commission of human rights of the state had to get involved to file a complaint. And when I entered they knew that I did not speak Spanish well, and they didnt give me a translator, and when I finally spoke and gave my statement, they told me, ‘how did you know they were soldiers who raped you? Because they don’t do that, they are good.’ And, they also told me, ‘how did they say that to you if you said you don’t speak Spanish, and how do you know it was soldiers who raped you.’ [...] Then we left, I thought I was only going to file a complaint and they were going to catch the soldiers who raped me, but that did not happen,” statement of Rosendo Cantú rendered at the public hearing, *supra* note 64.

¹³⁸ Mrs. Rosendo Cantú stated: “despite that [...] they told me that I was going to speak to the military justice system, how was I going to go there if they never believed me [...] and I was so afraid because of the fear, and, how was I going to go to the military justice system if they were the ones that abused me?” statement of Mrs. Rosendo Cantú rendered at the public hearing, *supra* note 96. She also stated: “I have a justified fear that the [...] investigation will be [...] unlawfully handed over to the Military Public Prosecutor, with serious detriment to my individual guarantees, petition for relief [amparo] filed by Mrs. Rosendo Cantú before First District Judge of the Twenty-first Circuit in the state of Guerrero on June 6, 2002 (case file of annexes to the application, annex 20, tome I, folio 506). She also indicated: “I did not want to go out because of the memory the soldiers left me with was very big [...] I was very scared [...] [I] did not want to leave my community, I didn’t leave because I wanted to leave, rather I left because of the fear that there were many soldiers,” statement of Mrs. Rosendo Cantú rendered during the public hearing, *supra* note 64.

2002, Mrs. Rosendo Cantú told the doctor at the Caxitepec clinic that she “received blows with military weapons” and in response to the doctor’s question, on two occasions, of whether she had been raped, she responded no, to which the doctor treated the abdominal pain, prescribing painkillers and anti-inflammatory medication.¹³⁹ The Court does not have sufficient proof to conclude that Mrs. Rosendo Cantú was not cared for by the doctor because of his fear of the soldiers,¹⁴⁰ as reported by the representatives, stating that the doctor at the health center in Caxitepec did offer the primary medical assistance requested.¹⁴¹ Likewise, in the medical consultation at the Ayutla Hospital on February 26, 2002, Mrs. Rosendo Cantú told the doctor that “10 days ago a piece of wood [had fallen] on her abdomen, causing pain,” without it being apparent to the Court that she mentioned the raped, and she was only treated for the pain she mentioned; the doctor requested a urine examination and gave the patient pain killers.¹⁴² Lastly, the Court does not rely on sufficient evidentiary elements to determine whether on February 25, 2002, Mrs. Rosendo Cantú went to the Ayutla Hospital and was denied attention for not having an appointment.¹⁴³

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

132. On the other hand, the Court deems that it is not necessary to rule on the arguments based on the same facts and decides to carry out the related assessment of a violation to the rights of the child derived from Article 19 of the Convention in Chapter X of the present Judgment (*infra* paras. 197 to 202).

ii) Personal integrity of the next of kin of Mrs. Rosendo Cantú

133. The Commission noted that because of the facts, Mrs. Rosendo Cantú was abandoned by her husband and she had to move to Chilpancingo along with her

¹³⁹ Cf. Clinical history of the Bernardino Rosendo family, *supra* note 74, folio 7756, and statement of the doctor adjoined to the Center for Rural Health for Dispersed Populations with its headquarter in Caxitepec, on March 22, 2002, before the Inspector General of the CODDEHUM (case file of annexes to the answer to the application, tome I, annex 1, folios 7731 and 7732).

¹⁴⁰ Brief of complaint filed by Mrs. Rosendo Cantú and Mr. Bernardino Sierra before the NHRC, *supra* note 64, folios 7555 to 7561; statement of Mrs. Rosendo Cantú in the case file of the complaint CODDEHUM-VG/065/2002-II (case file of annexes to the brief of pleadings and motions, tome I, annex 3, folios 5044 to 5230), and statement of Mrs. Rosendo Cantú during the public hearing, *supra* note 96. On its behalf, of the evidence in the case file there is evidence that the doctor who saw her on that occasion, indicated before the CODDEHUM that “he never said he would not see her due to fear of the soldiers who had beaten her [but rather] that the attention given to her was normal just like with any other person seen in [the] community,” *supra* note 139, folio 7732.

¹⁴¹ Cf. Order of Conclusions of the National Human Rights Commission, case file 2002/597-4, issued on December 11, 2002, *supra* 108, folios 7792, 7794 and 7796).

¹⁴² The NHRC in its Order of Conclusions established that “when [Mrs. Rosendo Cantú] went to said health clinic, she did not mention that she had experienced any sexual aggression, but rather that she felt pain because a tree branch had fallen on her abdomen; and, at said moment, no studies or gynecological revision was carried out for the alleged sexual abuse, that which [Mrs. Rosendo Cantú] accepted given that she did not tell the doctors for fear of not being seen,” Order of Conclusions of the National Human Rights Commission, case file 2002/597-4, issued on December 11, 2002, *supra* note 108.

¹⁴³ The representatives provided a letter of Mrs. Rosendo and her husband addressed to the Constitutional Governor as proof, as well as the statement of Mr. Ezequiel Sierra Morales before the Military Public Prosecutor on March 6, 2002 (case file on the merits, tome I, folio 216). In none of these documents was it stated that she had not been attended on February 25, 2002, for not having an appointment at the Hospital of Ayutla. Cf. Communication addressed to the Constitutional Governor of Guerrero, *supra* note 71, folios 343 to 345, and statement of Mr. Bernardino Sierra, *supra* note 72, folios 5688 a 5690.

daughter, as a consequence of the rejection she suffered by her community. This forced move implied that "her daughter has not been able to grow and live in a communitarian context and [that she have] to attend a school [...] where Spanish, not Tlapaneco, is spoken." The Commission also stated that "Mrs. Rosendo Cantu's daughter's "personal integrity was affected as a consequence of the facts related with the complaint, as well as of the actions and omission of the authorities in the investigation of the torture complaint," and that she has "not been able to grow and live in a communitarian context or with the peace that the victim yearns for herself and for [her daughter]." As such, the Commission requested that the Court declares that Mexico is responsible for the violation of Article 5(1) of the American Convention in relation with Article 1(1) of the same, to the detriment of Yenys Prisciliano Rosendo.

134. The representatives indicated that as a consequence of the rape suffered by Mrs. Rosendo Cantú, her daughter has been a victim of severe emotional harm that she has not been able to overcome. They maintained that she lived in circumstances where rape was used to send a message of domination and power entrenched in gender stereotypes. As a result of the facts, "she was raised in a home entrenched in gender violence, without having the opportunity to develop in a healthy and complete manner [...] she [suffered] the wounds of her mother's rape, because [Mrs. Rosendo Cantu's] anguish and pain prevented her from adequately breast feeding and providing the appropriate attention to her[. In addition,] she experienced the aggression of her father towards her mother, which generated great feelings of insecurity." They added that "she developed in within her mother's frustration and desperation to seek help for the aggression she received," and when her mother did not find it, she was obliged to move to the city of Chilpancingo, which "initiated the deep uproot from their community, their nuclear base, and the loss of their culture" causing feelings of confusion and abandonment. Similarly, she has suffered from her mother's absence due to the impunity of the case which caused Mrs. Rosendo Cantú to dedicate part of her time to the pursuit of justice, which "has not allowed [her daughter] to have a full life or a proper development in her childhood years."

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

136. The State expressed regret for the consequences that a rape may cause to close relatives; nonetheless, among other arguments, it said the crime nor those responsible had not yet been proven, and therefore it cannot recognize or accept that the rights to personal integrity and honor and dignity of the next of kin of Mrs. Rosendo Cantú have been violated (*supra* paras. 85 and 88). As such, Mexico requested the Court to declare that a violation of the rights to personal integrity, honor, and dignity, to the detriment of the indicated next of kin, is not attributable to the State.

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137. The Court has stated on other occasions that the next of kin of the victims of human rights violations may, in turn, be victims. The Tribunal has held as violated the right to psychological and moral integrity of the next of kin of victims because of the additional pain they have suffered as a result of the particular circumstances of the violations perpetrated against their loved ones and because of the subsequent actions or omissions of State officials regarding the facts.¹⁴⁴

138. The Court considers, in the case of Yenys Bernardino Rosendo, who was a few months old at the time the events occurred, that one of the damages suffered was the exile she had to face with her mother as a consequence of the events, the distance from her community and her indigenous culture, and the dismemberment of her family. The expert Correa Gonzalez, indicated that "the child has suffered in [eight] years, at least one drastic change from the country to the city, and three other changes in the city, which translates into changes in schools, neighborhoods, friends, and everyday living which affects the formation of her identity."¹⁴⁵ These moves meant that her child was raised far from her maternal family, with whom she was very close with, so much so that she states that "she doesn't want to be in the city, but rather with her grandparents in Caxitepec."¹⁴⁶ Moreover, the psychologist, González Marín said that the girl child, Yenys Bernardino Rosendo, "has grown amidst a violent scenario, which has resulted in her feelings of insecurity and vulnerability." On the other hand, changes of residence "have caused confusion [and] she constantly questions her mother as to why they have been apart from the community." Moreover, the moves implied that as a consequence, her education outside of her community would be carried out exclusively in Spanish.¹⁴⁷ Lastly, the circumstances in which her infancy is developing, according to the expert Correa, could in the future form emotional wounds.¹⁴⁸

139. Based on the aforementioned considerations, the Court concludes that the rape of Mrs. Rosendo Cantú, the consequences of said rape, as well as impunity in the present case, provoked emotional harm to Yenys Bernardino Rosendo, in contravention of the rights recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of said treaty.

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140. Regarding the alleged violation of the right to personal integrity of Mrs. Rosendo Cantú's other family members, the Court indicates that according to its jurisprudence, the alleged victims should be identified in the application and in the Commission's report pursuant to Article 50 of the American Convention. Moreover, in conformity with Article 33(1) of the Rules of Procedure, it is a task of the Commission and not of the Court to identify, in detail and at the appropriate procedural moment, whom the alleged victims are in the case before the Court.¹⁴⁹ Taking into account the abovementioned, in accordance with that reiterated in its jurisprudence, the Court considers as victims those

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

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

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

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

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

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

individuals who were identified in the application brief of the Commission. In the present case, in regards to Mrs. Rosendo Cantu's next of kin, the Commission identified only Yenys Bernardino Rosendo as an alleged victim.¹⁵⁰ As such, the Court will not refer to the alleged violations of the parents and siblings of Mrs. Rosendo Cantú.

IX

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

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

A. Facts relating to the criminal investigation

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

142. On March 8, 2002, as a result of the complaint filed by Mrs. Rosendo Cantu, the Common Public Prosecutor of Allende opened the Preliminary Investigation ALLE/SC/02/62/2002 for the crime of rape, and the crimes of consequence thereof (*supra* para. 78).¹⁵⁴ On March 18, 2002, the Common Public Prosecutor of Allende attempted to decline its jurisdiction in favor of the Common Public Prosecutor of Morelos.¹⁵⁵ On March 28, 2002, the preliminary investigation was returned by the Office

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

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

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

¹⁵² Article 25 of the American Convention establishes that:

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

¹⁵³ Article 2 of the American Convention establishes that:

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

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

¹⁵⁵ *Cf.* Order No. 279 of the Public Prosecutor of the Common Jurisdiction of the Judicial District of Allende of March 18, 2002 (case file of annexes to the answer to the application, tome V, folio 9261).

of the Attorney General of the state of Guerrero,¹⁵⁶ so the investigations could continue. On April 5, 2002, an ocular visit to the scene of the crime was carried out,¹⁵⁷ and subsequently, the Common Public Prosecutor of Allende sent the preliminary investigation to the Attorney General of Guerrero,¹⁵⁸ for considering that it lacked jurisdiction on territorial grounds to continue with the investigation.

143. On April 15, 2002, the Agent of the Public Prosecutor's Office specialized in Sexual Offenses and Domestic Violence of Morelos (hereinafter, "Public Prosecutor of Morelos") received the Preliminary Investigation ALLE/SC/02/62/2002 from the Office of the Attorney General of Guerrero and assigned it as Preliminary Investigation MOR/AEDS/025/2002.¹⁵⁹ The Public Prosecutor's Office of Morelos continued the investigation, carrying out some procedures,¹⁶⁰ until May 16, 2002, when it declared that it lacked subject-matter jurisdiction to continue the preliminary investigation and forwarded it to the military forum.¹⁶¹

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

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

¹⁵⁶ Cf. Order PGJE/DGAP/2247/2002 of the Office of the Attorney General for Justice of the state of Guerrero of March 28, 2002 (case file of annexes to the answer to the application, tome V, folio 9278).

¹⁵⁷ Cf. Certificate of site inspection issued by the Public Prosecutor of the Common Jurisdiction of the Judicial District of Allende on April 5, 2002 (case file of annexes to the answer to the application, tome V, folios 9283 to 9285).

¹⁵⁸ Cf. Agreement issued by the Public Prosecutor of the Common Jurisdiction of the Judicial District of Allende on April 5, 2002 (case file of annexes to the answer to the application, tome V, folio 9286).

¹⁵⁹ Cf. Agreement to file [open and settle] of the Office of the Public Prosecutor Specialized in Sexual Offenses and Domestic Violence of Morelos, of April 15, 2002 (case file of annexes of answer to the application, tome V, folios 9254 and 9255).

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

¹⁶¹ Cf. Agreement to decline jurisdiction and Order No. 244 to forward case file of the Public Prosecutor Specialized in Sexual Offenses and Domestic Violence, both of May 16, 2002 (case file of annexes to the answer to the application, tome V, folios 9334, 9345, and 9346).

¹⁶² Cf. Agreement to file [open and settle] of the Military Public Prosecutors adjoined to the 35th Military Zone of March 5, 2002 (case file of annexes to the brief of pleadings and motions, tome II, folios 5909 and 5910), and News Article "*To the NHRC, complaints for rape and beating of a young tlapaneca woman*" ["A la CNDH, quejas por violación and golpes a una joven tlapaneca"], *Diario el Sur*, of March 1, 2002 (case file of annexes to the brief of pleadings and motions, tome II, folio 5912).

¹⁶³ Cf. Radiogram 7018 of the Commander of the 35th Military Zone of March 3, 2002 (case file of annexes to the brief of pleadings and motions, tome II, annex 112, folio 5919).

¹⁶⁴ Cf. Agreement issued by the Military Public Prosecutors of May 21, 2002 (case file of annexes to the brief of pleadings and motions, tome II, annex 105, folios 5876 to 5879).

145. On June 7, 2002, Mrs. Rosendo Cantu filed a petition for relief [amparo] against the rejection of jurisdiction of the civil forum in favor of the military forum,¹⁶⁵ which was stopped by the First District Judge of the state of Guerrero on August 30, 2002.¹⁶⁶ Said Order was contested by Mrs. Rosendo Cantú in an appeal [petition for review] on September 17, 2002,¹⁶⁷ and confirmed on November 12, 2002 by a judgment of the First Collegiate Tribunal of the Twentieth Circuit of the state of Guerrero.¹⁶⁸ On November 28, of the same year, Mrs. Rosendo Cantú presented a brief wherein she requested the Military Public Prosecutor to “abstain from following” the case.¹⁶⁹ Said request was rejected on January 20, 2003,¹⁷⁰ in an order by the Military Attorney General's Office, which was contested by Mrs. Rosendo Cantú in a second petition for relief [amparo], presented on February 11, 2003.¹⁷¹ The second proceeding for relief [amparo] was also denied on April 29, 2003.¹⁷²

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

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

¹⁶⁶ Cf. Order of the First District Judge of the state of Guerrero, Petition for Relief [Amparo] No. 603/2002-III, of August 30, 2002 (case file of annexes to the answer to the application, tome VIII, folios 11258 to 11290).

¹⁶⁷ Cf. Appeal for review filed by Mrs. Rosendo Cantú against the Order of Petition for Relief [Amparo] No. 603/2002-III, of September 17, 2002 (case file of annexes to the answer to the application, tome XIII, folios 12853 to 12875).

¹⁶⁸ Cf. Judgment of the First Collegiate Tribunal of the Twentieth Circuit, Petition for Relief [Amparo] in Criminal Review 184/2002, of November 12, 2002 (case file of annexes to the answer to the application, tome XIII, folios 12886 to 12948).

¹⁶⁹ Cf. Brief of objection of jurisdiction of Mrs. Rosendo Cantú of November 28, 2002 (case file of annexes to the answer to the application, tome XXII, folios 16762 to 16778).

¹⁷⁰ Cf. Order No. AP-I-3577 issued by the Military Public Prosecutor of January 20, 2003 (case file of annexes of the application, tome I, folios 550 to 587).

¹⁷¹ Cf. Petition for relief [Amparo] filed Mrs. Rosendo Cantú on February 11, 2003 (case file of annexes to the answer to the application, tome XI, folios 11945 to 12007).

¹⁷² Cf. Judgment of the Fifth Judge of District “B” of Criminal Matters of the Federal District, of April 29, 2003 (case file of annexes to the answer to the application, tome XII, folios 12414 a 12438).

¹⁷³ Cf. Radiogram No. AP-S-16391 of the Attorney General of Military Justice of June 11, 2002 (case file of annexes to the answer to the application, tome VIII, folio 10866) and Order No. 0631 of the Military Public Prosecutors of June 12, 2002 (case file of annexes to the answer to the application, tome VIII, folio 10867).

¹⁷⁴ Cf. Agreement to file [open and settle] of the Investigative Agent of the Military Public Prosecutors of June 17, 2002 (case file of annexes to the answer to the application, tome VIII, folio 10868).

¹⁷⁵ Cf. Agreement to file [open and settle] Fifth Investigative Agent of the Military Public Prosecutors of September 1, 2003 (case file of annexes to the answer to the application, tome X, folio 11850 and 11851).

¹⁷⁶ Cf. Agreement to file [open and settle] of the Fourteenth Investigative Agent of the Military Public Prosecutors of November 25, 2003 (case file of annexes to the answer to the application, tome X, folio 10852 a 10854).

147. In the preliminary investigations mentioned above, the statement of Mrs. Rosendo Cantú was received and a "statement of injuries" was issued. In addition, the Military Public Prosecutor's Office carried out an on-site visit to the crime scene,¹⁷⁷ carried out a lineup procedure in the home of Mrs. Rosendo Cantú with 28 members of the Rios Operations Base,¹⁷⁸ carried out a photo identification review of members of the Hernandez Operations Base,¹⁷⁹ and obtained the ministerial statement of various persons, among them, military personnel.¹⁸⁰ Finally, on February 26, 2004, the Fourteenth Agency of the Military Public Prosecutor's Office gave for the consideration of the Military Attorney General's Office the record of the preliminary investigation "because of the failure to prove the commission of an illegal act on behalf of military personnel."¹⁸¹ The Military Attorney General determined the record of the Preliminary Investigation SC/169/2002/I –V-XIV on March 12, 2004.¹⁸²

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

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

¹⁷⁷ Cf. Record of the Agent of the Military Public Prosecutors of March 6, 2002 (case file of annexes to the answer to the application, tome II, folios 7825 to 7831), and Agreement of the Agent of the Military Public Prosecutors of March 7, 2002 (case file of annexes to the brief of pleadings and motions, tome II, annex 118, folios 5934 to 5936).

¹⁷⁸ Cf. Record of the Agent of the Military Public Prosecutors adjoined to the 35th Military Zone of March 15, 2002 (case file of annexes to the answer to the application, tome II, folios 8201 to 8206).

¹⁷⁹ Cf. Record of the Agent of the Military Public Prosecutors adjoined to the 35th Military Zone of March 16, 2002 (case file of annexes to the answer to the application, tome II, folios 8210 to 8211).

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

¹⁸¹ Cf. Agreement of consideration of the record of the Fourteenth Investigative Agent of the Military Public Prosecutors adjoined to the Office of Preliminary Investigations of the Attorney General of Military Justice of February 26, 2004 (case file of annexes received during the public hearing, tome II, folios 17631 to 17644).

¹⁸² Cf. Brief of observations on the merits of the State in the processing of the case before the Inter-American Commission of June 6, 2007 (case file of annexes to the application, appendix 3, tome I, folio 4390).

¹⁸³ Cf. Order No. PGJE/DGCAP/6030/2007 of General Office of Investigatory Services of the Attorney General for Justice of the state of Guerrero of October 16, 2007 (case file of annexes to the answer to the application, tome XV, folio 13785).

¹⁸⁴ Cf. Agreement of receipt and restart of the Agent of the Public Prosecutor of the Common Jurisdiction adjoined to the General Office of Investigatory Services of January 11, 2008 (case file of annexes to the answer to the application, tome XV, folio 13789).

149. On May 16, 2008, in regards to the collaboration agreement of April 25, 2008, for the completion of the pending procedures in this case,¹⁸⁵ the Attorney General of Guerrero sent a request to the Attorney General for collaboration with the procedures to expand the ministerial declaration of Mrs. Rosendo Cantú and the sketch.¹⁸⁶ On August 27, 2008, the Attorney General began complying with the request¹⁸⁷ by way of the Office of the Special Prosecutor for Offenses of Violence against Women and Trafficking of the Federal Public Prosecutor's Office (hereinafter "Special Prosecutor's Office").

150. The Special Federal Prosecutor's Office summoned Mrs. Rosendo Cantú to appear on September 10, 2008, in order to satisfy the procedures accorded on September 2, of that same year.¹⁸⁸ In view of the intervention of the Special Prosecutor's Office, on September 10, 2008, Mrs. Rosendo Cantú presented a brief addressed to the agent of said Prosecutor's Office requesting that "the jurisdiction for investigating the unlawful act of which [she] had been a victim be determined before appearing in court for any procedure," since the Preliminary Investigation was being conducted by the Office of the Attorney General of Guerrero while the Special Prosecutor's Office was adjoined to the Office of the Attorney General of the Republic.¹⁸⁹ Furthermore, on that same day, the representative of Mrs. Rosendo Cantú communicated with the Director of Preliminary Investigations of the Special Prosecutor's Office and stated that "[Mrs.] Rosendo Cantú would appear before [that] ministerial authority [...] on September 15, 2008."¹⁹⁰

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

¹⁸⁵ Cf. Order No. DDHH-CIDH-2323/08 of the Subsecretary for Multilateral Matters and Human Rights of the Secretariat of Foreign Affairs on May 13, 2008 (case file of annexes to the answer to the application, tome X, folio 11925).

¹⁸⁶ Cf. Order No. PGJE/DGCAP/3965/2008 of the General Office of Control of Investigatory Services of the Office of the Attorney General for Justice of the state of Guerrero of May 16, 2008 (case file of annexes to the answer to the application, tome V, folio 9393).

¹⁸⁷ Cf. Agreement of the Agent of the Public Prosecutor's Office of the Federation of the Special Prosecutor's Office for the Commission of Violent Crimes Against Women and Human Trafficking of August 27, 2008 (case file of annexes to the answer to the application, tome V, folios 9384 to 9388).

¹⁸⁸ Cf. Agreement of the Agent of the Public Prosecutor's Office of the Federation of the Special Prosecutor's Office for the Commission of Violent Crimes Against Women and Human Trafficking of September 2, 2008 (case file of annexes to the answer to the application, tome V, folios 9401 a 9404).

¹⁸⁹ Cf. Brief of Mrs. Rosendo Cantú addressed to the Agent of the Public Prosecutor's Office of the Federation of the Special Prosecutor's Office for the Commission of Violent Crimes Against Women and Human Trafficking of September 10, 2008 (case file of annexes to the answer to the application, tome V, folios 9442 a 9444).

¹⁹⁰ Cf. Certificate of the Agent of the Public Prosecutor's Office of the Federation of the Special Prosecutor's Office for the Commission of Violent Crimes Against Women and Human Trafficking of September 10, 2008 (case file of annexes to the answer to the application, tome V, folio 9433).

¹⁹¹ Cf. Ministerial declaration of Mrs. Rosendo Cantú before the Agent of the Public Prosecutor's Office of the Federation of the Special Prosecutor's Office for the Commission of Violent Crimes Against Women and Human Trafficking, of September 15, 2008 (case file of annexes to the answer to the application, tome V, folios 9453 a 9456).

¹⁹² Cf. Agreement of rejection of competence of the Agent of the Public Prosecutor of the Common Jurisdiction, adjoined to the General Office of Control of Investigatory Services of December 2, 2008 (case file of annexes to the answer to the application, tome X, folios 11934 and 11938).

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

152. On January 9, 2009, the agent of the Common Public Prosecutor's Office, adjoined to the Special Prosecutor for Sexual Offenses of Guerrero, ordered the opening of Preliminary Investigation FEIDSVI/002/2009.¹⁹³ On April 3, 2009,¹⁹⁴ notification was given of the February 5, 2009 decision of the Office of the Attorney General of the Republic¹⁹⁵ responding to Rosendo Cantú's brief (*supra* para. 150), reiterating that this federal authority had intervened "exclusively in an accessory role for the execution of procedures."¹⁹⁶

153. On March 19, 2009, the Special Prosecutor for Sexual Offenses summoned Mrs. Rosendo Cantú to be heard by this organ.¹⁹⁷ On April 21, 2009, the victim was summoned yet again, and then on April 29th, she sent a written brief requesting an agent of the Common Public Prosecutor's Office to justify her absence to the court summons that same day, and requesting that her brief of September 10, 2008, be answered¹⁹⁸ (*supra* para. 150). On May 5, 2009, Mrs. Rosendo Cantú was summoned a third time by way of an official letter where she was notified again of the agreement of the Federal Special Prosecutor of February 5, 2009¹⁹⁹ (*supra* para. 152). Mrs. Rosendo Cantú reiterated her petition on May 7, 2009.²⁰⁰ On June 1, 2009, the agent of the Public Prosecutor of the Special Prosecutor for Sexual Offenses reiterated that which was stated in the brief of February 5, 2009, (*supra* para. 152) and requested that Mrs. Rosendo Cantú appear in court on June 4, 2009 to carry out the relevant procedures.²⁰¹ That day, a representative of Mrs. Rosendo Cantú appeared in court and stated that Mrs. Rosendo Cantú was unable to appear given the weather and because of several acts of intimidation which forced her to abandon Chilpancingo. Moreover, she requested that the

¹⁹³ Cf. Agreement to restart, file [open and settle], and register of the Agent of the Public Prosecutor of the Common Jurisdiction, adjoined to the Special Prosecutor's Office of Investigation of Sexual Offenses and Domestic Violence of January 9, 2009 (case file of annexes to the answer to the application, tome V, folios 9349 and 9350).

¹⁹⁴ Cf. Certification of the Agent of the Public Prosecutor of the Common Jurisdiction, adjoined to the Special Prosecutor's Office of Investigation of Sexual Offenses and Domestic Violence of April 3, 2009 (case file of annexes to the answer to the application, tome V, folios 9490 and 9491).

¹⁹⁵ Cf. Agreement of the Agent of the Public Prosecutor's Office of the Federation of the Special Prosecutor's Office for the Commission of Violent Crimes Against Women and Human Trafficking, of February 5, 2009 (case file of annexes to the answer to the application, tome V, folios 9481 to 9488).

¹⁹⁶ Cf. Agreement of the Agent of the Public Prosecutor's Office of the Federation, *supra* note 195, folios 9473 to 9488.

¹⁹⁷ Cf. Orders No. 062/2009 and 063/2009 of the Agent of the Public Prosecutor of the Common Jurisdiction, adjoined to the Special Prosecutor's Office of Investigation of Sexual Offenses and Domestic Violence March 19, 2009 (case file of annexes to the answer to the application, tome V, folios 9378 and 9379).

¹⁹⁸ Cf. Order No. 102/2009 of the Agent of the Public Prosecutor of the Common Jurisdiction, adjoined to the Special Prosecutor's Office of Investigation of Sexual Offenses and Domestic Violence of April 21, 2009 (case file of annexes to the answer to the application, tome V, folio 9497), and brief of Mrs. Rosendo Cantú addressed to the Agent of the Public Prosecutor of the Common Jurisdiction, adjoined to the Special Prosecutor's Office of Investigation of Sexual Offenses and Domestic Violence of April 29, 2009 (case file of annexes to the answer to the application, tome V, folios 9522 to 9525).

¹⁹⁹ Cf. Order No. 011/2009 of the Agent of the Public Prosecutor of the Federation, adjoined to Special Prosecutor's Office for the Commission of Violent Crimes Against Women and Human Trafficking, of May 5, 2009 (case file of annexes to the answer to the application, tome V, folio 9530).

²⁰⁰ Cf. Brief of Mrs. Rosendo Cantú of May 7, 2009, addressed to the Agent of the Public Prosecutor of the Common Jurisdiction, adjoined to Special Prosecutor's Office for the Investigation of Sexual Offenses and Domestic Violence (case file of annexes to the answer to the application, tome V, folios 9559 to 9561).

²⁰¹ Cf. Order No. 143/2009 of the Agent of the Public Prosecutor of the Common Jurisdiction, adjoined to the Special Prosecutor's Office for the Investigation of Sexual Offenses and Domestic Violence of June 1, 2009 (case file of annexes to the answer to the application, tome V, folios 9565 to 9567).

"notifications be made with due notice so as to establish contact with [Mrs. Rosendo Cantú]," and she be able to appear for the proceedings when summoned, and that as her representative, "so as not to delay the investigations" would be willing to appear before the Attorney General [of Guerrero]."²⁰² On August 5, 2009, the agent of the Federal Public Prosecutor's Office of the Special Prosecutor's Office summoned Mrs. Rosendo Cantú to take part in several procedures on August 14, 2009.²⁰³ On August 14, 2009, she went to said office, expanded her ministerial statement, provided the physical data of her alleged attackers so that an artist's sketch could be prepared, and identified two possible attackers in an album of photographs.²⁰⁴

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

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

155. On November 18, 2009, the Second Investigatory Agency of the Military Attorney General's Office acknowledged receipt of the files corresponding to Preliminary Investigation FEIDSVI/002/2009 and assigned it as Preliminary Investigation SC/180/2009/II.²⁰⁶ On February 18, 2010, the Section for Preliminary Investigations of the Military Attorney General's Office ordered the Preliminary Investigation of the Military Public Prosecutor's Office, Specialized in Naval Matters Table I, connected with the Section for Preliminary Investigations of said Attorney General's Office be forwarded,²⁰⁷ which, on that same day, assigned the brief as Preliminary Investigation SC/180/2009/II-E.²⁰⁸ Within this phase of preliminary investigations in the military forum, the evidentiary procedures such as those regarding statements and expert opinions were carried out.²⁰⁹

²⁰² Cf. Brief of the representative of Mrs. Rosendo Cantú addressed to the Agent of the Public Prosecutor of the Common Jurisdiction, adjoined to the Special Prosecutor's Office of Investigation of Sexual Offenses and Domestic Violence, of 7 junio of 2009 of 2009 (case file of annexes to the answer to the application, tome V, folios 9593 to 9595).

²⁰³ Cf. Order No. 145/2009 of the Agent of the Public Prosecutor of the Common Jurisdiction, adjoined to the Special Prosecutor's Office of Investigation of Sexual Offenses and Domestic Violence of August 5, 2009 (case file of annexes to the answer to the application, tome V, folio 9694).

²⁰⁴ Cf. Record of the Agent of the Public Prosecutor of the Common Jurisdiction, adjoined to the Special Prosecutor's Office of Investigation of Sexual Offenses and Domestic Violence within the Preliminary Investigation FEIDSVI/002/2009 of August 14, 2009 (case file of annexes to the answer to the application, tome V, folios 9735 to 9737).

²⁰⁵ Cf. Resolution and Order No. 344/2009 of Special Prosecutor's Office of Investigation of Sexual Offenses and Domestic Violence of October 29, 2009 (case file of annexes to the answer to the application, tome V, folios 9788 to 9822).

²⁰⁶ Cf. Agreement to file [open and settle] issued by the Agent of the Military Public Prosecutors adjoined to the Office of Preliminary Investigations of the Attorney General of Military Justice of November 18, 2009 (case file of annexes to the answer to the application, tome XV, folios 13668 and 13669).

²⁰⁷ Cf. Agreement of the Investigative Agent of the Military Public Prosecutors adjoined to the Office of Preliminary Investigations of the Attorney General of Military Justice of February 18, 2010 (case file of annexes to the answer to the application, tome XXIII, folio 17488 and 17489).

²⁰⁸ Cf. Agreement to file [open and settle] issued by the Agent of the Special Military Public Prosecutors dependant of Office of Preliminary Investigations of the Attorney General of Military Justice of February 18, 2010 (case file of annexes received during the public hearing, tome II, folio 17677).

²⁰⁹ Among others, expert opinions were carried out on the following matters: i) physiognomic identification, cf. Order without number of the General Office of Coordination of Expert Services of April 5, 2010 (case file of annexes presented during the public hearing, tome II, folios 17823 to 17827); ii) psychology, cf. Order without number of the Office of Psychology of the Military General Hospital of April 20, 2010 (case file of annexes received during the public hearing, tome II, folios 17922 to 17930), and iii)

B. Intervention of the military criminal justice system

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

157. The representatives argued that Mrs. Rosendo Cantú's rights to judicial guarantees and to judicial protection were violated because her case was submitted to the military jurisdiction, based on Article 13 of the Constitution and Article 57(ii)(a) of the Code of Military Justice, and also because the State had not provided an effective remedy to contest the application of said jurisdiction to her case. The military jurisdiction does not fulfill the requirements of impartiality, independence, and competence to hear human rights violations, and the submission of the case to this jurisdiction violated the guarantee of a hearing by a competent tribunal as previously established by law. This practice owes itself to the absence of an express provision in the Mexican legal system that excludes the military justice system from hearing offenses of this type, and in general, to the transfer of ordinary offenses committed by soldiers on active service, or related to active service, to this jurisdiction based on Article 57 of the Code of Military Justice. The foregoing is a result of the ambiguity of Article 13 of the Constitution interpreted in accordance with the contents of Article 57(ii)(a) of the Code of Military Justice. In addition, they emphasized that said situation is aggravated because of the ineffectiveness of the domestic remedies available to question which is the jurisdiction responsible for the investigation given that in two cases "the petition for amparo [relief] proved to be ineffective and inadequate as a means of protection of the human rights of the [victim], because the investigations [...] continued [...] under the charge of the military jurisdiction." Consequently, they asked the Court to declare that the State had violated the rights contained in Articles 8 and 25 of the American Convention, and also in Articles 1, 6, and 8 of the Convention against Torture, and Article 7 of the Convention of Belém do Pará.

158. In the answer to the application, the State, among other arguments, affirmed that the guarantee of a competent, independent, and impartial judge had not been breached, because the actions taken to that date corresponded to ministerial [investigative] authorities. Consequently, the Court has been asked to penalize the expectation of a violation that did not arise from an action that had occurred, and in particular, that had been to the detriment of Mrs. Rosendo Cantú, given that she "has not been subjected to the military jurisdiction, and her complaint has not been heard by a military court." In addition, Mexico indicated that the development of the investigation has been a central element for determining jurisdiction. In other words, the investigation was initiated by civil authorities before whom the complaint was filed. When the participation of members of the Armed Forces was indicated, the investigation was transferred to the Military Public Prosecutor's Office. The alleged victim's failure to collaborate prevented the investigation from advancing. In regards to the investigation of the facts in the complaint, the State considered that "the investigation continue, and that by means of the ministerial authorities, there exist the will to get at the truth of the matter and punish those responsible." Once the sketch had been administered in August 2009, and the alleged perpetrators had been identified, the investigation was assigned

cartography, *cf.* Expert opinion on cartography presented on May 14, 2010, *supra* note 104, folios 18112 to 18125.

within a special agency of the Office of the Attorney General for Military Justice, who has carried out various actions and it is anticipated that it will yield specific results from the alleged facts of the present case. Accordingly, it asked the Court to declare the inexistence of violations of Articles 8(1) and 25(1) of the American Convention, to the detriment of Mrs. Rosendo Cantú. Subsequently, during the public hearing, the State affirmed that it "would not present any arguments with regard to ministerial competences in this case, because the Court had already made a final ruling on this issue in its Judgment in the case of [*Radilla Pacheco*]." In the final written arguments, the State maintained that, despite that which was ordered by the Court in the mentioned case, it is the Military Public Prosecutor's Office "who is charged with the duty to continue the investigations" and that "[i]t is inappropriate to suspend the investigations being carried out, given that they were properly established in the current legal framework."

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

160. In particular, with regard to the intervention of the military jurisdiction to examine acts that constitute violations of human rights, this Court recalls that, recently, it has ruled with regard to Mexico, in the case of *Radilla Pacheco*. Taking this into account, together with the arguments of the State (*supra* para. 17), for the effects of this case, the Court finds it sufficient to reiterate that:

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

Furthermore, [...] taking into account the nature of the crime and the juridical right damaged, the military criminal jurisdiction is not the competent jurisdiction to investigate and, if applicable, prosecute and punish the authors of violations of human rights; rather the processing of those responsible always corresponds to the ordinary [non-military] forum. In this regard, the Court has indicated on numerous occasions that "[w]hen the military jurisdiction assumes competence for a matter that should be heard by the ordinary jurisdiction, it is violating the right to a hearing by an ordinary court previously established by

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

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

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

law and, *a fortiori*, to due process," which, in turn, is closely related to access to justice. The judge in charge of hearing a case shall be competent, as well as independent, and impartial.²¹³

In situations that violate the human rights of civilians, the military jurisdiction may not operate under any circumstance.²¹⁴

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

161. In no case does the rape of someone by military personnel bear a relationship to the military discipline or mission. To the contrary, the offense committed by military personnel against Mrs. Rosendo Cantú affected juridical rights protected by domestic law and the American Convention, such as the victim's personal integrity and dignity. It is evident that such conduct is openly contrary to the obligations to respect and to protect human rights, and consequently, is excluded from the competence of the military jurisdiction. Based on the foregoing, the Court concludes that the intervention of the military justice system in the preliminary investigation of the rape was contrary to the parameters concerning the exceptional and restrictive nature of that system and involved the application of the military jurisdiction that functioned without taking into account the nature of the acts involved. This conclusion is valid in the present case, even though the incident is only at the investigation stage by the Military Public Prosecutor's Office. As revealed by the criteria indicated above, the incompatibility of the American Convention with the intervention of the military justice system in this type of case does not refer merely to the act of prosecution, which is the responsibility of a court, but essentially to the investigation itself, because this procedure constitutes the beginning and the necessary grounds for the subsequent intervention of an incompetent court. Based on the above, the Court finds that the State violated the rights to judicial guarantees and to judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mrs. Rosendo Cantú. As in previous cases²¹⁶ when it has found that the military criminal jurisdiction is not competent, the Court considers that it is not necessary to rule on the other arguments concerning the independence and impartiality of the military justice system or the possible violation, based on the same facts, under other Inter-American instruments.

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162. Moreover, the Court observes that the intervention of the military justice system was based on Article 57(ii)(a) of the Code of Military Justice²¹⁷ (*supra* para. 144). In this regard, the Court reiterates that this provision:

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

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

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

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

²¹⁷ Article 57(II)(a) of the Code of Military Justice, in what is relevant, states:

The following are crimes against military order:

II.- Those of the common or federal jurisdiction, when the commission has involved any of the circumstances hereby stated:

a) when committed by military personnel while on duty or as a result of acts of the same[.]

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

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

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164. Lastly, regarding the alleged inexistence of an effective remedy to contest the military competence, the Court has indicated that Article 25(1) of the Convention establishes the obligation of the State Parties to ensure, to all those subject to its jurisdiction, an effective judicial remedy for acts that violated their fundamental rights.²²¹

165. Mrs. Rosendo Cantú filed a petition for amparo [relief] against the decision of the Civil Public Prosecutor's Office that confirmed the military justice system's jurisdiction to hear the case (*supra* para. 145). However, this petition was dismissed in first instance (*supra* para. 145), because of the Act of the Common Public Prosecutor's Office "since it is not sufficient to affect the legal interest of the plaintiff in this forum, because it is not a definitive Act, nor an order that directly associates so that the agent of the [Military] Public Prosecutor's Office, who was granted competence, takes a decision in this regard," and for this reason there was "cause of inability to execute the petition for amparo [relief] which obligates the Court of Constitutional Control to not adjudicate the merits in question."²²² Said order was confirmed using the same arguments.²²³ In addition, Mrs. Rosendo Cantú presented an appeal regarding the jurisdiction of the Military Public Prosecutor's Office (*supra* para. 145) requesting it to abstain from hearing the case.²²⁴

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

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

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

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

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

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

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

Contrary to the decision of stay of proceedings of the appeal²²⁵ and the confirmation of the military forum in the case, Mrs. Rosendo Cantu imposed a new remedy of amparo [relief], opposing the Military Public Prosecutor's Office from maintaining jurisdiction to hear about the rape committed against her.²²⁶ This remedy was partially dismissed and partially denied on the merits by the Fifth Judge of District "B" of Appeals on Criminal Matters of the Federal District, who affirmed that "if in the case the present complainant is the person offended by the crime, it is not legally possible to construct a realm of jurisdiction to hear or investigate those unlawful facts to the civil authority, given that the legislators purpose was not as such, rather only when the commission of the offense involves civilians and soldiers, or only civilians who infringe upon military law, namely, when the main perpetrator is a civilian or citizen, circumstances not evident in this case given the complainants nature."²²⁷ Likewise, the Judgment affirmed that "due to the unfounded concepts of a violation [to the rights of Mrs. Rosendo Cantu], and given that the deficiency of the correction of deficiencies in the complaint cannot be established, it is appropriate to deny the amparo [relief]."²²⁸

166. From the aforementioned decisions, this Court concludes that Mrs. Rosendo Cantú was unable to contest the military jurisdiction's competence to hear matters that, by their nature, should correspond to the authorities of the ordinary [non-military] jurisdiction. In this regard, the Court has indicated that States have the obligation to establish by law and ensure due application of effective remedies and guarantees of due process before the competent authorities, in order to protect all those subject to its jurisdiction against acts that violate their fundamental rights or that lead to the determination of their rights and obligations.²²⁹ Hence, the Court has established that, for the State to comply with the provisions of Article 25 of the Convention, the formal existence of remedies is not sufficient; instead they must be effective in the terms of the that precept.²³⁰ Said effectiveness means that these remedies provide results or answers to the violations of recognized rights, be it in the Convention, or in the Constitution or in the law.²³¹ The Court has reiterated that this obligation implies that the remedy must be appropriate to combat the violation and be applied effectively by the competent authority.²³²

167. As indicated above (*supra* paras. 160), the Court emphasizes that the victim's participation in criminal proceedings is not limited merely to redresse the damage but, above all, to make effective her rights to know the truth and to justice before the competent judicial authorities. This necessarily implies that, at the domestic level,

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

²²⁶ Cf. Petition for relief [Amparo] presented by Mrs. Rosendo Cantú on February 11, 2003, *supra* note 171, folios 11947 to 12007.

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

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

²²⁹ Cf. *Case of the "Street Children" (Villagrán-Morales et al.) Merits*, *supra* note 123, para. 79; *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Perú. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of July 1, 2009 Series C No. 198, para. 72, and *Case of Radilla Pacheco*, *supra* note 36, para. 295.

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

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

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

adequate and effective remedies must exist for a victim to be able to contest the competence of the authorities that exercise jurisdiction over matters where it is considered that they do not have jurisdiction.²³³ Consequently, in this case, the remedy of amparo [relief] was not effective to allow Mrs. Rosendo Cantú to contest the hearing of the rape by the military jurisdiction, and this constitutes a violation of Article 25(1) of the Convention.

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

168. The Inter-American Commission argued that the State restricted the access to justice of Mrs. Rosendo Cantú by denying her medical care and by not acting with due diligence to investigate and punish the rape of which she was a victim. In regards to the deficient medical care, the Commission noted that: i) the doctor on call at the state emergency clinic of the Caxitepec community where Mrs. Rosendo Cantu was seen on February 18, 2002, refused to see her "because he did not want problems with the soldiers" and because he did not have "the necessary equipment"; ii) on February 25, 2002, Mrs. Rosendo Cantu, together with her husband and daughter, walked for almost eight hours to get to the General Hospital of Ayutla de los Libres and was not seen until the next day because she "did not have an appointment"; iii) the medical examination by a medical examiner took place on March 19, 2002, when "only physical evidence of violence was evident," and iv) the "gynecological examination carried out on [Mrs.] Rosendo Cantú was focused on a physical and gynecological examination without compiling the minimum parameters necessary to investigate the rape and without any consideration of the psychological aspects involved." This situation was aggravated "because of [Mrs.] Rosendo Cantu's condition as an indigenous minor of age." Likewise, the Commission indicated that, nevertheless, in "not offering Mrs. Rosendo [Cantu] the due guarantees to file a complaint and receive an effective legal response," the State carried out an investigation with serious deficiencies: i) during her statement to the Public Prosecutor's Office she was not guaranteed the presence of an official interpreter translator, privacy or special measures of protection in consideration of her state as an adolescent and a victim of rape; ii) the State wasted "the opportunities to recognize fundamental evidentiary elements in the case, obstructing as such the possibility of identifying the alleged perpetrators of the rape"; iii) the report of the physical and gynecological examination was not detailed nor completed as recommended by the Istanbul Protocol, and iv) the methods of investigation also did not comply with the parameters established in said Protocol. As a consequence of the aforementioned, eight years have passed since the incident of the crime, and "the investigation is in its initial stages." Based on the aforementioned, the Commission requested the Court to declare that the State violated Articles 8 and 25 of the American Convention, in relation to Article 1(1) of the same instrument.

169. Regarding the specific obligation to punish violence against women, the Commission indicated that it had received "information about the barriers that indigenous women face to obtain access to justice, which are generally related to social exclusion and ethnic discrimination." These barriers can be particularly serious, since they represent forms of "multiple discrimination" because the alleged victims are women, indigenous, and poor. Particularly in cases of the rape of indigenous women, the investigators frequently refute the complaints and place the burden of proof on the victim, and the investigation mechanisms are flawed and even threatening and disrespectful. Article 7(b) of the Convention of Belém do Pará obliges the State to act with due diligence when investigating and punishing violence against women, giving rise to specific obligations that complement the State's obligations as regards compliance with the rights embodied in the American Convention. In the present case, Mrs. Rosendo Cantú was not provided with access to the necessary medical services as a victim of rape, and this lack of diligence to provide and offer services has contributed to the

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

impunity of the case. The Commission requested that the Court find that the State failed in its obligation to act with due diligence to prevent, investigate, and punish violence against women, contained in Article 7 of the Convention of Belém do Pará. Furthermore, the Commission asked the Court to declare that “the absence of an impartial [and diligent] investigation of torture, and the continuing impunity of those responsible, constitute a failure to comply with the obligations established in Articles 1, 6, and 8 of the [Convention Against Torture].”

170. The representatives affirmed that the State did not allow effective access to justice in conditions that ensured equal protection to Mrs. Rosendo Cantu, given that her particular condition was not considered. They argued that “there was a complete unawareness of the medical institutions regarding the treatment of a woman victim of sexual violence”: i) on February 18, 2002, the doctor of the Caxitepec clinic refused to examine the victim due to fear to soldiers and because he lacked the necessary equipment, and he sent her to the General Hospital of Ayutla without giving notice of the circumstances in which he had received her and the reasons for which he sent her to the Hospital; ii) the [female] doctor which examined her at the General Hospital of Ayutla on February 26, 2002, “did not possess the necessary expertise to carry out an examination with those characteristics,” and her “medical note [only] referred [to] a ‘trauma to the abdomen’”; iii) on March 12, 2002, Mrs. Rosendo Cantú, accompanied by officials of the Human Rights Commission of the state of Guerrero and the National Human Rights Commission, was attended at the General Hospital of Ayutla. The [female] doctor requested examinations but these were not carried out “for lack of reagents”; iv) after the filing of the complaint, Mrs. Rosendo Cantú was not examined by a female forensic physician, because the Common Public Prosecutor’s Office did not “have a female forensic physician, and [...] the only doctor they had was not [available] at the time”; v) at the request of the Public Prosecutor’s Office to carry out a gynecological examination of Mrs. Rosendo Cantú, the General Office of Expert Services of the Office of the Attorney General of Justice of the state of Guerrero “responded that it did not have personnel specialized in [g]ynecology” and that the examination would be carried out in the city of Chilpancingo; vi) the corresponding examinations for a victim of sexual violence were realized on March 19, 2002, by a “male forensic physician,” which “did not find evidence of rape, rather of visible external physical aggression that remained,” and vii) the examinations carried out by the victim were not administered by competent professionals, they did not respect the international standards on the matter, and were incomplete. In this regard, the State did not seek the administration of a psychological examination to establish the existence of sexual torture, did not carry out the essential examinations required in cases of rape against women, and did not “offer the victim the minimum guarantees for the treatment of a child victim of violence.” The representatives also indicated the series of omissions of the State in the investigation that “translated into the failure to carry out a serious, complete, and effective investigation of the facts”: i) the authorities did not initiate the investigation of the rape for the offense of torture, taking into account the particularities of the case, nor the international standards for the investigation of that type of violation; ii) the Common Public Prosecutor’s Office made serious errors when receiving the victim’s statement; the statement was not received by competent personnel with experience in dealing with victims, who were aware of the context and would be sensitive to the complainant; no interpreter translator was provided, and no questions were asked to direct the testimony so as to obtain the relevant information to clarify the facts, and iii) the authorities did not collect or adequately and diligently protect evidence that was fundamental for the investigation. Based on the abovementioned, the representatives affirmed that the State had violated Articles 8 and 25 of the American Convention.

171. Regarding the obligation to punish violence against women, the representatives argued that the State had failed to comply with Article 7(b) of the Convention of Belém do Pará by failing to ensure the rights of Mrs. Rosendo Cantú, because it had not conducted a serious and effective investigation into the incident of which she was a victim. Finally, based on the same facts, in addition to the codification of the crime of

torture in the Criminal Code of the state of Guerrero, they concluded that the State had failed to comply with the obligations established in Articles 1, 6, and 8 of the Convention Against Torture, in relation with Articles 1(1) and 2 of the American Convention.

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

173. On the other hand, Mexico denied the violation of the Convention of Belém do Pará regarding the investigation of the facts and presented information regarding "the actions progressively carried out to guarantee the promotion and respect of the human rights of women," so as to "corroborate [...] the compliance of its conventional obligations enshrined in Articles 1(1) and 2 of the [American Convention], in relation with Article 7 of the [Convention of Belém do Pará]." The State referred to various public policy initiatives implemented in order to "reach a level of [progressive] protection, prevention, and punishment of [all] the acts [...] of discrimination and violence against women in all of its forms." Regarding the alleged violation of the Inter-American Convention to Prevent and Punish Torture, the State of Mexico observed that, "the constituent objective and subjective elements of torture have not been gathered to be able to condemn the State for its omission," and requested the Court to determine "the inexistence of violations of Articles 1, 6, and 8 of the Convention [against Torture]."

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174. The Court notes that Mexico acknowledged its international responsibility in relation to Articles 8 and 25 of the American Convention for the following facts: the lack of timely and specialized medical care at the time she filed her criminal complaint, the lack of specialized attention given her status as a female minor of age at the time the criminal complaint was filed, and the delay in the integration of the investigations and the impacts to her mental integrity because of said delay in the investigation. Nevertheless, it affirmed that it had not violated other rights established in the American Convention, or in any other Inter-American legal instrument (*supra* para. 17). Consequently, the Court still needs to determine certain facts and to decide the dispute with regard to whether the criminal investigation failed to comply with unacknowledged aspects of the guarantees arising from Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 thereof, and also Article 7 of the Convention of Belém do Pará and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

175. The Court recalls that the obligation to investigate human rights violations is one of the positive measures that States must adopt to guarantee the rights established in the Convention.²³⁴ The obligation to investigate is an obligation of means rather than results. However, it must be undertaken by the State as an inherent legal obligation and not as a mere formality preordained to be ineffective, or as a step taken by private interests that depends upon the procedural initiative of the victims or their next of kin, or upon their offer of proof.²³⁵ In light of this obligation, once State authorities are aware of an incident, they should initiate *ex officio* and without delay, a serious, impartial, and

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

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

effective investigation.²³⁶ This investigation must be carried out using all available legal means with the aim of discovering the truth.

176. The Court has also indicated that Article 8 of the Convention reveals that the victims of human rights violations, or their next of kin, should have wide-ranging possibilities of being heard and taking part in the respective proceedings, both in order to clarify the facts and punish those responsible, and also to seek due reparation. Furthermore, the Court has indicated that the obligation to investigate and the corresponding right of the alleged victims or the next of kin is not only evident from the treaty-based provisions of international law that are binding for the State Parties, but also arise from domestic law regarding the obligation to investigate *ex officio* certain unlawful conducts, as well as from the norms that permit the victims or their next of kin to denounce or submit complaints, evidence or petitions, or take any other measure in order to play a procedural role in the criminal investigation so as to establish the truth of the facts.²³⁷

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

178. On other occasions, this Court has defined the guiding principles that must be observed in criminal investigations into human rights violations, and these may include, *inter alia*: recovery and preservation of probative material in order to assist any potential criminal investigation of the authors; identification of possible witnesses and obtaining their statements, and determination of the cause, form, place and time of the act investigated. In addition, the scene of the crime should be examined thoroughly, and rigorous analysis should be performed by competent professionals, using the most appropriate procedures.²³⁸ In cases of violence against women, several international instruments describe and illustrate the enhanced State obligation to investigate them with due diligence.²³⁹ Among other requirements, in the course of a criminal investigation for rape: i) the victim's statement should be taken in a safe and comfortable environment, providing privacy and trust; ii) the victim's statement should be recorded so as to avoid or limit the need for repetition; 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 attention aimed at reducing

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

²³⁷ Cf. As an example, the Federal Code of Criminal Procedure, Article 141, which recognizes the Rights of the injured party in the preliminary investigation (section A), in the criminal procedure (section B), and during the execution of punishments (section C), and the Criminal Procedure Code of the state of Guerrero, Article 5, first paragraph, which recognizes the right of the victim or the injured party to contribute to the Public Prosecutor, offering the judge, by way of conduct or directly, all the facts available to prove the assertions and amount of harm and detriment caused by the crime.

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

²³⁹ Cf. United Nations Office of the High Commissioner for Human Rights, Istanbul Protocol, *supra* note 39, *inter alia*, paras. 67, 77, 89, 99, 101 to 103, 155, 162, 163, 170, 171, 224, 225, 260, 269, and 290, and W.H.O., *Guidelines for medico-legal care for victims of sexual violence*, *supra* note 39, *inter alia*, pages 17, 30, 31, 34, 39 to 44, and 57 to 74.

the consequences of the rape; iv) a complete and detailed medical and psychological examination should be made immediately by appropriate trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be informed that she can 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, and obtaining other evidence such as the victim's clothes, immediate examination of the scene of the incident, and guaranteeing the proper chain of custody of the evidence, and vi) access to free legal assistance at all stages of the proceedings should be provided to the victim.

179. In the present case, in addition to the facts that the State has acknowledged (*supra* paras. 16 and 18), the Court finds that, *inter alia*, the following omissions and errors in the investigations have been proven:

- i) the State had knowledge of the facts prior to the filing of the claim on March 8, 2002, before the Civil Public Prosecutor's Office, but did not initiate an immediate investigation, did not offer medical assistance to the victim to obtain the necessary evidentiary evidence, and it did not present, at any time, the conducive criminal complaint for the rape of an indigenous girl child.²⁴⁰ The National Human Rights Commission received a complaint²⁴¹ from
- ii) Mrs. Rosendo Cantú narrating the facts on February 27, 2002,²⁴² sent an accord the following day,²⁴³ and then on March 4, of that same year, the complaint was initiated.²⁴⁴ On the other hand, the State, in a report presented by

²⁴⁰ The Law of the National Human Rights Commission, of 1992, in Article 71 provides:

The National Commission may submit a special report if acts or omissions persist that involve evasive conduct or delaying tactics on the part of the authorities and public servants who have to intervene or assist in the investigations, despite the requirements set by these authorities.

The National Commission shall file complaints before the relevant bodies the crimes or misdemeanors that, despite the conduct and attitudes, were committed by the authorities or government officials concerned.

The Mexican Code of Military Justice, in Article 100 stipulates that:

The member of the military [soldier] who discovers or becomes aware in any way of the commission of a crime of the jurisdiction of military tribunals, is obliged to immediately inform the Public Prosecutor's Office, through due conduct.

The violation of this provision shall not be punishable when the offender is linked to the member of the military [soldiers] due to a blood relationship in a straight line without limitation of degree, and in the collateral to the fourth, or of affinity to the second, inclusive.

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

Every person who knows of and notices actions or omissions of mistreatment, abandonment, neglect, abuse, and generally, of any assault suffered by a minor of age to their physical or moral integrity, property or rights, is required to file a complaint with the Office of the Defense of the Child.

²⁴¹ *Cf.* Brief of complaint filed by Mrs. Rosendo Cantú and el Mr. Bernardino Sierra before the NHRC, *supra* note 64, folios 7556 and 7561.

²⁴² *Cf.* Acknowledgment of receipt of the complaint filed by Mrs. Rosendo Cantú in the Office of Parties of the National Human Rights Commission by the Fourth Inspectorate General of the National Human Rights Commission, of February 27, 2002 (case file of annexes to the answer to the application, tome I, folio 7556).

²⁴³ *Cf.* Record of receipt of documents of the National Human Rights Commission, of February 28, 2002 (case file of annexes to the answer to the application, tome I, folio 7550).

²⁴⁴ *Cf.* Identification card of complaint of technical record of the National Human Rights Commission, of March 4, 2002 (case file of annexes to the answer to the application, tome I, folio 7574 to 7576).

the National Human Rights Commission, affirmed that the Commander of the 35th Military Zone learned of the facts as of February 28, 2002,²⁴⁵ and said military authorities send radiograms on the 1st and 2nd of March²⁴⁶ of the same year which made reference to the facts of the case. The formal investigation of the Military Public Prosecutor's Office began until March 5, 2002;

iii) a female official of the Civil Public Prosecutor's Office did not want to receive Mrs. Rosendo Cantú's complaint; this situation required the intervention of another government employee to ensure that they complied with their legal obligations;²⁴⁷

iv) Mrs. Rosendo Cantu, who did not speak Spanish fluently at the time of the incident, was not provided with the assistance of an interpreter, but had to be assisted by her husband, and in the Court's opinion this was inappropriate to: respect her cultural diversity; ensure the quality of the contents of the statement, and duly protect the confidentiality of the complaint.²⁴⁸ The Court deems that it is particularly inappropriate that Mrs. Rosendo Cantu had to turn to her husband to narrate the facts of the rape;

v) it was not guaranteed that the complaint for rape could be made respecting the minimum requisites of consideration and privacy due to a victim of this type of offense, but to the contrary, it was made in a place where members of the general public were present, and there was even the possibility that the victim could have been overheard by people she knew;²⁴⁹

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

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

²⁴⁵ Cf. Order DH-8189/0445 of the Attorney General for Military Justice addressed to the Fourth General Inspectorate of the National Human Rights Commission, of April 6, 2002 (case file of annexes to the answer to the application, tome I, folios 7697 to 7701), and Order No. 11606/9656 of Legal Aid of Section of the Agent of the Military Public Prosecutors adjoined to 35th the Military Zone, addressed to the Secretary of the Secretariat of National Defense, of March 28, 2002 (case file of annexes to the answer to the application, tome I, folios 7702 to 7707).

²⁴⁶ Cf. Radiogram 2441 of the Commander of the 35th Military Zone of March 1, 2002 (case file of annexes to the answer to the application, tome II, folios 8100 to 8103), radiogram 2/5179 of the Command of the IX Military Region of March 2, 2002 (case file of annexes to the answer to the application, tome I, folios 8112 to 8116).

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

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

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

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

viii) the investigations of the case were archived for three years and 10 months.²⁵¹

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

181. Furthermore, the Court notes that, in the present case, several of the government employees who intervened initially in the complaint made by Mrs. Rosendo Cantú showed a complete absence of motivation, sensitivity, and capacity. Likewise, the failure to use an action protocol by the medical officials and the officials of the Public Prosecutor's Office who initially attended Mrs. Rosendo Cantú were especially serious and had negative consequences in regards to the attention merited to the victim and on the legal investigation of the rape. Regarding this aspect, the Court stresses that stated by the expert witness Arroyo Vargas, during the public hearing of the case, regarding that in "cases of sexual violence, the minimum standards [of gathering evidence] must be immediate action and speed."²⁵²

182. Based on the abovementioned considerations and on the State's partial acknowledgement of responsibility, the Inter-American Court concludes that the State authorities did not act with due diligence in the investigation of the rape of Mrs. Rosendo Cantú, which, additionally, exceeded a reasonable time. Consequently, the State violated the rights to judicial guarantees and to judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, and did not comply with the obligations established in Article 7(b) of the Inter-American Convention for the Prevention, Punishment, and Eradication of Violence against Women, to the detriment of Mrs. Rosendo Cantú.

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183. In relation to that alleged by the representatives and Commission regarding discrimination in the access to justice on behalf of Mrs. Rosendo Cantú, the Court notes that the representatives considered violated the rights to equal protection and non-discrimination in the access to justice of Mrs. Rosendo Cantú, recognized in Articles 8 and 25, 24, and 1(1) of the American Convention, whereas the Commission only raised arguments regarding the non-compliance with the latter rule and its corresponding substantive norms. In this regard, the Court recalls that the general obligation of Article 1(1) refers to the State's responsibility to respect and guarantee "without discrimination" the rights contained in the American Convention, while Article 24 protects the right to "equal protection of the law."²⁵³ In other words, if it is argued that a

²⁵¹ The investigations of the case in the Military Justice System were archived between March 12, 2004 and January 10, 2008. *Cf.* Agreement of Consideration of the Fourteenth Investigative Agent of the Military Public Prosecutors, adjoined to the Office of Preliminary Investigations of the Attorney General of Military Justice, of February 26, 2004 (case file of annexes to the answer to the application, tome V, folios 9788 to 9803 and tome X, folios 11916 to 11922). See also, brief of observations of the State in the processing of the case before the Inter-American Commission on Human Rights, *supra* note, folios 4390 to 4406, and Record of the Agent of the Public Prosecutor of the Common Jurisdiction, adjoined to the General Office of Control of Investigatory Services, of January 10, 2008 (case file of annexes to the answer to the application, tome XV, folio 13786).

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

²⁵³ *Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica.* Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, paras. 53 and 54. Also *cf. Case of Aplitz Barbera et al.*,

State discriminates in this regard or in the guarantee of a conventional right, then the fact should be analyzed under Article 1(1) of the substantive right at issue. Conversely, if the alleged discrimination refers to unequal protection by the domestic law, then it should be analyzed under Article 24 thereof. As such, the alleged discrimination in the access to justice derived from Articles 8 and 25, should be analyzed under the general obligation to respect and guarantee the conventional rights without discrimination, recognized under Article 1(1) of the Convention.

184. As it has been established before by the Court, and pursuant to the principles of non discrimination enshrined in Article 1(1) of the American Convention, in order to guarantee access to justice to members of indigenous communities, "it is indispensable that States offer effective protection that considers the particularities, social and economic characteristics, as well as the situation of special vulnerability, customary law, values, customs, and traditions."²⁵⁴ Moreover, the Court has noted that "States should abstain from, directly or indirectly, creating situations of *de jure* or *de facto* discrimination."²⁵⁵

185. The Court considers that it has been proven that Mrs. Rosendo Cantú was not provided with a translator provided by the State when she required medical care, nor when she filed her initial complaint; neither did she receive, in her language, information regarding the subsequent steps taken regarding her complaint. In order to inform the authorities of that which affected her and to obtain information, she had to turn to her husband who spoke Spanish. On the other hand, the State on subsequent occasions when it called upon the victim, offered an interpreter and also informed that it was implementing a program that consisted of indigenous interpreters in Guerrero. The Court positively assesses both these steps taken by Mexico. Nevertheless, the inability to file a complaint and receive information in her language at the initial stages, implied, in the present case, treatment that did not consider Mrs. Rosendo Cantú's situation of vulnerability based on her language and ethnicity, thus implying an unjustified infringement to her right to seek justice. Based on the foregoing, the Court considers that the State did not comply with the obligation to guarantee, without discrimination, the right to access to justice, pursuant to Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of the same instrument.

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186. In addition, the Commission and the representatives alleged the violation of the Inter-American Convention to Prevent and Punish Torture. Among other reasons, it was stated that the authorities did not investigate the rape for the crime of torture, and that the Penal Code of the state of Guerrero does not codify said crime. The Court understands that this allegation refers, fundamentally, to the legal definition under which the rape suffered by Mrs. Rosendo Cantú was investigated. Article 1 of said treaty establishes the general obligation to prevent and punish torture. Article 6, in its regard, establishes the obligation to make torture a criminal offense under domestic law, establishing severe penalties for such acts. Finally, Article 8 of the Convention establishes, in general terms, the obligation to open, *ex officio* and immediately, an

("First Court of Administrative Disputes") v. Venezuela. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of August 5, 2008. Series C No. 182, para. 209; *Case of Ríos et al., v. Venezuela. Preliminary Exceptions, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194, para. 348, and *Case of Perozo et al., supra* note 236, para. 379.

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

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

impartial criminal investigation into any alleged act of torture. The Court considers that, in the present case, the State did not fail to comply with Articles 1, 6, and 8 of the aforementioned Convention when investigating the facts to the detriment of Mrs. Rosendo Cantu, that given the peculiarities, constituted a crime of torture, classifying it as a rape. In effect, the investigation of the alleged rape is in accordance with the facts of the complaint in this specific case and with the general obligation that the acts of torture be considered crimes in domestic law, as well as with the requirement of the severity of punishment. In this sense, the Court notes that the rape is a crime codified in the Criminal Code of the state of Guerrero²⁵⁶ and in the Federal Criminal Code of Mexico,²⁵⁷ which establish penalties of eight to sixteen years' imprisonment and eight to fourteen years' imprisonment, respectively. Based on the foregoing, it is not necessary to carry out an additional ruling in this respect, nor on the inadequate codification of the crime of torture in the state of Guerrero or other alleged violations based on the same facts that were analyzed in a timely manner under the other conventional obligations.

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

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

A. The actions of the authorities within the legal framework in force

The State argued that: i) "the domestic investigations of the complained facts [...] have been carried out, at all times, by ministerial [investigative] authorities previously created by law and that have acted within the legal framework in force in Mexico"; ii) "the [M]ilitary [P]ublic [P]rosecutor is currently the only competent authority under the legal system in force in Mexico, and will continue as such until a legislative reform is approved in this regard"; iii) the opposition to the jurisdictional authority which the alleged victim has expressed during the domestic investigation should also be analyzed by the Court, and iv) "Mrs. Rosendo Cantu's failure to appear in court [...] resulted in a vicious cycle to which the jurisdiction of the [investigative authorities] were objected to, while the necessary information was not given to the authorities to specify the type of crime that was being investigated." Accordingly, Mexico asked the Court to decide "to what extent it was valid for the victims to oppose, based on the argument of competence, the implementation of measures that were fundamental for the investigation, and for which all necessary guarantees had

²⁵⁶ The Criminal Code of the state of Guerrero establishes:

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

Article 141: A punishment of eighteen to twenty-two years of prison and one hundred and twenty to five hundred days fine will be imposed: [...] III. When the copulative act is carried out by the perpetrator, in the circumstances of his or her employment, when carrying out a public charge or when under carried out while executing professional responsibilities. The agent will also be sentenced to dismissal of public charges or employment and disqualification of eight years.

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

²⁵⁷ The Federal Criminal Code of Mexico establishes:

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

Article 266 bis: The punishment foreseen for sexual abuse and rape shall increase, by half at a minimum and maximum, when: [...] III. The crime is committed by a person carrying out a public charge or employment or in the course of employment, using the means or under the circumstances of the professional role. In addition to the prison sentence, the convicted individual will be disqualified from his or her charge or employment or suspended for a term of five years from the exercise of said profession.

been ensured," and to value that the ministerial [investigative] authorities have acted in conformity with the legal framework in force, and subject to subsequent legislative reforms, it determine that it is the Military Public Prosecutor's Office who must continue with the investigation of the facts.

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

The State indicated that Mrs. Rosendo Cantu: i) "was provided with the presence of an interpreter translator of the Secretariat of Indigenous Affairs of the government of the state of Guerrero," ii) has had the right to be assisted by a person of confidence for the processing of the present case; iii) has had, and also as her attorneys, at all times, the opportunity to be heard by the ministerial [investigative] authorities and has had plenty of access to the case files; iv) personally received, and by means of her representatives, the explanations regarding the nature of the jurisdiction in the case, and v) her request that the Attorney General of the Republic participate in the exhaustion of the procedures was attended to. Likewise, the State affirmed that during the period when the investigation was under the jurisdiction of the civil forum, "the interdisciplinary group with a gender perspective made up of female personnel" of diverse organisms "was created," which has continued collaborating in the investigations due to the forwarding of jurisdiction" to the military forum. This interdisciplinary group with a gender perspective "was, at all times, fully capable of moving to the locations indicated by the representatives in order to exhaust the procedures and [also maintained] the channels of communication open in order to attend to particular petitions regarding the investigations."

C. The invitation for the victim to assist in the investigations and the value of the victim's statement

The State asked the Court to examine "its willingness to continue the investigations, [considering] the repeated invitation made [...] to the alleged victim to obtain her participation in the investigations." Mrs. Rosendo Cantú was invited to testify on up to 10 occasions, and she was officially asked to propose dates to take part in procedures. Based on the foregoing, Mexico asked that the Court consider "to what extent the lack of collaboration by Mrs. Rosendo Cantú and [of] her representatives has had an impact on the progress of the investigations."

D. Promotion of the investigation procedures by the State

The State affirmed that it had promoted the investigation as a legal right, carrying out diverse ministerial [investigative] actions. The State's intense evidentiary actions have involved the taking of testimony from various witnesses, the analysis of documentary evidence, the carrying out of geo-referencing studies that allowed for the location of military personnel at the time of the facts to be determined," and "medical assessments, among other measures."

E. The recent actions taken by the Military Public Prosecutor's Office

Mexico affirmed that as of the date in which they retook the investigations in the military forum, several different procedures have been carried out to prove the *corpus delicti* and the probable perpetrators. Likewise, it affirmed that so as to not revictimize of Mrs. Rosendo Cantú, collaboration from the interdisciplinary group with a gender perspective of the Attorney General's Office of the Republic has been requested for all the procedures that require the possible participation of the alleged victim.

F. The alleged complaint formulated by Mrs. Rosendo Cantu before the municipal authorities and medical personnel

The State indicated that "there is no evidence that proves that government employees of the State of Mexico had knowledge, prior to the presentation of the

criminal complaint, of the alleged rape of Mrs. Rosendo Cantu," and that neither the Commission nor the representatives have effectively proven said facts. Likewise, the State affirmed that "the two instances where the Mexican authorities had knowledge, for first the first time, of the alleged rape" were with the criminal complaint filed before the Public Prosecutor of the city of Ayutla de los Libres on March 8, 2002, and via a newspaper article that referenced the rape, to which the *ex-officio* investigation was initiated by the Military Public Prosecutor on March 5, 2002. In regards to the reference to the facts of the case that deal with the medical personnel of the state of Guerrero, the State indicated that the case files regarding the medical care received by Mrs. Rosendo Cantú on February 18 and 26, 2002, respectively, in the clinic of the Caxitepec community and in the General Hospital of Ayutla de los Libres, do not reference the information provided by the victim regarding whether a rape occurred. For this reason, the medical professionals did not treat her case as such and did not fail to comply with the obligation recognized in the domestic norm to "inform the authorities responsible [...] of the allegedly criminal act, with a special emphasis in the events that may involve gender-based violence."

188. First, the Court notes that some of these affirmations, such as those concerning the action of the authorities within the legal framework in force and the scrupulous respect for the procedural guarantees of Mrs. Rosendo Cantú, have already been dealt with, substantially, in this section of the Judgment. The Court recalls that, irrespective of its conformity with domestic law, the intervention of the Military Criminal Public Prosecutor's Office does not comply with the guarantees arising from the American Convention (*supra* paras. 159 to 161). Furthermore, regarding respect for procedural guarantees, the Court assesses positively some of the efforts made by the State, including the provision of an interpreter on some of the occasions in which Mrs. Rosendo Cantú was summoned to testify or participate in procedures. Nevertheless, as the Court has indicated, the actions taken by the State have not been sufficient and, in some cases, not even opportune, to investigate the rape with due diligence, and Mexico has even partially acknowledged these errors. Based on the foregoing, the Court does not find any reason to make additional findings in this regard.

189. In addition, this Court positively assesses the establishment of an interdisciplinary group with a gender perspective composed of female personnel from the Office of the Attorney General of the Republic adjoined to different institutions, in order to monitor the measures undertaken, support the victim, and insofar as possible, lessen her re-victimization. The Court also appreciates that some progress was made while this group was functioning, for example, the artist's sketch with the aid of Mrs. Rosendo Cantú, a measure that could lead to the identification of the possible authors of the rape. The Court reiterates that it is fundamental to provide support to a victim of rape from the onset of the investigation in order to ensure her safety and an appropriate framework for referring to the act suffered and to facilitate her participation, as simply and as carefully as possible, in the investigation procedures. The Court observes that, even though said group with a gender perspective played a positive role, it began its work as a consequence of a commitment acquired by the State in the hearing or this case before the Inter-American Commission on October 2007; in other words, almost five years after the facts had been reported.²⁵⁸

190. Regarding the failure of Mrs. Rosendo Cantú to attend the summons to testify, this Court understands that, when investigating criminal acts, even when the burden of the investigation should not rest on the victim, the victim's participation may be necessary. In this regard, the Court appreciates the State's effort to summon Mrs. Rosendo Cantú to testify on various occasions and, thus, advance the investigation. Nevertheless, the Court recalls its previous observations with regard to repeatedly summoning a victim of sexual offenses to testify, (*supra* paras. 178 and 180) and also

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Cf. Answer to the application (case file on the merits, tome I, folio 471).

finds it is evident that a victim of rape attributed to soldiers feels profound fear and apprehension when summoned to appear by the Military Public Prosecutor's Office, irrespective of whether this authority will conduct the procedure directly or carry it out using officials of the Civil Public Prosecutor's Office.

191. The Court appreciates the different investigative measures mentioned by the State. The efforts indicated must be continued by the ordinary [non-military] Public Prosecutor's Office so that the investigation is concluded as diligently and urgently as possible, in order to determine the truth of the facts and investigate, and where applicable, punish those responsible for the rape of Mrs. Rosendo Cantú.

192. Lastly, the Court found that it was proven that State officials of diverse jurisdictions had knowledge of the facts of the case prior to the dates acknowledged by the State, specifically on February 27 and 28, 2002 (*supra* para. 179). Likewise, in regards to the medical care initiated on February 18 and 26, 2002, in particular, regarding whether the doctors were informed of the rape, the Court has already ruled on this matter in this Judgment (*supra* para. 130). Nevertheless, the Court observed that, the doctor who saw her on February 18, 2002, though he did in fact give her the primary attention she requested (*supra* para. 130), he received information regarding physical assault to a girl, committed by soldiers, to which, pursuant to the domestic legal rules of procedure, should have reported to the competent authorities.²⁵⁹

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

193. The Commission alleged that the acts of harassment and threats supposedly suffered by Mrs. Rosendo Cantú, her next of kin and her representatives "illustrate the absence of justice and absence of adequate measures on behalf of the State." The Commission indicated that the victim and her daughter "had to leave the Barranca Bejuco Community, to protect themselves and the [c]ommunity itself. Subsequent to their departure, the victim and her daughter have [...] had to move on various occasions given the threats and acts of harassment." The persistence of the threats, acts of persecution, and harassment have made it necessary for the State to adopt measures to eliminate the situation of risk and guarantee the security of the victim, her next of kin, and her representatives.

194. The representatives argued that Mrs. Rosendo Cantu "on various occasions, has felt that she is being followed and that they monitor her, particularly when she goes to complain with human rights organizations, and because of the filing of the present

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

Article 122: "[e]very person who knows of and notices actions or omissions of mistreatment, abandonment, neglect, abuse, and generally, of any assault suffered by a minor of age to their physical or moral integrity, property or rights, is required to file a complaint with the Office of the Defense of the Child."

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

Article 55.- When a public servant is aware of the commission of a crime, in the exercise and due to their functions, should complain immediately, if the crime is prosecutable ex officio, or make his hierarchical superior aware, if the crime is prosecutable by means of a complaint or an equivalent act, that depends on an authority. If not done, the penalty for a concealment shall be applied.

Health Law 159 of the state of Guerrero, in its Article 140, states:

Article 140: Members of the public health system should give immediate care to children and the elderly whom have been subjected to any form of abuse that endangers their physical and mental integrity. Also, they shall provide care to those that have been passive subjects in the commission of crimes that threaten the physical or mental or normal psychosomatic development in individuals.

In these cases, state health institutions will take immediate measures necessary to protect the health of children and the elderly, subject to intervention by the competent authorities.

application before the [...] Court." During the public hearing, Mrs. Rosendo Cantu affirmed that she currently lives in a place and in conditions far from what she prefers for security purposes. This situation of threats and harassment have resulted in the ordering of provisional measures by this Court to protect those involved in the search for justice, without the threats ceasing. The representatives concluded by requesting the Court to declare the State responsible for the violation of the victim's right to access justice when "no effective measures were adopted for her and her representatives to continue in their search for justice under secure conditions," thus violating Articles 8 and 25 of the American Convention and 1, 6, and 8 of the Convention against Torture, and 7 of the Convention of Belém do Pará.

195. The State has reported to the Court that Mrs. Rosendo Cantú and her next of kin have all the contemplated remedies in domestic legislation to denounce possible accusations or threats; similarly it has implemented, in favor of her and her next of kin, the necessary measures for her protection, such as the provisional measures in force in this case. Likewise, it affirmed that "the factual elements that motivated the implementation of precautionary and provisional measures do not make up the factual framework of the present case."

196. The Court recalls that the alleged facts of harassment and threats, while not part of the purpose of the litigation in the present contentious case, are being considered by the Court in regards to the provisional measures filed opportunely (*supra* para. 15). In this regard, the Court considers that there should not be obstacles in the search for justice in the present case, and thereby, the State must continue adopting all necessary measures to protect the victims and other people connected to this case, and guarantee their safety, ensuring that they can exercise their rights to judicial guarantees and to judicial protection without restrictions.

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

197. The Commission stated that "the rape of Mrs. [Rosendo Cantú, then a minor of age], as well as the actions of the military during the investigations of the case and the subsequent impunity of those responsible [that] have continued to date [and] they constitute a clear violation of the right of the State of Mexico to grant the special protection guaranteed in the American Convention and the other international treaties applicable," to which it requested the Court to declare the international responsibility of the State as a consequence of a violation of Article 19 of the American Convention in relation to Article 1(1) of the same, to the detriment of Mrs. Rosendo Cantú.

198. The representatives highlighted that at the time of the rape, Mrs. Rosendo Cantu was a seventeen-year-old girl child. The State "did not provide [her] primary medical care, but rather [ten] days after she was raped" and that "she did not receive the proper medical treatment for her suffering until [six] months [after] the incident when she went to a private clinic." This being the case, Mexico did not comply with its duty to seek the enjoyment of the highest level of health for Mrs. Rosendo Cantú, tending to her status as a girl child. Moreover, the State also did not adopt, in her favor, any other measures of special protection. As such, they requested that the Court declare the responsibility of the State for the adoption of special measures of protection given her status as a girl

²⁶⁰ Article 19 of the Convention establishes that:

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

child, thereby violating Article 19 of the American Convention, to the detriment of Mrs. Rosendo Cantú.

199. The State, in its answer to the application, took issue with the alleged violation of Article 19 of the Convention. Nevertheless, in the public hearing and in its final written arguments, Mexico recognized that "the authorities [...] were negligent in offering Mrs. Rosendo Cantú with specialized attention given her status as a minor of age at the time of the filing of the complaint with the Public Prosecutor of the state of Guerrero, which constituted non-compliance with the obligation to protect the rights of the child, recognized in Article 19 of the American Convention [...] and in the light of other international instruments in which the State of Mexico is a Party, such as the Convention of the Rights of the Child."

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200. The Court has established (*supra* para. 23) that the acknowledgment of responsibility by the State has been clear and specific regarding the lack of special measures in favor of Mrs. Rosendo Cantú, paying special attention to her status as girl child at the time of the events, acknowledging as such, its international responsibility for the violation of the rights of the child established in Article 19 of the American Convention. Notwithstanding the aforementioned, the Court deems it appropriate to make the following considerations.

201. The Court has previously held, that in conformity with Article 19 of the American Convention, the State must assume a special position as guarantor with greater care and responsibility and must take special measures aimed at the best interest of the child.²⁶¹ In this sense, the State must offer special attention to the necessities and the rights of the child, considering the child's particular condition of vulnerability.²⁶² In accordance with its conventional obligations, the State should have adopted special measures in favor of Mrs. Rosendo Cantú, not only during the filing of the criminal complaint, but also during the time when, being a girl child, she was a part of the ministerial [investigative] investigations regarding the offense of which she was the victim, all the more since she was also indigenous, given that indigenous children whose communities are affected by poverty find themselves in a particular situation of vulnerability. The obligation to protect the best interest of the children during the proceedings of which they are a part,²⁶³ may imply, *inter alia*, the following: i) to provide with information and to implement the appropriate procedures, adapting them to the child's particular necessities, and guaranteeing that the child have legal and other assistance at all times, pursuant to their needs;²⁶⁴ ii) in cases in which children have been victims of crimes such as sexual abuse or other mistreatment, to assure that the exercise of their right to be heard is provided ensuring full protection, making sure that personnel are trained to address children and that the interview rooms are safe and not intimidating, hostile, insensitive or

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

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

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

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

inappropriate,²⁶⁵ and iii) to ensure that children are not interrogated on several occasions to avoid, to the extent possible, the revictimization or traumatic effects of the child.²⁶⁶

202. As a consequence, considering that Mrs. Rosendo Cantu was a girl child at the time the facts occurred, that she did not count on special measures appropriate for her age, and the acknowledgment of responsibility of the State, the Court declares that the State violated her right to special protection given Mrs. Rosendo Cantú status as a girl child, enshrined in Article 19 of the American Convention, in relation with Article 1(1) thereof.

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

203. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to repair it adequately²⁶⁸ and that this provision “embodies a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.”²⁶⁹

204. This Court has established that reparations must be related to the facts of the case, the violations that have been declared, the damage proven, and the measures requested to repair the respective damage. Consequently, the Court must respect all these factors to ensure that its ruling is appropriate and in keeping with the law.²⁷⁰

205. The Court will proceed to examine the claims submitted by the Commission and the representatives, as well as the State’s arguments, so as to order measures designed to repair the damage caused to the victims. Regarding the State’s arguments, the Court observes that it presented specific arguments with regard to only some of the requested measures of reparation. Notwithstanding, Mexico requested in a general manner that the Court reject “any claim for reparation presented by the [Commission] or the petitioners.” In addition, it requested that the measures ordered “should be designed to repair the violation [...] committed and not to make the victims more rich, [...] nor to provide a double reparation.” Lastly, it requested that the Court consider the measures of public policy implemented by the State as guarantees of non-repetition.

206. The Court does not lose sight that Mrs. Rosendo Cantú is an indigenous woman, a girl child at the time the violations occurred, and whose situation of particular

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

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

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

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

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

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

vulnerability will be taken into account in the reparations awarded in this Judgment. Furthermore, the Court finds that the obligation to repair in a case that involves victims belonging to an indigenous community may call for measures that encompass the entire community²⁷¹ (*infra* para. 226).

A. Injured party

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

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

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

208. The Commission and the representatives substantially coincided in what regards the obligation to investigate the facts, and where applicable, to punish those responsible. In sum, they requested the Court to order the State to carry out an investigation with due diligence, on the facts of the present case, so as to ascertain the historical truth of what occurred, identify those responsible, and apply the appropriate punishment. Moreover, they noted that the victim and her next of kin should have full access and means to act in all the stages of the investigation according to domestic law and the American Convention. In addition, they requested that security be guaranteed to the victim, her next of kin, and the representatives in relation to the threats and persecution experienced as a consequence of the search for justice.

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

210. The representatives added that the State must adopt affirmative measures that guarantee access to justice of Mrs. Rosendo Cantú, taking into account the cultural, social, economic, and other obstacles faced and offer the means to overcome them. Finally, they also requested administrative sanction of the public agents responsible for the irregularities verified in the investigation.

211. The Court has established in the present Judgment, bearing in mind the State's partial acknowledgement of responsibility, that the investigation of the rape of Mrs. Rosendo Cantú was not conducted, to date, with due diligence or under the appropriate jurisdiction, and consequently, that Mexico has violated the rights to judicial guarantees and to judicial protection established in Articles 8 and 25 of the American Convention (*supra* para. 162). Consequently, as it has done on other occasions,²⁷² the Court finds that the State must efficiently conduct the criminal investigation into the facts of this case, in order to determine the corresponding criminal responsibilities and apply the punishments and consequences established by law. This obligation must be complied

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

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

with within a reasonable time, respecting the criteria mentioned above concerning investigations in this type of case.²⁷³

212. In particular, the State must guarantee, through its competent institutions, that the preliminary investigation that is being conducted into the facts that constituted the rape of Mrs. Rosendo Cantú remain within the ordinary [non-military] jurisdiction. Furthermore, if new criminal actions based on the facts of this case are filed against alleged perpetrators, whom are or have been members of the military, the authorities in charge of the case must ensure that they are conducted under the ordinary jurisdiction and, in no circumstances, under the military forum.²⁷⁴

213. The Court reiterates that during the investigation and prosecution, the State must ensure the victim full access and capacity to act at all stages. In a case such as this in which the victim, a woman and indigenous person, has had to face various obstacles in order to access justice, the State has the obligation to continue to offer the means by which the victim may fully access and participate in all the proceedings of the case and, to this end, it must ensure that an interpreter is provided and that she counts on assistance with a gender-based perspective, all the foregoing is based on her circumstance of special vulnerability. Lastly, if Mrs. Rosendo Cantú offers her consent, the results of the proceedings must be publicized, so that Mexican society learns the truth about the incident.

214. In addition, on other occasions,²⁷⁵ the Court has ordered the State to initiate disciplinary, administrative, or criminal actions under its domestic law with regard to those responsible for the different procedural and investigative irregularities in a case. In the present case, taking into account that in this case an agents at the Ayutla Public Prosecutor's Office complicated matters when receiving the complaint filed by Mrs. Rosendo Cantú (*supra* para. 179) and that it does not appear that one of the doctors had given the corresponding authorities the legal warning, (*supra* para. 192) the Court orders the State to examine this fact, and where applicable, the conduct of the respective government employees, in keeping with the appropriate disciplinary norms.

215. Finally, in regard to the request to guarantee the security of the victims, the next of kin, and the representatives, the Court recalls that the provisional measures ordered opportunely by this Court remain in force (*supra* para. 15).

ii) Adaptation of domestic law to the international standards of justice

216. The Commission requested the Court to order Mexico to limit and restrict the scope of the military jurisdiction, excluding it from hearing cases in which human rights violations have been committed and, particularly, in cases of sexual abuse.

217. The representatives asked the Court to order the State to reform Article 13 of the Constitution and Article 57 of the Code of Military Justice in order to establish clearly and without any ambiguity that the military system of justice must abstain, whatsoever the circumstances, from hearing cases of human rights violations attributed to members of the Mexican Armed Forces, whether or not they are on active duty, being that it considered the State has not fulfilled this obligation.

218. In the Court's opinion, it is not only the suppression or expedition of domestic legal provisions guarantee the rights contained in the American Convention. Pursuant to

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

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

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

the obligation established in its Article 2 thereof, the State must also develop practices leading to the effective observance of the rights and freedoms embodied in the Convention. The existence of a norm does not, in and of itself, guarantee that its application will be adequate. It is necessary that the application of the norms or their interpretation, as jurisdictional practices and expressions of the State's public order, must be adapted to the objective sought by Article 2 of the Convention. In practical terms, as the Court has already established, the interpretation of Article 13 of the Mexican Constitution must be coherent with the constitutional and the treaty-based principles of due process and access to justice contained in Article 8(1) of the American Convention and the pertinent provisions of the Mexican Constitution.²⁷⁶

219. In its jurisprudence, the Court has established its awareness that domestic authorities are subject to the rule of law, and consequently, that they are obliged to apply the provisions of the laws that are in force in the legal code.²⁷⁷ Nevertheless, when a State has ratified an international treaty such as the American Convention, all of its organs, including its judges, as part of the State apparatus, are also subject to such a treaty, and this obligates them to ensure that the effects of the provisions of the Convention are not diminished by the application of norms contrary to its object and purpose. The Judicial Branch must exercise control *ex officio* of the harmonization of the domestic norms with the American Convention, evidently within the framework of their respective jurisdictions and the corresponding procedural rules. In this task, the Judicial Branch should bear in mind not only the treaty, but also the corresponding interpretation made by the Inter-American Court, the definitive interpreter of the American Convention.²⁷⁸

220. Hence, the constitutional and legislative interpretations concerning the criteria for the personal and subject matter jurisdiction of the military jurisdiction in Mexico needs to be adapted to the principles established in the Court's jurisprudence, which have been reiterated in the present case. This implies that, irrespective of the reforms to the law that the State may adopt (*infra* para. 222), in this case, it is incumbent on the judicial authorities, based on the control of the harmonization of domestic law with the Convention, to order immediately and *ex officio* that the facts be heard by the ordinary criminal justice system.

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

222. Furthermore, in Chapter IX of this Judgment, the Court has declared that Article 57 of the Code of Military Justice is incompatible with the American Convention (*supra* paras. 162 and 163). Consequently, the Court reiterates to the State its obligation to adopt, within a reasonable time, the legislative reforms applicable in order to harmonize the mentioned provision with the international standards in this regard and with the Convention, in keeping with that established in this Judgment.

223. Finally, pursuant to that established in Chapter IX of this Judgment, Mrs. Rosendo Cantú did not have an appropriate and effective remedy to contest the intervention of the military justice system (*supra* paras. 164 to 167). As a consequence, Mexico must adopt, also within a reasonable time, the relevant legislative reforms to

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

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

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

allow those affected by the intervention of the military forum to have available an effective remedy to contest its jurisdiction.

iii) Public act of acknowledgement of responsibility

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

225. The representatives also asked that an act should be held during which the State would publically acknowledge its responsibility, in the Spanish and Me'paa languages, with the intervention of high-ranking officials, and where the President of Mexico would offer an apology for the violations committed. Said act must be "covered by the principle media that reach the national and community sector," and be held according to the victim's wishes and that she should indicate the place where the act should be held, as well as other aspects related to the content and conditions in which the act will be carried out. Lastly, they requested that, in the act, the reality of marginalization, exclusion, and discrimination of indigenous peoples be acknowledged, with particular emphasis made on the situation of indigenous women, as well the important labor of human rights organizations.

226. The Court recalls that the State made a partial acknowledgement of its international responsibility at the public hearing held in this case (*supra* para. 16). The Court has determined that the State's acknowledgement of responsibility makes a positive contribution to the development of this procedure and to validity of the principles that inspire the American Convention (*supra* para. 25). However, as in other cases,²⁷⁹ for this acknowledgement to achieve its full effect, the Court considers that the State must organize a public act of acknowledgement of international responsibility in relation to the facts of the present case. During this act, reference should be made to the human rights violations declared in this Judgment. The act should be carried out in a public ceremony, held in the Spanish and Me'paa languages, in the presence of high-ranking national authorities and of the state of Guerrero, the victims in this case, and authorities and members of the victims' community. The State, together with Mrs. Rosendo Cantú, and/or her representatives, must agree on how the public act of acknowledgement is to be organized, as well as other details, such as the place and date. If Mrs. Rosendo Cantú agrees, this act should be broadcast by a radio station of the state of Guerrero. The State has one year from the notification of this Judgment to carry out said act.

iv) Publication of the Judgment

227. The Commission requested the Court to order the State to publish the Judgment in a national means of circulation.

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

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

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

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

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

231. The State presented a large amount of information on the various actions and measures it has adopted to eradicate discriminatory practices, particularly against women and indigenous persons. The State made reference to, among other programs, the Intercultural Model for the Development of the Indigenous Peoples, facilitated by the Secretariat of Indigenous Affairs of the state of Guerrero. This program includes as one of its central points the legal reform and the indigenous recognition, and its services are aimed at reviewing and systematizing laws to formulate a reform proposal and bill on rights and culture in the state of Guerrero. Moreover, the Intercultural Model includes a Defense and Legal Aid Program for Indigenous Peoples, whose actions are aimed at offering defense services, legal aid, and administrative procedures in favor of the indigenous population. Likewise, Mexico also reported on the Program for the promotion of collaboration on justice in which projects have been carried out with civil organizations and the United Nations Fund for Women in order to promote the leadership of indigenous women in public matters. Lastly, during the public hearing, the State presented documentation relating to actions and programs in the area of gender and of indigenous peoples, including the Institutional and Social Enhancement Program for the Exercise of the Human Rights of Indigenous Women, prepared by the Government of the state of Guerrero, which proposes an "Intercultural and gender equity model for the exercise of the human rights of indigenous women."

232. The Court notes that the State provided certain information on programs and actions implemented in this sphere, whose existence or validity was not contested by the Commission, and to which the Commission did not provide any information indicating possible shortcomings. In this respect, the Court has already established that the obligation to motivate and establish a foundation for the Commission's claims for reparations and costs is not fulfilled by general requests without any legal or factual

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

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

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

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

argumentation or evidence that would allow the Court to analyze their purpose, reasonableness, and scope.²⁸⁴ This prevents the Court from ruling on the measure requested.

vi) Multidisciplinary health services for women victims of sexual abuse

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

234. The State presented information during the public hearing and in its final written arguments regarding the public policy, programs, norms, and actions that it has implemented at a federal and local level in order to “reduce the prevalence and severity of the harm caused by violence against women, with a particular emphasis on those women in situations of major risk and vulnerability.” Among other aspects, it presented information regarding Mexican Norm-046-SSA2-2005, “Domestic and sexual violence against women. The criteria for prevention and attention,” which strives to establish the criteria’s for detention, prevention, medical care, and the orientation for the service users of the general health care services, and particularly, those involved in circumstances of domestic or sexual violence. In this manner, it strives for medical care to the victim of violence that involves the promotion, protection, and restoration-to the highest degree possible-of physical and mental health via treatment, rehabilitation, or referrals to specialized places. Likewise, it reported on the creation in the state of Guerrero of institutions that intervene in cases of sexual violence against women such as the Investigation of Sexual Offenses and Domestic Violence, the municipal offices specialized in assistance and prevention of violence against women, made up of lawyers, social workers, doctors, and psychologists, and the State System to Prevent, Attend, Punish, and Eradicate Violence against Women” as well as the creation, at a federal level of: i) four Integral Attention Centers for victims of gender-based violence, “with the hopes of expanding the number [...] to all the federal entities,” and ii) a national network of refuge for women victims of violence, where they offer “specialized and interdisciplinary protection and attention to women and children in conditions of domestic, sexual violence or trade.”

235. In this regard, the Court notes that the State gave specific information regarding the institutions, norms, programs, and actions developed in this sphere, whose existence or validity was not questioned by the Commission, and to which the Commission also did not present information regarding possible deficiencies or problems. As such, the Court states that the duty to provide motive and establish the claims for reparations and costs is not satisfied with generic requests where there is no attached evidence or supporting argumentation (*supra* para. 232). The abovementioned prevents the Court from addressing the requested measures.

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

236. The Commission requested the Court to order the State to design participatory programs to contribute to the reinsertion of indigenous women victims of rape into the community.

237. The State presented information regarding some public policies initiated at a federal level as well as within the state of Guerrero regarding the participation of indigenous women in the diagnostic of the situation of violence against women and the “socialization of the legal instruments that recognize said women’s’ rights.” In particular, the State reported on training workshops for indigenous women, indigenous authorities,

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

indigenous organizations and those who offer services regarding violence, municipal authorities, and government employees of the judicial branch so as to, *inter alia*, "sensitize [them] in regards to the attention of women and their development in conditions that promote equal protection and freedom from violence."

238. In this regard, the State provided definite information regarding programs and actions developed on this subject, and the existence and validity were not objected to by the Commission, and to which the Commission also did not raise information regarding their possible problems. As such, the Court states that the duty to provide motive and establish the claims for reparations and costs is not satisfied with generic requests where there is no attached evidence or argumentation (*supra* paras. 232 and 238). The abovementioned prevents the Court from addressing the requested measures.

viii) Protocol for the diligent investigation of acts of violence

239. The Commission requested the Court to order the State to design protocols to facilitate and promote the effective, standardized, and transparent investigation of acts of physical, sexual, and psychological violence, which should include a description of the complex nature of the evidence, and details of the minimum evidence that must be collected in order to provide adequate probative grounds, according to the provisions of the Istanbul Protocol.

240. The State reported on the adoption of distinct protocols related with the investigation of the violence against women in the state of Guerrero such as the protocols of care to women in situations of violence and of the investigation of crimes of homicide with a focus on feminicides. Moreover, it reported on the publication of two manuals entitled, "Detection Networks, Support and Reference of Cases of Violence Against Indigenous Women of Guerrero," and "Reference Models of Cases of Gender Violence for the state of Guerrero," as well as other instruments related to the investigation and attention to violence against women, among others, the "Integrated Model for the Prevention and Attention of Family and Sexual violence," model used by health units, and the Program of "Medical Attention to Raped Persons." Likewise, the State provided information on the process of fitting the Istanbul Protocol to the national context through elaboration and application of the Special Medical/Psychological Report for Cases of Possible Torture and/or Mistreatment, issued by the Office of the Attorney General of the Republic, as well as by publication of institutional guidelines for the application of this Report to be followed by the agents of the Office of the Public Prosecutor of the Federation, and the forensic experts and/or criminal pathologists of the Office of the Attorney General of the Republic. Furthermore, it advised that 29 federative entities had received training on this report and three federative entities were in the process of training the attorney general's offices on the implementation of the Istanbul Protocol. Lastly, the State provided information on the elaboration of Mexican Official Norm NOM-046-SSA2-2005 on domestic and sexual violence and violence against women, which contains criteria to prevent and deal with this. This norm establishes various obligations for personal health, among others, to inform the Public Prosecutor's Office to carry out the corresponding investigations, and it was created pursuant to a friendly settlement with the Inter-American Commission.

241. The Court takes note of the information provided by the State concerning the existence of the mentioned instruments, and the training activities that the federative entities have been holding. However, the State did not attach the document on the "national contextualization" of the Istanbul Protocol or on its application in the state of Guerrero. Furthermore, the Court positively notes the existence of Mexican Official Norm NOM-046-SSA2-2005, which contains criteria for preventing and dealing with sexual abuse and violence against women, as well as detection and investigation standards for health personnel. Nevertheless, the Court notes that despite that in its introduction it states that "with the elaboration of this Mexican Official Norm [the State] complies with the commitments acquired in the international forum," and despite that the Norm is the

result of an agreement with the Inter-American Commission, Article 8 of the norm establishes that it “does not meet Mexican and international guidelines or recommendations,” namely, that it does not conform to international standards. The Inter-American Commission and the representatives did not address any of the instruments indicated by the State.

242. The Court has ordered in other cases that the parameters for investigations and for performing forensic analyses be harmonized with international standards.²⁸⁵ In the present case, the Court finds it necessary that the State continue with a standardized action protocol for the investigation of sexual abuse, for the federal forum and the state of Guerrero, based on the parameters established in the Istanbul Protocol and the World Health Organization’s guidelines mentioned above.

ix) Training programs for officials

243. The Commission asked that the Court order the State to develop training programs for government employees in accordance with the Istanbul Protocol, to provide said officials with the necessary scientific and technical elements to evaluate possible situations of torture or cruel, inhuman, or degrading treatment.

244. The State presented information and documentary evidence about the implementation of training programs and courses, as well as operating manuals for officials of the public administration, the judiciary branch, and health sector employees. Among other initiatives, Mexico reported that in 2009, a procedure of institutional and social fortification for attention to violence against indigenous women was developed, training government employees of the state of Guerrero in human rights, gender equity, and interculturality. Moreover, the Attorney General of Justice of the state of Guerrero provides training courses in human rights, with the goal of raising awareness amongst the employees on the importance of prevention of sexual assaults, highlighting seminars on criminal investigations of sexual violence, forensic medicine, and attention to victims of sexual violence. In addition, during the 2008-2009 period, the General Secretariat of the Government of Guerrero, carried out two training workshop called “Networks of development of detention, support, and reference of gender-based violence cases in indigenous areas of Guerrero” directed, among others, at indigenous authorities and care providers to the violence. Ten workshops on professionalism of public employees of the judiciary branch of the state of Guerrero were carried out. Finally, Mexico also made reference to other training initiatives of general reach, including the training of translators in the agencies of the Public Prosecutor’s Office in indigenous communities.

245. The Court assesses positively the existence of training programs and courses developed by the State. In this regard, it considers that they should include the provisions of the Istanbul Protocol and the guidelines of the World Health Organization, and should pay special attention to the response to alleged victims of rape, particularly when they belong to vulnerable groups, such as indigenous women and children.

246. As it has done previously,²⁸⁶ the Court orders the State to continue implementing permanent training programs and courses on the diligent investigation of cases of the sexual abuse of women that include a gender and ethnicity perspective. These courses must be offered to officials at the federal level and in the state of Guerrero, particularly to officials within the Public Prosecutor’s Office, the judicial branch, the police, and health sector personnel with competence in this type of case who, owing to their functions, constitute the first line of response to women victims of violence.

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

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

x) Permanent educational programs on human rights within the Armed Forces

247. The Commission asked that the Court order the State to implement permanent educational programs on human rights within the Mexican Armed Forces, for all ranks, which should include special mention of international human rights instruments, specifically those related to the protection of women's rights, *inter alia*, their right to live without violence, and to non-discrimination.

248. The State presented information on the human rights training programs and international humanitarian law programs implemented by the Mexican Secretariat of National Defense. Likewise, it indicated the creation of the General Office of Human Rights of said Secretariat, responsible for promoting a culture of human rights within the Armed Forces and to follow the complaints and recommendations that the National Human Rights Commission puts forward for the probable violations of human rights imputed to military personnel. Regarding a gender-based perspective, it manifested that said Secretariat is currently developing a Training and Sensitization Program for Gender-Based Perspectives.

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

xi) Medical and psychological care

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

251. The representatives asked the Court to order the State to guarantee to Mrs. Rosendo Cantú and her daughter, medical and psychological care provided by competent and trustworthy professionals for both of them, that take into consideration her status as an indigenous woman victim of violence, her culture, and her address. Moreover, they requested that the State incur all the all expenses related to treatment, including transportation or other necessities.

252. The Court finds, as it has in other cases,²⁸⁸ that a measure of reparation must be ordered that provides appropriate care for the physical and psychological effects suffered by the victims, which attend to their gender and ethnicity. Consequently, having verified the violations and the harm suffered by the victims in the present case, the Court decides that the State is obliged to provide them, free of charge and immediately, with the medical and psychological care they require. Prior, clear, and sufficient information should be offered to the victims so as to obtain their consent. The treatments should be provided for the time that is necessary, and should include the provision of medication, and where applicable, transportation, interpreters, and other costs that are directly related and strictly necessary.

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

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

253. In particular, the psychological or psychiatric treatment must be provided by State personnel and institutions specialized in attending to victims of acts of violence such as those that occurred in this case. If the State does not have this type of service available, it must have recourse to specialized private or civil society institutions. When providing this treatment, the specific circumstances and needs of each victim must be considered, so that they are offered individual and family treatment, as agreed upon by each of them, and following an individual evaluation.²⁸⁹ Lastly, this treatment must be provided, insofar as possible, in the institutions nearest to their place of residence. The victims that request this measure of reparation, or their legal representatives, have six months as of the notification of this Judgment to inform the State of their specific requests for psychological or psychiatric treatment. The Court highlights the need for the State and the representatives to offer their best collaborative efforts and to provide the victims with all the information necessary for said victims to receive the psychological treatment in order to advance the implementation of this measure in an agreed upon manner.

xii) Codification of the crime of torture in the Criminal Code of the state of Guerrero

254. The representatives requested the Court to order the State to appropriately codify the crime of torture in the criminal legislation of the state of Guerrero so that those involved in judicial operations of said state can effectively investigate and punish those responsible for the conducts that fall into said penal codification. In their final written arguments, the representatives requested that the Court order the State to “reform the norms in which the crime of torture in Guerrero is legislated,” which “do not satisfy the minimum conventional standards, and which have been included in a normative body different from the state Criminal Code.”

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

xiii) Award of scholarships

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

257. The Court has established in this Judgment that the facts of the case harmed Mrs. Rosendo Cantú and her daughter and this harm continues and has resulted in significant alterations to their lives and also to their domestic relations and their relations with the community, which have affected their personal development (*supra* paras. 130, 131, 138, and 139). Based on the foregoing, and bearing in mind the representatives’ request, the Court finds it appropriate to order as a measure of satisfaction in this case, as it has in other cases,²⁹⁰ that the State awards scholarships in Mexican public establishments to Mrs. Rosendo Cantú and her daughter, Yenys Bernardino Rosendo, that covers all the costs of their education until the completion of their higher education, whether of technical or university studies. The State’s compliance with the obligation implies that the beneficiaries must take certain measures to exercise their right to this

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

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

measure of reparation.²⁹¹ Consequently, those who requested this measure of reparation, or their legal representatives, have six months from notification of this Judgment, to advise the State of their request of scholarships.

xiv) Health care center for the victim's community

258. The representatives requested the Court to order the State to, in the framework of a policy of access to health care for women in indigenous communities in Mexico, give Mrs. Rosendo Cantu's indigenous community a comprehensive health care center, with specialized personnel in the treatment of women victims of violence, that provides translators and the necessary resources and medication, so as to guarantee increased access to said services for women in the community to actively participate, promoting human rights of women victims of violence, if the victim wishes so.

259. The Court notes that the State reported on various public policies aimed at attending to women victims of sexual violence, that have been implemented by means of a National Program of Prevention and Attention to Domestic and Sexual Violence, which has been implemented in 32 federal states and which establishes as its objective an organized social response to the needs of women victims of violence regarding medical and psychological care. It also reported that the state of Guerrero has carried out multiple actions to attend to women in Guerrero, through various agencies, including the Secretariat of Women and the Secretariat of Indigenous Affairs, and the provision of services such as mobile units traveling to attend to the problems of women in the community. It also reported that in indigenous areas, policies and programs have been designed and implemented to expand coverage of health services. The State also indicated that health personnel "constantly receives training on human rights [...] to ensure adequate provision of health services to people," and made reference to works that have been carried out to improve health care infrastructure in the state of Guerrero and special services for women victims of sexual violence. On the other hand, of the evidence presented in the current case, it is evident that the nearest health care center to the Barranca Bejuco community is found in the community of Caxitepec.

260. In the present case, the Court notes that the rape of Mrs. Rosendo Cantú has demonstrated the need to strengthen attention and the health care centers that treat women who have suffered violence. Notwithstanding the aforementioned, the Court notes that there is a health care center in Caxitepec, and the representatives have not provided the Court with sufficient information for it to consider the need of ordering to create a new health care center. The services for treating women victims of sexual violence can be guaranteed within the current center, which should be fortified by way of the provision of material resources and staffing, including the provision of a translator who speaks Me'paa, as well as the use of an appropriate protocol, to take the appropriate actions; all this in the context of the implementation of programs regarding care for victims of violence and investment efforts in improving the services that the State indicated that it has been carrying out.

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

261. The representatives asked the Court to order the Mexican State to create a Special Office of the Public Prosecutor to provide attention to women victims of violence in the state of Guerrero, of easy access, which should have appropriate technical and financial resources and personnel trained to handle cases such as this one who are conversant with the international standards for treating women victims of violence and torture.

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

262. Mexico reported that in the state of Guerrero there exists, among others, a Special Prosecutor's Office for the Investigation of Crimes of Sexual and Domestic Violence, of which seven agencies specialized in attention to sexual violence depend, and which are strategically located in the territory of the state, one in the Mountain Region, all of which are attended to by female personnel, trained on matters of gender and violence, and the Special Prosecutor for Crimes of Violence Against Women and Human Trafficking, adjoined to the Attorney General of Justice of the Republic. Moreover, Mexico reported that the state of Guerrero has carried out multiple actions to take care of indigenous women of Guerrero, noting the work of various agencies, among others, the Secretariat for Women and the Secretariat of Legal Matters in the state of Guerrero, the creation of 36 municipal counsels for assistance and prevention of the same specialization located in the Mountain area. In addition, it reported that in order to provide psychological and legal attention and of social-work oriented attention for women in the Mountain and Costa Chica region, in municipalities and localities of greater marginalization that have a higher numbers of indigenous population, it counts on two mobile units. Similarly, it reported on a program of consultancy, orientation in gender violence and legal representation in family matters, whose actions are aimed at providing, among other services, free legal representation and assistance to women, and it also reported on the program of defense and legal aid of the attorney general of defense of the rights of women, whom, among other matters, offers economic aid to women to expense costs in jurisdictional proceedings and provides representation and legal aid in the criminal procedures of which they may be involved. Lastly, it reported on the actions taken in regard to the dissemination of women's rights information, among which it noted the distribution of leaflets to raise awareness of the functions, services, and location of the municipal units specialized in the care for women victims of violence.

263. The Court values the information presented by the State and notes that the representatives have not given their observations on the diverse actions, mobile units, or institutions referred to by Mexico, nor have they provided information noting the possible failures with these organizations. Based on the aforementioned, the Court does not have specific and sufficient information to assess the situation and order the creation of the requested office by the representatives. Nevertheless, the services for women victims of sexual violence must be offered by the institutions noted by the State, among others, the Public Prosecutor's Office of Ayutla de los Libres, by way of the provision of material resources and personnel, whose activities should be strengthened through trainings ordered in the present Judgment.

264. Lastly, the Court observes that the diagnostic report carried out by the Secretariat for Women of the state of Guerrero identifies, among other barriers that complicate attention to the violence in indigenous and rural zones, the fact that said services are centered in cities, and the difficulties regarding access and moving of the location of the services.²⁹² Said diagnostic report recommends, among other measures to decentralize the services and to promote roaming services of sensitization, detection, and attention to violence and to improve access to telephone services for the indigenous communities of Guerrero, so as to allow better attention to women victims of violence. The Court understands that the first of these measures shall be attended to by the informed mobile units. Notwithstanding the foregoing, the Court appreciates the document and considers it useful to indicate the State to discuss the need for progress in implementing these two recommendations in the area where the events of this case occurred.

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

xvi) Campaign for the awareness and sensitization of the prohibition and effects of violence and discrimination against the indigenous woman

265. The representatives requested the Court to order the State of Mexico to carry out a campaign for the awareness and sensitization of the prohibition and effects of violence and discrimination against indigenous women in all aspects of their lives, which should be directed at the population in general, and particularly at the education and public health facilities in the state of Guerrero, such as federal, state, municipal and communitarian employees.

266. In this regard, the State presented evidence of campaigns regarding the prohibition and effects of violence and discrimination against women in all aspects of their lives. In particular, it reported on two programs of dissemination, through several media outlets, addressed to population, public officers and social actors that attend to victims of gender related violence and human trafficking. The State also reported on campaigns, implemented by the National Women's Institute and the National Commission for the Development of Indigenous Peoples, on the prevention -in print and electronic media- to promote nonviolence as the right of women in indigenous areas, which include radio programs covering topics such as gender violence, sexual harassment, domestic violence, and sexual rights, among others. Finally, the State noted that said the Department of Indigenous Affairs of the state of Guerrero has promoted radio broadcasting in indigenous radios, of the rights enshrined in Law 533 of Access of Women to aLife Free From Violence in four indigenous languages that exist throughout the state of Guerrero.

267. The Court does not have information on behalf of the representatives that indicate the deficiencies in this campaign. As such, the Court does not find that it is necessary to carry out a new awareness and sensitization campaign of the population in general regarding the prohibition and effects of violence and discrimination against indigenous women in all aspects of their lives, rather that the measure should be guaranteed by means of the continuation of the already established campaign. Regarding the government employees, the Court considers that the publication of the present Judgment and the reparations ordered in sections *ix)* and *x)* of this chapter are sufficient and adequate, and as such, the Court will not declare additional measures regarding the present request for reparation.

xvii) Other measures requested

268. In its final written arguments, the Commission requested that Court to order the following additional measures of reparations from the State: i) to adopt, as a priority, a comprehensive and coordinated policy, backed-up with the appropriate resources, to guarantee that cases of violence against women are properly prevented, investigated, punished, and that the victims receive reparations, and ii) to implement public policies and institutional programs designed to quash stereotypes regarding the role of women in society and to promote the eradication of socio-cultural discrimination patterns that prevent full access to justice for women, including training programs for government employees in all branches of the administration of justice, the police, and the comprehensive prevention policies. Furthermore, the representatives, also in their final written arguments, asked the Court to order the State of Mexico: i) to establish adequate and effective mechanisms for prior, free, and informed consent of the indigenous peoples or communities of Guerrero whenever legislative or administrative measures are adopted that would result in the presence of security forces, including soldiers, on their territory, or on the territory in which these communities reside, and ii) to establish adequate conditions for the victims to return to their native community, to which they request, *inter alia*, the restitution of their cultural heritage, the eradication of the risk and threat factors, the design of preventive and not culturally deterrent

measures, and the provision of psycho emotional accompaniment that the victim so requires.

269. The Court observes that the Commission and the representatives did not submit these requests at the appropriate procedural opportunity, namely, in the brief containing the application and written brief of pleadings and motions. Consequently, the requests for these measures of reparation are time-barred and the Court will not consider them.

D. Indemnization, compensation, costs, and expenses

i) Pecuniary damage

270. The Court has developed in its jurisprudence the concept of pecuniary damage and the requisites for which it should be compensated. This Court has established that pecuniary damage supposes "the loss of or detriment to the income of the victims, the expenses incurred as a result of the facts, and the pecuniary consequences that bear a relationship to the facts of the case."²⁹³

271. The Commission requested the Court to, where it deems appropriate, fix in equity an amount of compensation that corresponds to consequential damages and loss of earnings, using its wide faculties on the matter.

272. The representatives indicated that as a direct consequence of the rape of Mrs. Rosendo Cantú, the victim had to abandon involuntarily her two parcels of five hectares each, three head of cattle, and 13 goats. The representatives clarified that the victim was only the proprietor of half of her assets, given that the other half belonged to her husband. They indicated that the commercial value of both the parcels was \$120,000.00 M.N. (one hundred and twenty thousand Mexican pesos), of which half belonged to her, namely, \$60,000.00 M.N. (sixty thousand Mexican pesos), equivalent to US \$4,583.65 (four thousand, five hundred and eighty-three dollars of the United States of America and sixty-five cents). As such, they requested, as a measure of reparation for the loss of the parcels, that "the State [...] offers [Mrs. Rosendo Cantú] a parcel with the characteristics of that one which was lost, in the village of Caxitepec [...], in order for her to return to her community and return to her heritage where she can then carry out harvesting activities as she did before the rape." Regarding the heads of cattle, the representatives expressed that each head of cattle had the commercial value of \$8,000.00 M.N. (eight thousand Mexican pesos) and each goat had the commercial value of \$1,000.00 M.N. (one thousand Mexican pesos), to which the total value of the cattle was \$37,000.00 M.N. (thirty-seven thousand Mexican pesos), of which half belonged to her, namely, \$18,500.00 M.N. (eighteen thousand, five hundred Mexican pesos), equivalent to US \$1,413.29 (one thousand, four hundred and thirteen dollars of the United States of America with twenty-nine cents). In addition, they noted that to the prior sums, "medical and transportation costs should be added that [...] she had to incur [as a consequence of the rape]," given that she went four times to a private doctor and had to purchase medicine for three months, to which she had to end the treatment due to lack of means.

273. On the other hand, the representatives also stated that, as a direct result of the rape, owing to the stigmatization and discrimination suffered in her community and owing to the well-founded fear of suffering another attack from the soldiers, Mrs. Rosendo Cantú isolated herself from her community and avoided work in her daily chores that entailed cultivation and care of the livestock, and given the situation she was living, had to involuntarily leave the community. The amount that corresponds to the earnings that she did not make since the events took place, amount to \$613,552.00 M.N. (six hundred and thirteen thousand, five hundred and fifty-two Mexican pesos),

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

equivalent to US \$46,871.81 (forty-six thousand, eight hundred and seventy-one dollars of the United States of America and eighty-one cents). Nevertheless, because they cannot show the Court receipts that accredit this amount, they asked the Court to determine, in equity, the amount for loss of earnings.

274. The Court observes that the representatives did not present any documentation or evidence to authenticate the alleged emerging damage or the lost of income suffered by Mrs. Rosendo Cantú. Notwithstanding, the Court notes that Mrs. Rosendo Cantú stopped working in the harvest because she feared acts of violence and because of her search for justice in the case. As a consequence, it is foreseeable that the effects of the rape caused her to be inactive for some time. For the abovementioned, the Court decides to fix, in equity, the amount of US US\$5.500,00 (five thousand and five hundred dollars of the United States of America) or its equivalent in Mexican pesos, for the loss of income of Mrs. Rosendo Cantú. This amount should be given to Mrs. Rosendo Cantú in the time period fixed by the Court for this purpose (*infra* para. 287).

ii) Non-pecuniary damage

275. The Court has developed in its jurisprudence the concept of non-pecuniary damage and the assumptions under which it must be compensated. The Court has established that non-pecuniary damage “may include the suffering and distress caused to the direct victims and their next of kin, the impairment of values that are highly significant to them, and other alternations, of a non-pecuniary nature, in the living conditions of the victim or his family.”²⁹⁴

276. The Commission asked the Court to establish in equity the amount of the compensation for non-pecuniary damage, based on the nature of the case and the gravity of the damage suffered by the victims and their next of kin.

277. The representatives indicated that the rape of Mrs. Rosendo Cantú resulted in numerous devastating effects on her life. To which they mentioned the permanent state of pain, sadness, guilt, and anxiety of the victim, caused by the rape itself and because of the stigmatization and abandonment of her husband as well as of her community, as well as the defenselessness and despair felt due to the lack of justice. Moreover, the stigmatization has caused her feelings of defenselessness and total vulnerability, which caused her to live traumatic moments and provoked her uproot from the community. Similarly, the lack of sensibility with which she was treated by officials who attended to her, the impunity, and the fact that the case went before the military forum have heightened her feelings of impotence, anguish, and sadness. Likewise, the representatives expressed that the girl Yenys Bernardino Rosendo, has also been subjected to serious harm as a result of what happened. Given the aforementioned, they requested that the State of Mexico order compensation for the harm caused to Mrs. Rosendo Cantú and her daughter and that economic reparation be determined in equity.

278. International jurisprudence has repeatedly established that the Judgment may constitute *per se* a form of reparation.²⁹⁵ However, considering the circumstances of the case *sub judice*, the sufferings that the violations committed caused the victims, as well as the alterations in their living conditions, and the other consequences of an immaterial

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

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

or non-pecuniary nature that they experienced, the Court finds it pertinent to establish a sum, in equity, as compensation for non-pecuniary damage.²⁹⁶

279. Based on the compensation ordered by the Court in other cases, and considering the circumstances of the present case, the status of Mrs. Rosendo Cantú, as a girl child, when the events occurred, and the nature and seriousness of the violations committed, the sufferings caused to the victims and the way they have been treated, the time that has elapsed since the rape, the denial of justice, and also the alterations in their living conditions and other consequences of a non-pecuniary nature that they suffered, the Court finds it pertinent to establish, in equity, the sum of US \$60,000.00 (sixty thousand dollars of the United States of America) in favor of Mrs. Rosendo Cantú, as compensation for non-pecuniary damage. Moreover, given the suffering she experienced as a consequence of the facts of the case, particularly the uproot and imbalance to the family infrastructure (*supra* para. 139), the Court establishes, in equity, compensation of US \$10,000.00 (ten thousand dollars of the United States of America) in favor of Yenys Bernardino Rosendo.

iii) Costs and expenses

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

281. The Inter-American Commission asked that the Court "order the State [...] to pay the reasonable and necessary costs and expenses that arise and have arisen from the processing of the present case that have been duly authenticated."

282. In their written brief of pleadings and motions, the representatives asked that the Court to order the State to pay the following amounts for costs and expenses: i) the sum that the Court establishes in equity in favor of the victims, Mrs. Rosendo Cantú and her family for the expenditure incurred in the pursuit of justice and medical care; ii) in favor of CEJIL, US\$11,910.75 (eleven thousand nine hundred and ten dollars of the United States of America and seventy-five cents) for the expenses incurred from October 2007 up until the presentation of the brief of pleadings and motions and US\$6,152.54 (six thousand, one hundred and fifty-two dollars of the United States of America and fifty-four cents) for costs incurred after said date iii) in favor of "Tlachinollan," US\$3,517.14 (three thousand five hundred and seventeen dollars of the United States of America and fourteen cents) for the expenses incurred from April 2002 until the presentation of their final written arguments and US\$23,584.05 (twenty-three thousand, five hundred and eighty-four dollars of the United States of America and five cents) for the costs incurred "in connection with the preparation and carrying out of the public hearing [as well as] costs incurred in the past by Tlachinollan, due to the fact that because of human error they were not added to [the] brief of pleadings and evidence". Lastly, the representatives indicated that CEJIL incurred expenses for, *inter alia*, photocopies, stationery, and telephone calls for US\$250.00 (two hundred and fifty dollars of the United States of America) in the case requesting the Court to set an amount to cover future expenditures related with the processing of the case. Finally, the representatives asked that the payment of these amounts be made directly on their behalf, which would contribute to the speed and efficiency of payments, given the reality of the victim and the potential difficulties for reimbursement.

283. In its observations to the attachments presented jointly with the final written arguments, the State observed that "some of the receipts for costs presented by the

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

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

representatives do not relate to the expenditures of the processing of the matter before the Inter-American System of Human Rights, such as the receipts that indicate the purchase of colored pencils, brushes and water colors, table games, princess balls, and clothes, and a receipt of carwash and car vacuum [...], without considering that many of these expenditures are backed up by the receipts of the organization Tlachinollan that does not have a fiscal registry or other type of tax control.”

284. Regarding reimbursement of costs and expenses, the Court must prudently assess its 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 can be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that the *quantum* is reasonable.²⁹⁸

285. The Court has indicated that “the claims of the victims or their representatives concerning costs and expenses, and the evidence to support them, must be submitted to the Court at the first procedural occasion granted to them, namely, in the brief of pleadings and motions; notwithstanding the possibility that these claims may be updated subsequently, in keeping with the new costs and expenses that may have been incurred as a result of the proceedings before this Court.”²⁹⁹ Furthermore, the Court reiterates that it is not sufficient that the parties merely submit probative documents; rather they are required to submit arguments that connect the evidence to the fact that it is supposed to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly explained.³⁰⁰ With their final arguments, the representatives included additional expenses presumably incurred by “Tlachinollan” prior to the presentation of the application that were not included in the brief on pleadings and motions. The representatives indicated that this omission was due to a “human error.” Owing to its time-barred presentation, the Court will not consider said expenses when determining the amount that it will establish as costs and expenses. Finally, the Court observes that a significant number of expenditures reported by the representatives have no supporting documentation or the receipts sent have no relationship with expenses related to this case.

286. Notwithstanding the aforementioned, the Court determines that the representatives incurred various expenses before the Court in relation to fees, evidence collection, transportation costs, communication services, among others, in the processing at the domestic and international forums of the present case. Based on the abovementioned, the Court determines, in equity, that the State must deliver the sum of US\$14,000.00 (fourteen thousand dollars of the United States of America), US\$10,000.00 (ten thousand dollars of the United States of America), and US\$1,000.00 (one thousand dollars of the United States of America), in favor of CEJIL, Tlachinollan, and Mrs. Rosendo Cantú, respectively, for costs and expenses. In the monitoring of compliance procedures of the present Judgment, the Court may provide the reimbursement on behalf of the State to the victims or their representatives for reasonable expenses that have been duly proven.

iv) Method of compliance with the ordered payments

287. The State must pay the compensation for pecuniary and non-pecuniary damage and the reimbursement of costs and expenses established in this Judgment directly to

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

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

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

those indicated herein, within one year of notification of the Judgment, under the terms of the following paragraphs.

288. In regard to the compensation ordered in favor of the girl Yenys Bernardino Rosendo, the State must deposit it in a solvent Mexican institution. The investment must be made within one year, in the most favorable financial conditions permitted by the law and banking practices, while the beneficiary is a minor. Said sums can be withdrawn by her when she is no longer a minor, or before then if it is convenient to the best interest of the child, as determined by the competent judicial authorities. If the compensation is not claimed within ten years of the minor coming of age, the sum shall be returned to the State with interest.

289. In regard to the payment of the amount that corresponds to Mrs. Rosendo Cantú, the State must analyze the convenience, if the victim agrees, to carry out payment via a deposit made in a bank account, without this affecting the amount ordered in the Judgment.

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

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

292. If, for reasons that can be attributed to the beneficiaries of the compensation or to their heirs, it is not possible to pay the amounts established within the time indicated, the State shall deposit the amount in their favor in an account or a deposit certificate in a solvent Mexican financial institute in dollars of the United States of America and in the most favorable financial conditions permitted by law and banking practice. If, after 10 years, the compensation has not been claimed, the amounts shall revert to the State with the accrued interest

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

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

XII

OPERATIVE PARAGRAPHS

295. Therefore,

THE COURT

DECIDES,

unanimously, that:

1. It admits the withdrawal of the preliminary exception filed by the State, in the terms of paragraph 13 of the present Judgment.
2. It accepts the partial acknowledgment of international responsibility of the State, in the terms established in paragraphs 16 to 26 of the present Judgment.

DECLARES,

unanimously, that:

3. The State is responsible for the violation of the rights to personal integrity, dignity, and private life, enshrined, respectively, in Articles 5(1) and 5(2), 11(1), and 11(2) of the American Convention on Human Rights, in relation to Article 1(1) of the same, and Articles 1, 2, and 6 of the Inter-American Convention to Prevent and Punish Torture, and did not meet the obligations which arise from Article 7(a) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, to the detriment of Mrs. Rosendo Cantu, in accordance with that mentioned in paragraphs 89 to 121 and 127 to 131 of this Judgment.

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

5. It does not correspond to rule on an alleged violation of personal integrity, established in Article 5(1) of the American Convention on Human Rights, to the detriment of Mr. Victoriano Rosendo Morales, Mrs. Maria Cantu Garcia, and the brothers and sisters of Mrs. Rosendo Cantu, pursuant to that established in paragraph 140 of the present Judgment.

6. The State is responsible for the violation of the right to judicial guarantees and judicial protection, established in Article 8(1) and 25(1) of the American Convention on Human Rights, to the detriment of Mrs. Rosendo Cantu: a) in relation with Article 1(1) and 2 thereof, in the terms of paragraphs 159 to 167 of the present Judgment, and b) in relation to Article 1(1) of the American Convention and the State did not comply with the obligation established in Article 7(b) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, in the terms of paragraphs 174 to 182 of the present Judgment. Likewise, Mexico did not comply with the obligation to guarantee, without discrimination, the right to access to justice established in Articles 8(1) and 25 of the American Convention on Human Rights, in relation with Article 1(1) thereof, to the detriment of Mrs. Rosendo Cantu, pursuant to paragraphs 183 to 185 of the present Judgment.

7. The Court is not responsible for the non-compliance of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Mrs. Rosendo Cantu, pursuant to paragraph 186 of the present Judgment.

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

AND DECIDES,

unanimously, that,

9. This Judgment constitutes *per se* a form of reparation.
10. The State must conduct in the ordinary jurisdiction, effectively and within a reasonable period of time, the investigation, and where necessary, the criminal procedures in relation with the rape of Mrs. Rosendo Cantu, in order to determine those criminally responsible and to apply, where necessary, the punishment and consequences that the law dictates, pursuant to that established in paragraphs 211 to 213 of this Judgment.
11. The State must, pursuant to the relevant normative principles, examine the facts and conduct of the agent of the Public Prosecutor's Office who complicated the reception of the complaint presented by Mrs. Rosendo Cantu, as well as that of the doctor who did not give legal notification to the corresponding authorities, in conformity with the terms of paragraph 214 of the present Judgment.
12. The State must adopt, in a reasonable period of time, the relevant legislative reforms so as to adjust the compatibility of Article 57 of the Military Code of Justice with international standards on the matter and the American Convention on Human Rights, pursuant to that established in paragraph 222 of the present Judgment.
13. The State must adopt the relevant reforms so as to allow an effective remedy to contest jurisdiction to those persons affected by the intervention of the military justice system, pursuant to that established in paragraph 223 of the present Judgment.
14. The State must carry out a public act of acknowledgment of its international responsibility in regard to the facts of the present case, pursuant to that established in paragraph 226 of the present Judgment.
15. The State must carry out the abovementioned publications, pursuant to that established in paragraph 229 of the present Judgment.
16. The State must continue with the process of standardization of an action protocol, for the federal forum and that of the state of Guerrero, regarding the attention provided and investigation of rape, taking into consideration, to the extent relevant, the parameters established in the Istanbul Protocol and the Guidelines of the World Health Organization, in accordance with paragraph 242 of the present Judgment.
17. The State must continue to implement permanent training programs and courses regarding diligent investigation in cases of sexual violence against women, that include an ethnic and gender based perspective, which should be administered to federal employees and those in the state of Guerrero, in conformity with that established in paragraphs 245 and 246 of this Judgment.
18. The State must continue with the actions developed in regard to training programs on human rights for members of the Armed Forces, and should implement, in a reasonable period of time, a permanent and obligatory program or course on training and formation in human rights, directed at members of the Armed Forces, pursuant to that established in paragraph 249 of the present Judgment.
19. The State must provide the medical and psychological treatment needed by the victims, in conformity with that established in paragraphs 252 and 253 of the present Judgment.
20. The State must provide scholarships for study at public Mexican institutions for the benefit of Mrs. Rosendo Cantú and her daughter, Yenys Bernardino Sierra, in the terms established in paragraph 257 of the present Judgment.
21. The State should continue to offer services for treating women victims of sexual violence by means of the health center in Caxitepec, which should be fortified by way of the provision of material resources and staffing, pursuant to that established in paragraph 260 of the present Judgment.

22. The State must assure that the attention services for women victims of sexual violence are offered by institutions indicated by Mexico, among others, the Public Prosecutor's Office of Ayutla de los Libres, via the provision of medical resources and personnel, whose activities must be strengthened with trainings, in conformity with that established in paragraph 263 of the present Judgment.

23. The Court must continue the awareness and sensitization campaign of the population regarding the prohibition and effects of violence and discrimination against indigenous women, in the terms established in paragraph 267 of the present Judgment.

24. The State must pay the quantities fixed in paragraphs 274, 279 and 286 of the present Judgment, for pecuniary and non-pecuniary damage, and the reimbursement of costs and expenses, as it so corresponds, within a period of one year, to begin as of the notification of the present Judgment, in the terms of paragraphs 287 to 294 of the same.

25. The Court will supervise the full compliance with this Judgment, in the exercise of its attributions and in compliance with its obligations pursuant to the American Convention on Human Rights, and will conclude the present case once the State has entirely satisfied said dispositions. In a period of one year as of the notification of this Judgment, the State must offer the Court a brief regarding the measures adopted to satisfy compliance.

The Judges Rhadys Abreu Blondet and Alejandro Carlos Espinosa rendered a concurring opinion, which accompanies this Judgment.

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

Diego García-Sayán
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Alejandro Carlos Espinosa
Judge *Ad hoc*

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

**CONCURRING OPINION OF JUDGE RHADYS ABREU BLONDET
IN RELATION TO THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN
RIGHTS IN THE CASE OF *ROSENDO CANTÚ ET AL. V. MÉXICO*, OF AUGUST 31,
2010**

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

2. *Regarding the State's withdrawal of its only preliminary objection.* In the case of *Rosendo Cantú et al.*, as well as in the case of *Fernández Ortega et al.*, Mexico argued that the Inter-American Court lacked *ratione materiae* jurisdiction to hear the violations of the Convention of Belem do Pará, basically reproducing the argument it had offered before this Tribunal in the case of *Gonzalez et al. ("Cotton Field")*, which the Inter-American Court discusses as of paragraph 33 of the aforesaid Judgment. Nonetheless, the State decides to withdraw said preliminary objection at a public hearing conducted for this purpose.

3. Mexico filed said preliminary objection in the case of *Rosendo Cantu et al.* on February 17, 2010 and in the case of *Fernandez Ortega* on December 13, 2009. Both dates are after this Court's Judgment was issued in the case of *Gonzalez et al. (Cotton Field)*, issued on November 16, 2009. Such procedural demeanor demonstrated dissatisfaction with the Court's decision. It does not seem strange to the Inter-American system for the protection of human rights that States show resistance in complying with certain interpretations made by this Court of the American Convention on Human Rights (hereinafter called "American Convention," or "Pact of San Jose"). Such is the case with the *continued crime* criterion granted in cases of enforced disappearance of individuals, which generally impedes the States from alleging the Court's lack of *ratione temporis* jurisdiction regarding probable violations of certain articles of the American Convention, such as the victim's *right to personal integrity* (Article 5) or the *right to judicial guarantees* and to *judicial protection* to next of kin in search of the whereabouts of the victim (Articles 8 and 25), depending on the case.

4. Furthermore, the fact that a given State had "reconsidered" and then later withdrawn by itself a preliminary objection such as the mentioned, which inadmissibility had being exemplarily explained by this Court, must be then understood as a sample of the steadfastness that such jurisprudential criterion has acquired up to this time. Changing it, which would be clearly absurd, is now extremely hard to do.

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

6. A precedent set by the Inter-American Court whereby it was established that the necessary motivation and establishment of foundation of the intent of the reparations

are not present in generic requests to which proof or explanations are not attached has supported such denial.³⁰¹

7. To my knowledge such position is correct in terms of assessing the amount for costs and expenses and in those cases in which the victims' representatives or the Inter-American Commission on Human Rights request the implementation of a public policy or of specific programs which have already been applied by the State, and where these do not explain deficiencies on existing ones.

8. However, in cases of this nature, the Tribunal is competent to determine what could be an appropriate measure of reparation regarding the three cited instances, or for at least setting the standards that should be honored by those policies executed by the State in this regard. A Tribunal that applies standards of human rights issues cannot render a restrictive interpretation of the language in the Pact of San Jose, but can, as established on Article 29(c) of the American Convention and as the Court itself has established, apply the *pro homine* principle.

9. The aforementioned conclusion can be reached, even when the combination of the principles *iura novit curia* and *pro homine* are applied in interpreting human rights' treaties. Such important decision, that of fixing the appropriate reparation for the victim, should not be left only to the diligence or lack of it, coming from the parties in the proceedings, because if the Inter-American Commission or the victims' representatives fail to support their respective petitions, the victim should not be devoid of such measures.

10. I mention the principle *iura novit curia* because if international tribunals, regardless of what the parties establish, are competent to determine what Articles of the American Convention have been violated after analyzing the facts, the Tribunal is likewise competent to determine what the applicable reparations should be, even if neither of the parties has proposed it (or had not supported the request).³⁰² The authority to establish the State's international responsibility for the violation of any of the Articles in the American Convention, cannot be severed, thus the Tribunal has the last word on establishing reparations that would be effective in trying to return the victim to the status quo when Article 63(1) of the San Jose Pact is properly applied.

11. Furthermore, it could also be said "who can handle the greatest, can also handle the lesser." It would be pointless if the Inter-American Court can indeed establish a State's international responsibility for the violation of a certain Article, from the review of proven facts, regardless of the violations put forward by the Inter-American Commission and/or by the victim's representatives, but not establish pertinent reparations for such violation. The Court could possibly reject such reparation measures, only based on arguments that the State has already proven implementation of identical or suitable measures to repair such a violation, and that the parties have not proven the mistake, but the Court can never reject them based on an argument that they were submitted in a generic fashion or without supporting argumentation.

³⁰¹ Cf. *Case of González et al. ("Cotton Field") v. México. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 16, 2009. Series C No. 205, para. 493.

³⁰² See, in regard to this principle, *inter alia*, *Case of the "Mapiripan Massacre" v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 134, para. 57.

Rhadys Abreu Blondet
Judge

Pablo Saavedra Alessandri
Secretary

**CONCURRING VOTE OF JUDGE AD HOC ALEJANDRO CARLOS ESPINOSA
IN RELATION TO THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN
RIGHTS IN THE CASE OF FERNÁNDEZ ORTEGA ET AL. V. MEXICO, OF AUGUST
30, 2010**

1. The present concurring vote is for the cited case *ut supra* as well as for the case of *Fernández Ortega et al. v. México* in consideration of the following reasons:

a) It deals with soldiers in service, namely agents of the State of Mexico, that under special conditions committed grave violations of the domestic and international legal codes, which should have been observed in attention given their role as guarantors of the domestic legal system of the State of Mexico and regarding the rights of their co-nationals;

b) The passive subject [victim] of the crime of rape for whom this case has unfolded, is a woman, poor, and indigenous, exposed to a high level of vulnerability; apart from not speaking the Spanish language;

c) The Code of Military Justice is similarly applied to investigate crimes committed by soldiers and those in which civilian victims are found, in attention to the provisions of Article 57, section II, subsection a) of the mentioned legal code; that which was ordered modified in the case of *Radilla Pacheco v. México*;

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

e) The delay was extreme in the preliminary investigation of the criminal procedure, and timely results by the various instances available in the search for justice were not produced, and

f) The victims underwent torturous paths to obtain access to justice.

2. In this concurring opinion, I express my agreement with the logic of motivation and argumentation, and therefore, with the content of the Judgment, given the case analysis by the Inter-American Court of Human Rights that provoked the ruling in the case of *Rosendo Cantú et al v. México*, as well as with the criteria and sums for reparation of harm detailed in the Judgment, due to their nature and proportionality. I add in this statement, and in addition to the findings held in the Judgment, my reasoning *ad cautelam* derived from specifics that I find the State of Mexico should observe.

3. As indicated by the American Convention on Human Rights, the subsidiary nature of the Inter-American jurisdiction of human rights, in contrast to the domestic jurisdiction, is fundamental, given that it enhances and complements that provided in the domestic laws of the American States; as such, I consider that the appropriate interpretation of Article 13 of the Constitution of the United Mexican States should harmonize not only Article 57, section II, subsection a) of the Code of Military Justice, but also the provisions enshrined in subsections b), c), d), and e), of the indicated normative instrument.

4. Despite the structural and normative weaknesses presented in the Code of Military Justice, which dates back to 1933, it should be noted that the State of Mexico was willing to investigate the case institutionally, but it is also evident that it did not go beyond carrying out routine procedures knowing that the facts would not be ascertained nor responsibility be pinned on the State agents, without seeking the maximum in the quest for justice "in that as time passes the truth passes."

5. The State of Mexico should ensure that legal uncertainty no longer occurs, that which affects governed individuals when crimes are investigated of one and of another

application of the law within the constitutional jurisdiction, namely, that investigative procedures be undertaken without a definite juridical criteria derived from a factual relation, such as when soldiers are criminally charged, then it becomes less coherent when an investigations is then carried out in the common jurisdiction, leaving the victims defenseless because of the lack of a legal remedies to strengthen their defense and to guarantee access to justice for them.

6. It must be noted, that however negligence and lack of results in procuring justice from the Mexican Estate were duly proven within the different criminal constitutional jurisdictions that were involved in the investigation of the facts, even with those acting as assistant to the public prosecutor, it shall also be said, that this is not a systematic violation used by the Mexican State as an instrument to intentionally frighten the indigenous communities in the region, particularly in regards to women.

7. The application, setting the litigious framework of the proceeding, does not exclude the possibility of presenting supervening evidence before a judgment is pronounced, those of which must be distinguished, in a timely matter, from the facts that are not grounds of the *litis*, even if they are related to the case, therefore the complaint, or the initial written document, sets the beginning of the *litis*.

8. The attention given by the Mexican State to the Judgment, shall not only emphasize the State's obligation to provide first level psychological care to the victim, namely, care given by experts on the field to all direct and indirect victims, but it also shall supervise that such treatments are indeed carried out until the victims are medically discharged.

9. Resulting from retrospective and prospective studies, the Mexican State must redesign and strengthen public policies that involve its Armed Forces in order to minimize interaction between military soldiers and the civil population, thereby ensuring not only a decrease in inconveniences caused, but also a decrease in violations to fundamental rights for greater offenses to the civil population, while disciplinary forces carry out their tasks and that have been emphasized due to public safety issues in Mexico; consequently, indoctrination should be given to military soldiers who provisionally carry out tasks of public safety or tasks which are linked to it or to the investigation and persecution of the crimes in which they participate.

10. With the current paradigmatic case, the Mexican State should seize the opportunity, not only to restore its commitment to civil society, but also to simultaneously, execute proper compliance to the Judgment handed down in this case, as well as in the case of *Fernández Ortega et. al*; it is now time to start a review and transformation of a lagging military model of justice, not only pertaining to the legislative methodology, but also to the distribution of its courts and tribunals and substantive and procedural rules, thus considering adopting a new model which will not play down the importance of service, obedience, and discipline, but yet will allow for the transformation of the Mexican military judicial system.

11. With *ad cautelam*, the importance and significance for the State of Mexico of, in a preventive sense, taking its military tribunals to the Judicial branch of the Federation, should be considered because if it is true that irregularities were involved in the criminal proceedings of the preliminary investigation of this case, it is likely that subsequent cases face, in addition, the burden of yet another element that conflicts with international standards, which under said fact would be the concurrence of two powers of the State in one and the rupture of the unity of the trial process.

Alejandro Carlos Espinosa
Judge *Ad hoc*

Pablo Saavedra Alessandri
Secretary