



Organization of  
American States



## Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights  
in the case of  
Valentina Rosendo Cantú *et.al.*  
(Case 12.579)  
against the United States of Mexico

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## INDEX

I.	INTRODUCTION.....	3
II.	PURPOSE OF THE APPLICATION.....	3
III.	REPRESENTATION .....	5
IV.	JURISDICTION OF THE COURT .....	5
VI.	CONSIDERATIONS OF FACT .....	7
c.	Incidents of February 16, 2002 .....	9
d.	Investigation by the Civilian Justice System .....	11
e.	Investigation by the Military Justice System.....	15
i.	General analysis.....	16
ii.	Investigations carried out as a result of the complaint filed before the Civilian Courts .....	28
iii.	Military justice system .....	29
e.	Obligation to investigate and punish torture (Articles 1, 6, and 8 of the Convention against Torture).....	40
f.	Right to humane treatment of Valentina Rosendo Cantu's daughter (article 5(1) of the American Convention) .....	41
VIII.	REPARACIONES Y COSTAS .....	42
a.	Obligation to make reparations .....	42
b.	Reparation measures.....	44
i.	Measures of cessation .....	45
ii.	Measures of satisfaction.....	47
iii.	Guarantees of nonrepetition .....	48
iv.	Measures of rehabilitation .....	48
v.	Measures of compensation .....	49
c.	Beneficiaries.....	50
d.	Costs and expenses.....	50
IX.	CONCLUSION .....	50
XI.	EVIDENCE .....	52
a.	Documentary evidence .....	52
b.	Witness evidence .....	54
c.	Expert evidence .....	55
XII.	INFORMATION ON THE VICTIMS AND THEIR REPRESENTATIVES.....	56

**APPLICATION FROM THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS  
AGAINST THE UNITED STATES OF MEXICO**

**CASE 12.579  
VALENTINA ROSENDO CANTÚ, ET.AL.**

**I. INTRODUCTION**

1. The Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") refers this application to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court" or "the Tribunal") in Case No. 12.579, *Valentina Rosendo Cantú et. al*, against the United States of Mexico (hereinafter "the State," "the Mexican State," or "Mexico") for its responsibility in the rape and torture of Valentina Rosendo Cantú of the Me'phaa indigenous peoples (hereinafter "the victim"),<sup>1</sup> incidents that occurred on February 16, 2002, in the state of Guerrero, Mexico.

2. The application also deals with the lack of due diligence in investigating and punishing those responsible for the incidents; the effects of the facts of the case on the victim's daughter; the failure to provide due redress to the 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, women in particular, in securing access to justice and health services.

3. This case has been processed in accordance with the terms of the American Convention and is submitted to the Court in compliance with Article 34 of its Rules of Procedure. Attached hereto, in the appendixes, is a copy of Report No. 36/09, drawn up according to Article 50 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention").<sup>2</sup>

4. The Commission believes it is justified in referring this case to the Court on account of the need to secure justice and redress. In addition, the Commission believes that the case illustrates the abuses committed against the indigenous population by the military deployed in the state of Guerrero, and in particular the use of rape as a form of torture against Me'phaa indigenous women and the impunity surrounding such incidents, which is largely due to the involvement of the military justice system in their investigation and prosecution.

**II. PURPOSE OF THE APPLICATION**

5. The purpose of this application is to respectfully request that the Court conclude and declare that:

- a) The Mexican State is responsible for violating Articles 8(1) (right to a fair trial), and 25 (right to judicial protection) of the Convention, in conjunction with the obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof, with respect to Valentina Rosendo Cantú;

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<sup>1</sup> As detailed below, Valentina Rosendo Cantú's daughter is also a victim of human Rights violations in the present case. However, the term "victim" is used solely to refer to her, and the term "victim's next-of-kin" to refer to the members of her family.

<sup>2</sup> IACHR, Report No. 36/09 (Merits), Case 12.579, *Valentina Rosendo Cantú et al*, Mexico, March 27, 2009; Appendix 1.

- b) The Mexican State is responsible for violating Articles 5(1) (right to humane treatment), 11 (right to privacy), and 19 (rights of the child) of the Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof, with respect to Valentina Rosendo Cantú;
- c) The Mexican State is responsible for violating Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (hereinafter "the Convention of Belém do Pará") with respect to Valentina Rosendo Cantú;
- d) The Mexican State failed to meet its obligations under Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "the Convention against Torture") with respect to Valentina Rosendo Cantú; and
- e) The Mexican State is responsible for violating Article 5(1) (right to humane treatment), in conjunction with Article 1(1) of the American Convention, with respect to the daughter of Valentina Rosendo Cantú.

6. In consideration of the above, the Inter-American Commission asks the Court to order that the Mexican State:

- a) Complete a timely, immediate, serious and impartial investigation, before the regular criminal courts of Mexico, to clear up the incidents reported in the complaint lodged by Valentina Rosendo Cantú, to identify those responsible, and to impose the corresponding punishments. It should also refer all previous proceedings conducted before the military justice system to the civilian courts;
- b) Provide redress to Valentina Rosendo Cantú and her daughter for the human rights violations established in the merits report of the IACHR and contained herein;
- c) Adopt the measures necessary to impose on the military justice system a restrictive and exceptional scope, limited exclusively to the prosecution of members of the military for the commission of crimes or offenses that, by their nature, affect legal interests particular to the military order. In particular, it should take the legislative, administrative, and other measures necessary to ensure that the military justice system is disqualified from hearing human rights violations, particularly cases involving sexual violence;
- d) Guarantee indigenous women access to justice through the design of a policy that respects their cultural identity;
- e) Design and implement multidisciplinary health services for women victims of rape, which address the specific needs of indigenous women, for the recovery, rehabilitation, and full community reincorporation;
- f) Develop participatory programs to contribute to the full reincorporation into their communities of indigenous women who have been victims of rape;
- g) Design protocols to facilitate and encourage the effective, uniform, and transparent investigation of acts of physical, sexual, and psychological violence, including a description of the complexity of the evidence and a detailing of the minimum evidence that must be gathered to provide an adequate evidentiary grounding, in consideration of the international provisions set forth in the Istanbul Protocol;
- h) Develop training programs for state officials, taking into account the international provisions set forth in the Istanbul Protocol, to ensure those officials have the technical

and scientific elements necessary for evaluating potential cases of torture or cruel, inhuman, or degrading treatment; and

- i) Implement, within a reasonable time, permanent human rights education programs within all hierarchical levels of the Mexican Armed Forces, and include in the curriculum of those training programs a particular reference to international human rights instruments, specifically those related to the protection of the rights of women, particularly their right to a life free of violence and discrimination.

### **III. REPRESENTATION**

7. In accordance with the provisions of Articles 23 and 34 of the Court's Rules of Procedure, the Commission has appointed Commissioner Florentín Meléndez and Executive Secretary Santiago A. Canton to serve as its delegates in this case. Assistant Executive Secretary Elizabeth Abi-Mershed and attorneys Isabel Madariaga, Rosa Celorio, Fiorella Melzi, And Lilly Ching, specialists with the Executive Secretariat of the Commission, have been appointed to serve as legal advisors.

### **IV. JURISDICTION OF THE COURT**

8. Under Article 62(3) of the American Convention, the Inter-American Court is competent to hear all cases concerning the interpretation and application of the provisions of the Convention that are submitted to it, provided that the states parties to the case recognize or have recognized its jurisdiction.

9. The Court has jurisdiction to hear this case. The State adhered to the American Convention on March 2, 1981, deposited its instrument of accession thereto on March 24, 1981, and accepted the Court's contentious jurisdiction on December 16, 1998.

10. In addition, the Court has jurisdiction to hear the instant case in that the Mexican State deposited its instrument of ratification of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women on November 12, 1998, and its instrument of ratification of the Inter-American Convention to Prevent and Punish Torture on June 22, 1987.

### **V. PROCESSING BY THE INTER-AMERICAN COMMISSION <sup>3</sup>**

11. The petition was filed on November 10, 2003. After the initial study related to its processing, based on Article 30(2) of its Rules of Procedure, the IACHR forwarded the relevant parts of the petition to the State on December 10, 2003, and granted two months for it to submit its observations. On February 17, 2004, the State requested an extension of the time period. The State responded to the petitioners' observations on March 23, 2004. The IACHR forwarded this information to the petitioners on April 14, 2004.

12. On October 21st, 2006 the IACHR adopted the Admissibility Report No. 93/06 dated October 21, 2006. In said Report, the Commission concluded that the petition was admissible as regards Articles 5.1, 7, 8.1, 11, 19, and 25 of the American Convention, in conjunction with Article 1.1 thereof, and as regards 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, and it decided to continue with its analysis of the merits of the case. The Commission conveyed the report to the petitioners and to the State in communications dated November 9, 2006, and gave the petitioners a period of two

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<sup>3</sup> The proceedings mentioned in this section can be found in the case file before the IACHR. Appendix 3.

months in which to submit any additional comments on the merits. In addition, it made itself available to the parties as provided for in Article 48.1.f of the American Convention with a view to reaching a friendly settlement of the matter.

13. On April 26, 2007, the IACHR conveyed the petitioners' comments on the merits to the State and set a two-month deadline for it to submit its comments. The State's reply was received on July 9, 2007.

14. In addition, the IACHR received information from the petitioners on the following dates: October 3, 2007; October 10, 2007; May 8, 2008; October 1, 2008; December 11, 2008; and February 24, 2009. Those communications were duly forwarded to the State.

15. Similarly, the IACHR received comments from the State on the following dates: September 21, 2007; October 12, 2007; October 15, 2007; October 19, 2007; June 2, 2008; October 16, 2008; December 22, 2008; and February 24, 2009. Those communications were duly forwarded to the petitioners.

16. Additionally, on October 12, 2007, during the IACHR's 130th regular session, a public hearing was held and was attended by the alleged victim, her representatives, and the Mexican State.

17. On March 27, 2009, during its 134th regular session, the Commission adopted Report on Merits 36/09, drawn up in compliance with Article 50 of the Convention. In that report it concluded that:

the Mexican State is responsible for violating the rights to a fair trial and to judicial protection enshrined in Articles 8.1 and 25 of the American Convention, in conjunction with Article 1.1 thereof; and Articles 5.1, 11, and 19 of the American Convention, in conjunction with Article 1.1 thereof. It further concludes that the State is responsible for violating 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, with respect to Valentina Rosendo Cantú. With respect to the members of her family, it concludes that the State is responsible for violating Article 5.1 of the American Convention, in conjunction with the general obligation of respecting and ensuring those rights set forth in Article 1.1 thereof.

18. In that report, the Commission extended the following recommendations to the Mexican State:

1. Complete a timely, immediate, serious and impartial investigation, before the regular criminal courts of Mexico, to clear up the incidents reported in the complaint lodged by Valentina Rosendo Cantú, to identify those responsible, and to impose the corresponding punishments. It should also refer all previous proceedings conducted before the military justice system to the civilian courts.

2. Provide redress to Valentina Rosendo Cantú and her daughter for the human rights violations established herein.

3. Adopt the measures necessary to impose on the military justice system a restrictive and exceptional scope, limited exclusively to the prosecution of members of the military for the commission of crimes or offenses that, by their nature, affect legal interests particular to the military order. In particular, it should take the legislative, administrative, and other measures necessary to ensure that the military justice system is disqualified from hearing human rights violations, particularly cases involving sexual violence.

4. Guarantee indigenous women access to justice through the design of a policy that respects their cultural identity.
5. Design and implement multidisciplinary health services for women victims of rape, which address the specific needs of indigenous women, for the recovery, rehabilitation, and full community reincorporation.
6. Develop participatory programs to contribute to the reincorporation fully into their communities of indigenous women who have been victims of rape.
7. Design protocols to facilitate and encourage the effective, uniform, and transparent investigation of acts of physical, sexual, and psychological violence, including a description of the complexity of the evidence and a detailing of the minimum evidence that must be gathered to provide an adequate evidentiary grounding, in consideration of the international provisions set forth in the Istanbul Protocol.
8. Develop training programs for state officials, taking into account the international provisions set forth in the Istanbul Protocol, to ensure those officials have the technical and scientific elements necessary for evaluating potential cases of torture or cruel, inhuman, or degrading treatment.
9. Implement, within a reasonable time, permanent human rights education programs within all hierarchical levels of the Mexican Armed Forces, and include in the curriculum of those training programs a particular reference to international human rights instruments, specifically those related to the protection of the rights of women, particularly their right to a life free of violence and discrimination.

19. The report was sent to the State on April 2<sup>nd</sup>, 2009, and a the State was given a period of two months to report back on the steps taken in implementing the recommendations, as provided for in Article 43(2) of the Commission's Rules of Procedure.

20. On that same date, pursuant to Article 43(3) of its Rules of Procedure, the Commission informed the petitioners that a report on the merits had been adopted and had been transmitted to the State, and it asked them to indicate, within a month, their position and that of the victim regarding the possible referral of the case to the Inter-American Court. In a communication of May 4<sup>th</sup>, 2009, the petitioners expressed their wish for the case to be taken to the Inter-American Court of Human Rights.

21. On May 7, 2009, the State sought a one-month extension to submit its report, stating that due to the suspension of work decreed as a result of the A H1N1 virus, the relevant authorities were not able to meet to prepare a comprehensive report regarding the report on the merits. On May 12, 2009, the State indicated that should the extension be granted, it would "waive the three-month period mentioned in Article 51 of the American Convention on Human Rights and Article 45 of the Rules of Procedure of the Inter-American Commission on Human Rights."

22. Through a communication dated June 17, 2009, the IACHR granted the one-month extension sought by the State. In addition, it asked the State to inform it on July 17, 2009 regarding the measures adopted to comply with the Commission's recommendations. The deadline passed without the State presenting information regarding implementation of the recommendations issued by the IACHR, and on July 31<sup>st</sup>, 2009 the Commission resolved to refer the case to the Inter-American Court.

## **VI. CONSIDERATIONS OF FACT**

### **a. Background of the victim and of indigenous peoples in México**

23. Valentina Rosendo Cantú belongs to the Me'phaa (Tlapanec) indigenous peoples. The small Me'phaa rural communities preserve their traditions and strongly express the cultural identity of indigenous peoples: language, social organization and institutions, spirituality and world view, rites and ceremonies, medicine, oral literature, and other artistic expressions.

24. Mexico's indigenous population accounts for around 12% of the total population (13 million in 2005)<sup>4</sup> and is concentrated in the poorest states, such as Oaxaca, Guerrero, and Chiapas.

25. Four indigenous peoples coexist alongside each other in the state of Guerrero: Mixtecs, Nahuas, Amuzgos, and Me'phaas (Tlapanecs). They pursue subsistence agriculture for self-consumption in a harsh, rural environment where the indigenous-impoverished correlation is the result of a complex historical process in which the basic human rights of indigenous peoples were undermined over centuries.<sup>5</sup>

26. On account of the irregular topography, there are only three rough trails that lead into the region of the Me'phaa Tlapanecs, and so it is extremely isolated. The Me'phaa Tlapanecs' relations with the Mestizo population are essentially commercial in nature and, given their fear of exploitation, they avoid contact with them to the extent that is possible.<sup>6</sup>

#### **b. Presence of the Military in States with Large Indigenous Populations**

27. Following the Zapatista uprising in Chiapas, the State increased the presence of the army in indigenous territories. Numerous complaints exist regarding the militarization of indigenous areas of the state of Guerrero, with camps and military bases located near indigenous communities, as well as military patrols and army checkpoints on roads, a situation which foments an atmosphere conducive to provocations and clashes with the civilian population.<sup>7</sup>

28. The State has not disputed the presence of the army in the area. The State has said that the function of the military personnel in the area was to enforce the firearms law and to pursue the permanent fight against drug trafficking, which is very common in the region.<sup>8</sup>

29. In its report *Indigenous Women and Military Injustice*, the international nongovernmental organization Amnesty International stated that the military operations in the area were also related to obtaining information on indigenous communities:<sup>9</sup>

Today, military operations primarily focus on search and destroy operations of drug crops in remote mountainous areas. However, these operations are also linked to gathering intelligence on indigenous communities and identifying what the military perceive to be subversive elements.

In a recent visit to the state of Guerrero, Amnesty International delegates learned of a range of abuses against indigenous communities by the military, as well as the various police forces,

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<sup>4</sup> Information from the National Statistics and Geography Institute, <http://www.inegi.gob.mx>.

<sup>5</sup> *Diagnosis of the Situation of Human Rights in Mexico*, Office of the United Nations High Commissioner for Human Rights in Mexico, 2003, p. 153. Annex 2, also available in Spanish at: <http://www.sre.gob.mx/derechoshumanos/docs/Diagnostico.pdf>.

<sup>6</sup> National Indigenous Institute, *Peoples of Mexico, Monograph Series, Me'phaa Tlapanecs*. At: <http://www.cdi.gob.mx/ini/monografias/tlapanecos.html>.

<sup>7</sup> *Diagnosis of the Situation of Human Rights in Mexico*, Office of the United Nations High Commissioner for Human Rights in Mexico, 2003, pp. 156 and 157. Annex 2.

<sup>8</sup> IACHR, audio containing the recording of the merits hearing No. 127, Case of Valentina Rosendo Cantú (México), 130<sup>th</sup> period of sessions, October, 2007. Annex 4.

<sup>9</sup> *Mexico: Indigenous Women and Military Injustice*, Amnesty International, AI: AMR 41/033/2004, November 23, 2004, p. 12. At: <http://www.amnesty.org/es/library/asset/AMR41/033/2004/es/dom-AMR410332004es.pdf>.

judicial, state and municipal. These included serious human rights violations committed over recent years, such as rape, arbitrary arrest and ill-treatment as well as intimidation and threats, and other arbitrary acts of destruction of property and crops, robbery, cutting off water supplies to the community, and illegally entering homes.

30. This situation was also described in 2003 by the United Nations Special *Rapporteur* on the Situation of Human Rights and Fundamental Freedoms of Indigenous People following his mission to Mexico:

Many human rights organizations informed the Special Rapporteur that the military on occasion participate in civilian public security operations and criminal investigations that fall outside their constitutional mandate: numerous checkpoints and searches on main and secondary roads, for example, arbitrary arrests and detention; body searches and inspection of possessions, raids on communities and properties, intimidating interrogations, death threats, extrajudicial or summary executions and sexual harassment and abuse of indigenous women, to mention only some of the complaints.<sup>10</sup>

31. Among his recommendations, the Special *Rapporteur* said:

When the indigenous communities so request, the army should fall back in the environs of indigenous communities; the army presence and activities in indigenous areas should be strictly compatible with its constitutional duties.<sup>11</sup>

32. In the mountains of Guerrero there are reports of multiple violations of the human rights of the region's indigenous peoples at the hands of municipal authorities or members of the police or the armed forces.<sup>12</sup> The World Organisation Against Torture compiled a series of cases of rapes allegedly committed by members of the Mexican regular army, in which neither the perpetrators nor their superiors have been prosecuted and/or punished in accordance with law. Those cases include six involving indigenous women in the state of Guerrero between 1997 and 2002, among them the complaint filed by Valentina Rosendo Cantú.<sup>13</sup>

### c. Incidents of February 16, 2002

33. On March 8, 2002, Valentina Rosendo Cantú informed the authorities that she had been sexually attacked by members of the Mexican Army on February 16, 2002. The following paragraphs contain a part of the complaint lodged with the Public Prosecution Service for local-jurisdiction crimes:

On February 16, 2002, at around 2:00 p.m., I left home to wash some clothes in a stream located some 200 m from my house – I would like to point out that only my husband and I live there, because we look after some goats belonging to my father – that place is about an hour walking from the town of Barranca Bejuco, and so it's completely isolated, that place where I went to wash. It took me about an hour and when I finished I was going to bathe; I was only washing my hair but I still had my clothes on when suddenly, from the path that leads to Caxitepec, eight men appeared, in army clothes with green shirts, green trousers, black boots, and rifles, and a person in civilian clothes. Then two of the soldiers approached me and the others surrounded me, and so I was in the middle with the two soldiers, who angrily asked me where the hooded men were. I answered that I didn't know any hooded men

<sup>10</sup> *Diagnosis of the Situation of Human Rights in Mexico*, Office of the United Nations High Commissioner for Human Rights in Mexico, 2003. At: <http://www.sre.gob.mx/derechoshumanos/docs/Diagnostico.pdf>.

<sup>11</sup> *Diagnosis of the Situation of Human Rights in Mexico*, p. 160. Annex 2.

<sup>12</sup> *Diagnosis of the Situation of Human Rights in Mexico*, p. 155. Annex 2.

<sup>13</sup> World Organization Against Torture, article "Alleged rape of an elderly indigenous woman by members of the military results in her death," Geneva, March 8, 2007. At: <http://www.omct.org/index.php?id=EQL&lang=es&articleSet=Appeal&articleId=6913>.

and one of them pointed at me with his gun and threatened to shoot me, while the other one stood alongside. The soldier who was pointing at me said, "Are you not from Barranca Bejuco?"; I replied that I wasn't, that I was from Caxitepec. The other soldier who was alongside showed me a photo and asked whether I knew that person; I replied that I didn't. He took out a sheet of paper and read out 11 names that he said were people from Barranca Bejuco and whether I knew them; I said I didn't, out of fear that they would do something to me.

Then the soldier pointing at me with his gun hit me in the stomach with its butt, and the blow knocked me over backwards onto some stones, and at that moment I fainted, but I came to right away and sat in that same place. Then one of them grabbed my hair and asked, violently, how come I didn't know, wasn't I from Barranca Bejuco. And I said no, I was from Quecheltepec, and told them that I'd only just got married. Then, the man they had tied up, they asked him if there was a telephone in the community of Caxitelpec, and he said there was. The soldiers then insisted that if I didn't tell them about the hooded men they would kill me, and then said correcting himself that they would kill everyone in Barranca Bejuco.

Then those two soldiers violently scratched my face, and pulled off the skirt I was wearing, and laid me down on the ground, and took of my underskirt and underwear. One of them opened my legs and he took down his trousers and underwear, and got on top of me, leaving his rifle on the ground. He began to hold me against my will and put his penis inside my vagina; he then began to move violently for about five or six minutes or more, and afterwards, the other soldier who had been asking me questions also started to hold me against my will, and he also lowered his trousers and underwear and put his penis inside my vagina, and took about five or six minutes more. After those two soldiers had raped me, the other six individuals or soldiers who were watching, because I was surrounded, together with the civilian... [...] I was raped by two of them, then I escaped as I was and, naked, made my way home and told my sisters-in-law Estela Bernardino Sierra and later I told my husband, and he went to the village of Barranca Bejuco and told the delegate, and later I went back for my clothes.<sup>14</sup>

34. In that statement, Valentina Rosendo Cantú gave a detailed description of the soldiers she claimed raped her:

I want to state that I know that in the village of Mexcaltepec there was a squad of soldiers, and that it is about three or four hours' walk from the village of Barranca Bejuco.

One of the soldiers who raped me had short hair, military style, and was wearing a cap, straight hair, brown skin, light brown eyes, straight nose, no mustache, no beard, small mouth, thick lips, fat, short, aged around 34 or 36, with the distinguishing mark of a wart on his neck; he was wearing a green shirt, green trousers, black boots, and had his rifle. The other soldier who raped me had short, straight hair and was wearing a cap, lighter skin, tall, thin, groomed beard and mustache, with black eyes; apparently, he had some illness (scabs), a flat, broad nose, small mouth, thin lips, no identifying features, and he was also wearing a green shirt, green trousers, black boots, equipment belt, and was carrying his rifle.<sup>15</sup>

35. On February 18, 2002, due to poor health, Valentina Rosendo Cantú went to the public health clinic in Caxitepec for medical attention.<sup>16</sup> At the merits hearing held at the IACHR, Valentina Rosendo Cantú stated she went to the emergency health clinic in Caxitepec but was not

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<sup>14</sup> Statement of Valentina Rosendo Cantú, given to the agent of the Public Prosecution Service for local jurisdiction crimes of the Allende Judicial District, dated March 8, 2002. Annex 5 and IACHR, audio containing the recording of the merits hearing No. 127. Annex 4.

<sup>15</sup> Statement of Valentina Rosendo Cantú, given to the agent of the Public Prosecution Service for local jurisdiction crimes of the Allende Judicial District, dated March 8, 2002. Annex 5.

<sup>16</sup> Communication dated February 26, 2002, from Valentina Rosendo Cantú and Fidel Bernardino Sierra, addressed to the Governor of Guerrero. Annex 6.

attended to by the duty physician, because he said he was afraid of the army.<sup>17</sup> That claim was not disputed by the State.

36. In her statement before the agent of the Public Prosecution Service on March 8, 2002, the victim established the following:

I went to the emergency health clinic in Caxitepec, [...] I told him everything that had happened to me [...] The doctor there told me he couldn't help me because he didn't want problems with the military, and he also couldn't help me because he didn't have the necessary equipment; he told me to go to the city of Ayutla and I went back home to my village.<sup>18</sup>

37. After failing to get medical attention at the emergency health clinic in Caxitepec, on February 26, 2002, Valentina Rosendo Cantú went to the Central Hospital in Ayutla – which meant an eight-hour walk – where she received no medical attention either, because she was told she needed an appointment. The next day, after requesting an appointment, a doctor examined her stomach and nothing else, refusing to do any other examinations because no female doctor was present. Valentina had to return to her village:

Since we have no money, I had to walk about eight hours from Ayutla, where I'd gone on the 26th to the General Hospital, where the doctor told me he couldn't see me because I had to make an appointment, and he told me to come back the next day. I went back the next day, and he examined my stomach only and he didn't want to see me because there was no woman doctor, and I had to return to my village.<sup>19</sup>

#### **d. Investigation by the Civilian Justice System**

38. On March 8, 2002, Valentina Rosendo Cantú, accompanied by Hipólito Lugo Cortes (General Inspector of the Guerrero State Commission for the Defense of Human Rights) and her husband, Fidel Bernardino Sierra, filed a complaint with the Public Prosecution Service for local jurisdiction offenses of the Allende Judicial District, against members of the army, for the crimes of rape and any others arising from the investigation.<sup>20</sup> As a result of that complaint, preliminary inquiry ALLE/SC/02/62/2002 was opened.

39. That same day, a statement was taken from Valentina Rosendo Cantú. Although her statement was given in Spanish, the authorities indicated in the record that she did not understand certain Spanish words:

The clerk notes that when they began to take the statement of the victim Valentina Rosendo Cantú, she claimed to understand Spanish. However, upon beginning her narrative of the attack, it was noticed that she did not understand perfectly certain words in Spanish; therefore, and in compliance with Article 12 of the Code of Criminal Procedure then in force, the victim was assisted by her husband, Fidel Bernardino Sierra, in understanding some of the Spanish words she did not understand, since she speaks the Tlapanec dialect and he understands the two perfectly, that is, the Spanish language and the Tlapanec dialect.<sup>21</sup>

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<sup>17</sup> IACHR, audio containing the recording of the merits hearing No. 127. Annex 4.

<sup>18</sup> Statement of Valentina Rosendo Cantú, given to the agent of the Public Prosecution Service for local jurisdiction crimes of the Allende Judicial District, dated March 8, 2002. Annex 5.

<sup>19</sup> IACHR, audio containing the recording of the merits hearing No. 127. Annex 4.

<sup>20</sup> Statement of Valentina Rosendo Cantú, given to the agent of the Public Prosecution Service for local jurisdiction crimes of the Allende Judicial District, dated March 8, 2002. Annex 5.

<sup>21</sup> Statement of Valentina Rosendo Cantú, given to the agent of the Public Prosecution Service for local jurisdiction crimes of the Allende Judicial District, dated March 8, 2002. Annex 5.

40. Document No. PGJE/DGSP/ND/XXVIII-2/207/2002 of March 15, 2002, issued by Amador Suárez Cervantes of the office of the State Attorney General for General Services, addressed to Concepción Barragán Alonso, agent of the Public Prosecution Service for local crimes, reports that it was not possible to comply with the request made "since we do not have specialized personnel for gynecology, we only have experts in legal medicine (general medicine)." It also stated that "should you require the participation of an expert in legal medicine, please specify the day and time for the victim to report to this office for examination."<sup>22</sup>

41. On March 19, 2002, Enoch Dolores Flores, specialist in legal medicine attached to the Morelos Judicial District, examined Valentina Rosendo Cantú in accordance with request No. 135 of March 19, 2002, from the agent of the Public Prosecution Service for civil crimes specializing in sex crimes, and issued the corresponding gynecological certificate.<sup>23</sup> That certificate states that Valentina Rosendo Cantú:

1. Shows signs of physical violence.
  - Scar, not recent, 0.5 mm in diameter, located on lower right eyelid.
  - Scar, not recent, 2 cm in diameter, located below the left knee.

42. The agency of the Public Prosecution Service for civil crimes in Allende Judicial District, in document No. 279 of March 18, 2002, referred preliminary inquiry ALLE/SC/02/62/2002, containing Valentina Rosendo Cantú's allegations to the office of the State Attorney General for Justice, for it to be conveyed, on the grounds of lack of competence, to the agency of the Public Prosecution Service in the Morelos Judicial District, headquartered in Tlapa de Comonfort, since the alleged incidents occurred within the jurisdiction of the Morelos Judicial District.<sup>24</sup>

43. On April 5, 2002, the General Directorate for Preliminary Inquiries of the office of the State Attorney General for Justice forwarded the preliminary inquiry to the head of the Investigating Agency of the Public Prosecution Service for local crimes specializing in sex crimes and domestic violence of the Morelos Judicial District, for her to continue with the corresponding investigations on the grounds that the alleged incident took place within the jurisdiction of that agency.<sup>25</sup>

44. Document No. 0676 of April 8, 2002, from the office of the Assistant Attorney General for Criminal Procedure of the office of the State Attorney General for Justice to the Investigating Agent of the Public Prosecution Service for local crimes specializing in sex crimes and domestic violence of the Morelos Judicial District, gives instructions so that after receiving preliminary inquiry No. ALLE/SC/02/62/2002, opened in the Allende Judicial District and referred to that agency on the grounds of lack of competence,

a legal analysis be performed, to examine the possibility of referring the matter to the Prosecution Service of the corresponding military jurisdiction, on the grounds that it corresponds to the military justice system by reason of how the law applies to individuals, for it to investigate and punish the persons responsible.<sup>26</sup>

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<sup>22</sup> Document No. PGJE/DGSP/ND/XXVIII-2/207/2002 of March 15, 2002. Annex 7.

<sup>23</sup> Document No. 130/2002, dated March 19, 2002. Annex 17.

<sup>24</sup> Document No. 279, dated March 18, 2002, issued by Mr. Lucas Moisen Catarino, Titled Agent of the Public Prosecution Service for local jurisdiction crimes, addressed to the General Director of Preliminary Inquiries at the Office of Attorney General for Justice of Chilpancingo, Guerrero. Annex 18.

<sup>25</sup> Document PGJE/DGAP/3157/2002, dated April 5, 2002. Annex 8.

<sup>26</sup> Document 0676, dated April 8, 2002, from Miguel Barreto Sedeño, Assistant Attorney General for Criminal Procedure. Annex 9.

45. In document No. 195 of April 15, 2002, the agency of the Public Prosecution Service for civil offenses specializing in sex crimes and domestic violence of the Morelos Judicial District began a preliminary inquiry into the case of Valentina Rosendo Cantú, registered as No. MOR/AEDS/025/2002.<sup>27</sup>

46. The case file contains the statement of Estela Bernardino Sierra, aged 15, given on April 22, 2002, to the Public Prosecution Service for local crimes specializing in sex crimes and domestic violence, in which she testifies that on February 16, she saw Valentina Rosendo Cantú arrive at her home in tears, her hair in disarray, and naked from the waist down. An extract from Estela Bernardino Sierra's statement, made through an expert interpreter, reads:

On February 16, [...] my sister-in-law Valentina told me that she was going to wash clothes in the stream that is approximately a half-hour from her home and left me with her little daughter because my sister-in-law told me she didn't have much laundry to do [...] Some time after 2:00 p.m. my sister-in-law Valentina came back to the house where I live with my parents; she was crying, and her hair was in a mess, and she was also naked from the waist down, wearing underwear but no skirt, and she had also been beaten because she was bleeding from beneath one eye; my sister-in-law arrived home without shoes, and told me she had been raped; she didn't say how many men had raped her, but she did tell me there were eight soldiers who also had another man with his hands tied behind his back, and so Valentina then went to find some clothes to wear [...] Later my sister-in-law Valentina left her daughter with me and went back alone to the stream to collect her clothes.<sup>28</sup>

47. The office of the Attorney General for Justice of the State of Guerrero, in instruction No. 676 of April 8, 2002, declined jurisdiction in favor of the military justice system, for that system to hear the complaint made by Valentina Rosendo Cantú.<sup>29</sup> On June 6, 2002, Valentina Rosendo Cantú filed an *amparo* remedy against instruction No. 676 of April 8, 2002, from the Assistant Attorney General for Criminal Procedure of the office of the Attorney General for Justice of the State of Guerrero. She also challenged the incompetence decision of May 16, 2002, adopted by the agent of the Public Prosecution Service for local crimes specializing in sex crimes and domestic violence of the Morelos Judicial District within preliminary inquiry MOR/AEDS/025/2002, whereby the preliminary inquiry was forwarded to the office of the State Attorney General for Justice for the investigation to be referred to the agent of the corresponding Military Prosecution Service.<sup>30</sup>

48. The *amparo* suit was dismissed by the First District Judge in the state of Guerrero in a resolution dated August 30, 2002, on the grounds that

there is no record of the agent of the Military Prosecution Service attached to the 30th military zone either accepting or rejecting competence, a function that is of such vital importance that on it depends the ability to conclude the preliminary inquiry phase properly.<sup>31</sup>

49. On September 17, 2002, Valentina Rosendo Cantú filed for a review of the judgment of August 30, 2002, handed down in the *amparo* suit by the First District Judge in the state of

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<sup>27</sup> Document No. 195, dated April 15, 2002, issued by Ms. Cristina Estrada Martínez, Titled Agent of the Public Prosecution Service for local crimes specializing in sex crimes and domestic violence for the district of Morelos, addressed to the General Director of Preliminary Inquiries at the Office of Attorney General for Justice of Chilpancingo, Guerrero. Annex 19.

<sup>28</sup> Statement of Estela Bernardino Sierra dated April 22, 2002. Annex 10.

<sup>29</sup> Document 0676, dated April 8, 2002. Annex 9.

<sup>30</sup> Request for a remedy of *amparo* presented by Valentina Rosendo Cantú on June 6, 2002, before the First District Judge of the 21st Circuit in the State of Guerrero, Chilpancingo, Guerrero. Annex 20.

<sup>31</sup> Resolution dated August 30, 2002, issued by First District Judge in the State of Guerrero. Annex 11.

Guerrero.<sup>32</sup> By means of a resolution dated November 12, 2002, adopted by the bench of the First Court of the 21st Circuit comprising Raquel Aldama Vega, Amado López Morales, and Margarito Medina Villafaña, the judgment was upheld on appeal and the *amparo* proceedings dismissed.<sup>33</sup>

50. On November 28, 2002, Valentina Rosendo Cantú asked the agent of the Military Prosecution Service attached to the 35th Military Zone to refrain from hearing her complaint and to refer the investigation to the agency of the Public Prosecution Service for local crimes specializing in sex crimes and domestic violence of the Morelos Judicial District, headquartered in the city of Tlapa de Comonfort.<sup>34</sup> In document AP-I-3577 of January 20, 2003, the Office of the Attorney General for Military Justice replied that there were “no grounds for declining jurisdiction” in favor of the agency of the Public Prosecution Service for local crimes specializing in sex crimes and domestic violence of the Morelos Judicial District.<sup>35</sup> On February 11, 2003, Valentina Rosendo Cantú filed an *amparo* suit against that decision, which was dismissed by the Fifth Judge of *Amparo* for Criminal Matters, District B, in the Federal District, in a judgment dated April 29, 2003.<sup>36</sup>

51. In a communication dated December 11, 2002, the Fourth General Inspector of the National Human Rights Commission wrote to the Attorney General for Military Justice saying that the Commission was closing its case file on Valentina Rosendo Cantú’s complaint on the grounds that it had no conclusive evidence that she had been attacked by personnel of the Secretariat of National Defense:

This Commission has decided to close the case file in question, on the grounds that it has no conclusive evidence that the victim was in fact sexually attacked by public servants of the Secretariat of National Defense, and it consequently advises her to stay alert to the results of the investigations opened by the local and military justice systems, which will issue their conclusions in due course.<sup>37</sup>

52. During the merits hearing on this case at the IACHR, the State reported that the following formalities were still pending before the civilian courts:

the psychological examination of the victim; the expansion of the prosecutorial statement so the victim can provide facts to develop an identikit portrait; the line up proceeding; and the photographic recognition of military personnel in accordance with the photograph album enclosed with this inquiry.<sup>38</sup>

53. The case for the events occurred on February 16, 2002 continues to be in the preliminary investigation stage, and that to date the transactional formalities have not been completed and the alleged perpetrators have not been identified.

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<sup>32</sup> Request for *amparo* remedy presented by Valentina Rosendo Cantú on September 17, 2003, before the First District Judge of the 21st Circuit in the State of Guerrero, Chilpancingo, Guerrero. Annex 16.

<sup>33</sup> Judgment of November 12, 2002, by the First Court of the 21st Circuit, A.R.P. 184/2002. Annex 12.

<sup>34</sup> Document dated November 28, 2002 brought by Valentina Rosendo Cantú before the Prosecution Service of the corresponding military jurisdiction, pertaining to the 35 Castrense Zone. Annex 21.

<sup>35</sup> Agreement AP-I-3577, issued on January 20, 2003 by the Head of Preliminary Inquiries for the Central Sector of the Attorney General for Military Justice. Annex 22.

<sup>36</sup> *Amparo* remedy number 246/2003-V, brought by Valentina Rosendo Cantú on February 11, 2003, before the Fifth “B” Tribunal of the District of *Amparo* in Criminal Matters with residence in México. Annex 23. Resolution for *Amparo* remedy number 246/2003-V, issued by the Fifth “B” Tribunal of the District of *Amparo* in Criminal Matters with residence in México, notified on May 9, 2003. Annex 24.

<sup>37</sup> Communication dated December 11, 2002, Exp. 2002/597/04, from Rodolfo H. Lara Ponte, Fourth General Inspector of the National Human Rights Commission, to the Attorney General for Military Justice, in respect of the complaint dealing with the alleged violations of the human rights of Valentina Rosendo Cantú. Annex 13.

<sup>38</sup> IACHR, audio containing the recording of the merits hearing No. 127. Annex 4.

54. At the merits hearing before the IACHR, the State made reference to the creation, in 2005, of the office of the Assistant Attorney for Legal Matters and the Attention to Crime Victims, which offers psychological support and legal guidance. It also maintained that a result of the creation of the office of the Assistant Attorney for Legal Matters and the Attention of Crime Victims, it now had specialized personnel for carrying out that formality: "The ruling is not late, no rights or pending tests are precluded in the investigation phase, when it is still ongoing."<sup>39</sup>

**e. Investigation by the Military Justice System**

55. The investigation of the case was before the military courts from 2002 until it was sent to the archive on March 12, 2004, pursuant to the opinion of the Third and Sixth Agents of the Prosecution Service attached to the office of the Attorney General for Military Justice "given that the investigation of the facts showed no breaches of military discipline or the participation of military personnel in the commission of any other illicit action."<sup>40</sup> The report on the decision to close the file was based on the following considerations: the declaration of Valentina Rosendo Cantú; the statements of the hearsay witnesses; statements from 108 members of the military on duty on the day of the incident at the Figueroa, Ríos, Martínez, and Hernández Operations Bases; the medical records; the inspection that was carried out; and the line-up identification formality with military personnel from the Ríos Operations Base conducted outside the petitioner's home.<sup>41</sup>

56. At the hearing on the merits of this case held at the IACHR on October 12, 2007, the State attested that the involvement of the military justice system in this case was intended to discover whether a crime had been committed by military personnel:

The detachment of military personnel deployed in an area near to the village, if it had abandoned its duty in any way:

Furthermore, I wish to state that, as the petitioners themselves maintain, within a climate of transparency, to try to discover whether there really was a soldier who abandoned his duty and committed an offense.

The Commanding Officer with jurisdiction over the area gathered together the personnel who were nearby to attempt to identify him and proceed and bring him before the authorities for action to be taken; it was as they themselves claim, the intention was at no time to conceal any illicit act, we are more interested than anyone else [...] in this case, within the sphere of our competence, we took statements from one chief, four officers, and 101 enlisted men.

This is exactly perhaps a subtle point in the question of jurisdiction that is already distorted, but competence to investigate does not mean we are saying we are competent to hear or punish whether an offense was committed; that is the statement I would like to make.<sup>42</sup>

57. Among the documents furnished the petitioners is press release No. 025, dated March 7, 2002, issued by the Secretariat of National Defense (SEDENA), "rejecting the accusations made against military personnel for the alleged rape of a woman in the state of Guerrero." Thus, the IACHR notes that the SEDENA gave a statement regarding the facts denounced by Valentina Rosendo Cantú one day before Valentina Rosendo Cantú lodged her formal complaint with the office of the State Attorney General for Justice:

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<sup>39</sup> However, it added that it was only just setting up the support centers for crime victims. IACHR, audio containing the recording of the merits hearing No. 127. Annex 4.

<sup>40</sup> Reply from the State No. OEA-01787, dated July 6, 2007. Appendix 3.

<sup>41</sup> Reply from the State No. OEA-01787, dated July 6, 2007. Appendix 3.

<sup>42</sup> IACHR, audio containing the recording of the merits hearing No. 127. Annex 4.

Yesterday certain national dailies published a press report claiming that on February 16 of this year, military personnel beat and raped Mrs. Valentina Rosendo Cantú in the village of Barranca Bejuco, municipality of Acatepec, Guerrero.

This Secretariat states that the members of the Mexican Army and Air Force engaged in the permanent campaign against drug trafficking in the state of Guerrero did not carry out, on that date or any close date, any operations in the vicinity of Barranca de Bejuco.

We do not discard the possibility that the pursuit of the antidrug campaign might affect the personal interests of criminals inhabiting that area, who use any opportunity to attempt to discredit the activities of military personnel.<sup>43</sup>

58. In the proceedings before the IACHR, the State provided no information on the military investigation and that the information on the civil case file was submitted on the condition of confidentiality to the IACHR. Consequently, the Commission cannot take into consideration information that it cannot share with the other party.<sup>44</sup> However, at the merits hearing held on October 12, 2007, Valentina Rosendo Cantú stated that one of the formalities pursued by the military justice system involved bringing some 50 armed soldiers to her home for her to identify the alleged perpetrator.<sup>45</sup> In connection with this, the State told the IACHR that it carried out a line-up identification formality with military personnel on March 15, 2002, outside Valentina Rosendo Cantú's home, during which she made no direct identification of any of the army personnel brought before her. The State refers to the testimony of Infantry Private Eudelio Flores Bernardino, who said:

After, when they had lined up the military personnel, I saw Mr. Encarnación Sierra approach Mrs. Valentina and tell her, in Tlapanec dialect, to choose any one of them [...] and Mrs. Valentina Rosendo Cantú told Mr. Encarnación Sierra Morales that it was none of them.<sup>46</sup>

59. At that same merits hearing, the State told the IACHR that the office of the State Attorney General for Justice would ask the military justice system to itemize the formalities pursued by the office of the Attorney General for Military Justice, in order to continue with the formalities before the civilian venue. Later, the State reported that on January 10, 2008, the Secretariat of National Defense had referred the inquiry to the office of the Attorney General for Justice of the State of Guerrero.

## **VII. CONSIDERATIONS OF LAW**

### **a. Right to humane treatment and right to privacy (Articles 5(1) and 11 of the American Convention, in conjunction with Article 1.1 thereof)**

#### **i. General analysis**

60. The IACHR has stated that rape committed by members of the security forces of a state against the civilian population constitutes, in any situation, a serious violation of the human rights protected by Articles 5 and 11 of the American Convention.<sup>47</sup>

61. Article 5.1 of the American Convention stipulates that "every person has the right to have his physical, mental, and moral integrity respected."

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<sup>43</sup> Secretariat of National Defense, Press Release No. 025, March 7, 2002. "The Secretariat of National Defense rejects the accusations made against military personnel for the alleged rape of a woman in the state of Guerrero." Annex 14.

<sup>44</sup> La documentación forma parte del expediente ante la CIDH que se transmite a la Corte como apéndice 3. On February 24, 2009, the IACHR received, from the petitioners, a copy of the case file from the military justice system as referred to the civilian courts. It comprises ten volumes, and many of the documents are illegible. Annex 15.

<sup>45</sup> IACHR, audio containing the recording of the merits hearing No. 127. Annex 4.

<sup>46</sup> Reply from the State No. OEA-01787, dated July 6, 2007. Appendix 3.

<sup>47</sup> IACHR, Report on Merits No. 53/01, Ana, Beatriz, and Cecilia González Pérez (Mexico), paragraph 45.

62. Similarly, Article 11 of the American Convention guarantees all persons the right to have their honor respected and their dignity recognized, and it provides that “no one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.”

63. Particularly, in cases involving sexual violence, the Inter-American Court has ruled that sexual violence against women has devastating physical, emotional, and psychological consequences.<sup>48</sup> The Court has also ruled that the sexual rape of a detainee by a state agent is an especially gross and reprehensible act, taking into account the victim’s vulnerability and the abuse of power displayed by the agent.<sup>49</sup> In addition, it has maintained that sexual rape is an extremely traumatic experience that may have serious consequences<sup>50</sup> and it causes great physical and psychological damage that leaves the victim “physically and emotionally humiliated” – a situation that is difficult to overcome with time, contrary to what happens with other traumatic experiences.<sup>51</sup>

64. With specific reference to rapes of indigenous women, the IACHR has established that the pain and humiliation they suffer is worsened by their status as indigenous people<sup>52</sup> first of all, because of their lack of knowledge of the language of their aggressors and of the other authorities involved; and second because of the repudiation of their own communities that they face as a consequence of the violations.<sup>53</sup>

65. In this case, the Commission concluded that Valentina Rosendo Cantú was a victim of rape by members of the armed forces. First of all, there is the statement given to the civil authorities, in which Valentina Rosendo Cantú provided a detailed description of the incident, along with the physical characteristics of the soldiers who sexually assaulted her. Second, there is the statement of Estela Bernardino Sierra, in which she testifies that she saw Valentina Rosendo Cantú on February 16, 2002, when she arrived home in tears, her hair in disarray, and naked from the waist down. Third, the Commission notes that the results of the expert examinations performed on Valentina Rosendo Cantú indicated the aftereffects of physical violence. Fourth, the presence of the Army in the area at the time of the incident described in the complaint has not been disputed. Fifth, it has been established that the case was under investigation by the military justice system for two years and was then shelved, with the investigation file remaining in the possession of military justice. Sixth, the IACHR notes the reports issued by agencies of the United Nations stating that they had received complaints of sexual attacks perpetrated against indigenous women in the state

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<sup>48</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, paragraph 313, citing: United Nations Commission on Human Rights, 54th Session, *Report presented by Mrs. Radhika Coomaraswamy, Special Rapporteur on violence against women, with the inclusion of its causes and consequence, pursuant to resolution 1997/44 of the Commission*, Doc. E/CN.4/1998/54 of January 26, 1998, paragraph 14.

<sup>49</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, paragraph 311.

<sup>50</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, paragraph 311, citing: Report of the UN Commission on Human Rights, 50th Session, *Matter of the human rights of all persons submitted to any form of detention or imprisonment, and especially torture and other cruel, inhuman, or degrading treatments or punishments*, Report of the Special Rapporteur, Mr. Nigel S. Rodley, presented in accordance to resolution 1992/32 of the Human Rights Commission, Doc. E/CN.4/1995/34 of January 12, 1995, paragraph 19.

<sup>51</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, paragraph 311, citing: Eur.C.H.R., *Case of Aydin v. Turkey* (GC), Judgment of September 25, 1997, App. No. 57/1996/676/866, paragraph 83.

<sup>52</sup> IACHR, Report on Merits, No. 53/01, Ana, Beatriz, and Cecilia González Pérez (Mexico). At: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565.htm>.

<sup>53</sup> IACHR, Report on Merits No. 53/01, Ana, Beatriz, and Cecilia González Pérez (Mexico), paragraph 95. At: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565.htm>.

of Guerrero. In that same connection, the IACHR also observes that domestically, there has been a documented increase in sexual violence against women committed with political ends, particularly in heavily militarized areas such as the states of Chiapas, Oaxaca, Veracruz, and Guerrero.<sup>54</sup>

66. Sexual violence remains a source of deep shame for women and, frequently, for their families.<sup>55</sup> Although most women who are victims of violence sexual do not report those incidents to the authorities, Valentina Rosendo Cantú did so, encountering cultural, economic, and social obstacles, including language barriers.

67. In this regard, Amnesty International has said that:

Overcoming internalized guilt or shame to denounce the case, even to the community, takes enormous courage. If she speaks out, a woman may face stigmatization or outright rejection by the family or community.<sup>56</sup>

68. Thus, as a result of the rape, Valentina Rosendo Cantú now lives in the city of Chilpancingo in forced exile; her community has marginalized her on account of the complaint she lodged with the authorities. His displacement meant abandoning her usual place of residence and her community.<sup>57</sup> As a consequence of that exile, Valentina Rosendo Cantú's five-year-old daughter has been unable to grow up and live in her community, and she attends a school where the Spanish language, not Tlapanec, is used. They also report that Valentina Rosendo Cantú's husband abandoned her three years ago on account of the role of women within the Tlapanec indigenous culture, in which after a woman is raped, her ability to reproduce is placed in doubt.

69. The State's response to Valentina Rosendo Cantú – who was, along with her family, ostracized by her community for seeking justice – has caused emotional harm to both her and her family that constitutes humiliation and degradation in violation of the right to humane treatment and to privacy guaranteed by the American Convention, which went as far as to force her to flee from her community amid fear, shame, and humiliation. The State, in contrast, made no statements on this point in the processing of the case by the IACHR.

70. In addition, the investigation methods used by the military justice system, such as confronting Valentina Rosendo Cantú directly with her possible assailants, is in contravention of the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.<sup>58</sup> Those guidelines establish the obligation of taking steps to prevent children from being affected during the investigation of a case to ensure that the best interests and dignity of child victims and witnesses are respected.<sup>59</sup>

71. The IACHR has ruled on the need for States, through their administration of justice, to incorporate the specific needs of indigenous women in their undertakings, respecting their

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<sup>54</sup> Juan Méndez, Guillermo O'Donnell, Paulo Sergio Pinheiro, *The (Un)Rule of Law & the Underprivileged in Latin America, Overcoming the Discrimination of Women in Mexico: A Task for Sisyphus*, Mariclaire Acosta, University of Notre Dame Press, 1999, p. 170.

<sup>55</sup> United Nations, *In-depth study on all forms of violence against women: Report of the Secretary-General*, A/61/122/Add.1, July 6, 2006, paragraph 128. At: <http://daccessdds.un.org/doc/UNDOC/GEN/N06/419/77/PDF/N0641977.pdf?OpenElement>.

<sup>56</sup> Amnesty International, *Mexico: Indigenous Women and Military Injustice*, AI: AMR 41/033/2004, November 23, 2004, p. 6.

<sup>57</sup> IACHR, Report on Merits No. 53/01, Ana, Beatriz, and Cecilia González Pérez (Mexico).

<sup>58</sup> United Nations, ECOSOC, Resolution 2005/20, United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, paragraph 29.

<sup>59</sup> United Nations, ECOSOC, Resolution 2005/20, United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

cultural identity and ethnicity, their language and uniqueness, and even creating systems and methods for the participation of cultural experts in cases of violence.<sup>60</sup>

72. The United Nations has said that women victims of violence frequently do not seek justice because of feelings of shame and fear of persecution by the criminal justice system.<sup>61</sup> Consequently, good practice requires safeguarding the rights of victims and creating a system that respects the privacy, dignity, and autonomy of all victims.<sup>62</sup> For the IACHR actions of this kind are a way to re-victimize the alleged victim, in clear contravention of the provisions of the Convention of Belém do Pará that require states to refrain from any action or practice of violence against women. Furthermore, this situation is worsened by Valentina Rosendo Cantú's status as an indigenous person and a minor-aged child.

73. Most particularly, the Commission noted that Valentina Rosendo Cantú received no specialized assistance as the victim of a crime of violence at any point after lodging her complaint with the authorities. In the merits hearing on this case held at the IACHR in October 2007, the State reported on the creation, in 2005, of the office of the Assistant Attorney for Legal Matters and the Attention of Crime Victims.<sup>63</sup> The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime establishes the need to provide special services and protection measures that take into account the particular characteristics, including gender, of certain crimes, including rape.

74. In this regard, the Commission notes that the Mexican State has recognized:

The institutional violence, the indifference and discrimination suffered by indigenous women at the hands of personnel associated with health institutions and instances to impart justice, poorly trained and insensible to the poverty conditions and cultural diversity of these women.<sup>64</sup>

75. In light of these considerations, the Commission concluded and therefore asks the Court to declare that the Mexican State is responsible for violating Article 5(1) and Article 11 of the American Convention on Human Rights with respect to Valentina Rosendo Cantú, in conjunction with Article 1.1 thereof, with respect to the rape committed by members of the armed forces as well as through the harm suffered as a result of the state authorities' deficient investigation of that rape.

## ii. Rape as torture

76. Torture and cruel, inhuman, or degrading punishment or treatment is strictly prohibited by international human rights law. The absolute prohibition of torture, both physical and mental, is currently part of the international *jus cogens*.<sup>65</sup>

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<sup>60</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, Specific Recommendations for the States.

<sup>61</sup> United Nations, *In-depth study on all forms of violence against women: Report of the Secretary-General*, July 6, 2006, A/61/122/Add.I, paragraph 307.

<sup>62</sup> United Nations, *In-depth study on all forms of violence against women: Report of the Secretary-General*, July 6, 2006, A/61/122/Add.I, paragraph 307.

<sup>63</sup> IACHR, Merits Hearing No. 27, Case of Valentina Rosendo Cantú (Mexico), 130th regular session, October 2007; IACHR, Merits Hearing No. 26, Case of Inés Fernández Ortega (Mexico), 130th regular session, October 2007.

<sup>64</sup> Acknowledgement by the Mexican State, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 202.

<sup>65</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, paragraph 271.

77. Within the inter-American system, the definition of which acts constitute torture is set out in the Inter-American Convention to Prevent and Punish Torture, which states:

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.<sup>66</sup>

78. The Inter-American Convention to Prevent and Punish Torture, which was in force for Mexico at the time the incident occurred, provides:

Article 1

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

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.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 8

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international forums whose competence has been recognized by that State.

79. In addition, this Convention provides that the following persons shall be held guilty of the crime of torture:<sup>67</sup>

- a. A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so.
- b. A person who at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.

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<sup>66</sup> Inter-American Convention to Prevent and Punish Torture, Article 2.

<sup>67</sup> Inter-American Convention to Prevent and Punish Torture, Article 3.

80. Both at the international and regional level, including the Inter-American Commission and the Court, it has been ruled that once the occurrence of a rape perpetrated by state agents is proven, either inside or outside of detention facilities, it may constitute torture, based on two elements – the nature of the perpetrator and the purpose of the act.

81. At the international level, in its final verdict in the *Čelebići Case*, the International Criminal Tribunal for the Former Yugoslavia (hereinafter the “ICTY”) expressly ruled that “there can be no doubt that rape and other forms of sexual assault are expressly prohibited under international humanitarian law.”<sup>68</sup> In this case, the ICTY considered about rape perpetrated by public officials that:

The condemnation and punishment of a rape becomes all the more urgent where it is committed by, or at the instigation of, a public official, or with the consent or acquiescence of such an official.....Furthermore, it is difficult to envisage circumstances in which rape, by, or at the instigation of a public official, or with the consent or acquiescence of an official, could be considered as occurring for a purpose that does not, in some way, involve punishment, coercion, discrimination or intimidation.<sup>69</sup>

82. The European Court of Human Rights has emphasized as an aggravating factor the physical and psychological control the perpetrator exercises over the victim when it is a state agent:

Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim, which do not respond to the passage of time as quickly as other forms of physical and mental violence.<sup>70</sup>

83. In regards to the purpose requirement, in the *Furundžija Case*, the ICTY held:

As evidenced by international case law, the reports of the United Nations Human Rights Committee and the United Nations Committee Against Torture, those of the Special Rapporteur, and the public statements of the European Committee for the Prevention of Torture, this vicious and ignominious practice can take on various forms. International case law, and the reports of the United Nations Special Rapporteur evince a trend moving toward defining rape as torture when it can be verified in the context of detention and interrogation of the victims and, therefore, as a violation of international law. Rape is resorted to either by the interrogator himself or by other persons associated with the interrogation of a detainee, as a means of punishing, intimidating, coercing or humiliating the victim, or obtaining information, or a confession, from the victim or a third person.<sup>71</sup>

84. The IACHR notes as well that the ICTY Appeals Chamber in the *Kunarac, Kovac and Vukovic Case* went one step further and determined that for a finding of torture it is sufficient to establish whether a perpetrator intended to act in a way which would cause severe pain and suffering to his victims, whether physical or mental, even if his motivation was “entirely sexual”.<sup>72</sup> The ICTY Appeals Chamber ruled in the same case that the “severe pain or suffering” required by

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<sup>68</sup> Case No. IT-96-21-T, Judgment, paragraph 476, November 16, 1998. In: Louis Henkin *et al.*, *Human Rights*, Foundation Press, New York, 1999, pp. 380 and 381.

<sup>69</sup> Case No. IT-96-21-T, Judgment, paragraph 495, November 16, 1998. In: Louis Henkin *et al.*, *Human Rights*, Foundation Press, New York, 1999, pp. 380 and 381.

<sup>70</sup> European Court of Human Rights, *Aydin v. Turkey*, (57/1996/676/866), Judgment of September 25, 1997, paragraph 83.

<sup>71</sup> ICTY, *Prosecutor v. Anto Furundžija*, Judgment of December 10, 1998, paragraph 163; upheld on appeal by the Appeals Chamber of the ICTY in a judgment of July 21, 2000.

<sup>72</sup> ICTY Appeals Chamber, *Prosecutor v. Kunarac, Kovac and Vukovic*, Judgment of June 12, 2002, paragraph 153.

the definition of the crime of torture can be considered established once the rape is proven since the act of rape per se implies such pain and suffering.<sup>73</sup>

85. In regards to the location of the act, the United Nations Committee against Torture has also held that rape can constitute torture even when it takes place outside of detention facilities, emphasizing the control that can still be exercised by a state agent over the victim in other settings.<sup>74</sup> The Committee considered that:

In assessing the risk of torture in the present case, the Committee considers that the complainant was clearly under the physical control of the police even though the acts concerned were perpetrated outside formal detention facilities (...). Therefore, the Committee believes that the sexual abuse in this case constitutes torture even though it was perpetrated outside formal detention facilities.<sup>75</sup>

86. In the inter-American system, the Commission determined that for torture to exist in cases of sexual violence, three elements must be present:<sup>76</sup>

- a. an intentional act through which physical and mental pain and suffering is inflicted on a person;
- b. committed with a purpose; and,
- c. committed by a public official or by a private person acting at the instigation of the former.

87. In analyzing the three elements, in the case of Raquel Martín Mejía, where the victim had been raped twice by Peruvian military personnel in her home, based on the accusation that she and her husband were considered subversive and members of the *Movimiento Revolucionario Tupac Amaru*,<sup>77</sup> the Commission found the State responsible for torture. The IACHR highlighted the physical and mental suffering that is inherent to the act of rape, and how it can be employed as a method of psychological torture because its objective, in many cases, is to humiliate not just the victim, but also her family or community:

Rape causes physical and mental suffering in the victim. In addition to the violence suffered at the time it is committed, the victims are commonly hurt or, in some cases, are even made pregnant. The fact of being made the subject of abuse of this nature also causes a psychological trauma that results, on the one hand, from having been humiliated and victimized, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them.<sup>78</sup>

88. The Commission additionally considered in its analysis that Raquel Martín Mejía “was raped with the aim of punishing her personally and intimidating her”.<sup>79</sup> Similarly, in its report on the merits in the case of Ana, Beatriz, and Celia González Pérez, who were sexually assaulted during an illegal interrogation conducted by members of the armed forces in a zone of armed conflict, the IACHR ruled that those abuses to the physical, mental, and moral integrity of the three Tzeltal

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<sup>73</sup> ICTY Appeals Chamber, *Prosecutor v. Kunarac, Kovak and Vukovic*, Judgment of June 12, 2002, paragraph 151.

<sup>74</sup> In the case of *V.L. v. Switzerland*, the petitioner alleged that prior to her departure from Belarus she was repeatedly interrogated and raped by three police officers seeking information about the whereabouts of her husband. United Nations Committee against Torture, *V.L. v. Switzerland*, CAT/C/37/D/262/2005, 20 November 2006.

<sup>75</sup> United Nations Committee against Torture, *V.L. v. Switzerland*, CAT/C/37/D/262/2005, 20 November 2006, para. 8.10.

<sup>76</sup> IACHR, Report No. 5/96, Case 10.970, Raquel Martín Mejía, March 1, 1996.

<sup>77</sup> IACHR, Merits Report, N. 5/96, Raquel Martín de Mejía, March 1, 1996.

<sup>78</sup> IACHR, Report No. 5/96, Case 10.970, Raquel Martín Mejía, March 1, 1996.

<sup>79</sup> IACHR, Report No. 5/96, Case 10.970, Raquel Martín Mejía, March 1, 1996.

sisters committed by the agents of the Mexican State constituted torture.<sup>80</sup> The Commission considered in its finding *indicia* that the military officers sought to humiliate and punish the sisters for their presumed links with the rebels, due to the manner in which they were assaulted and the serious death threats they received from the aggressors.<sup>81</sup>

89. The Inter-American Court ruled that the acts of sexual violence to which female detainees were subjected constituted torture.<sup>82</sup> In its analysis, the Inter-American Court considered explicitly “that the women that suffered the acts were subject to the complete and power control of state agents, absolutely defenseless....” and thus feared more violent acts by the security agents.<sup>83</sup> The Court recognized that the rape of a detainee is an especially grave and reproachable act, taking into account the vulnerability of the victim and the abuse of power displayed by the agent.<sup>84</sup> The Court highlighted that rape is a traumatic experience with severe consequences and physical and psychological damage that leaves the victims “humiliated physically and emotionally”, a situation that is challenging to overcome with the passing of time, in contrast to other traumatic experiences.<sup>85</sup>

90. In accordance with the development of international and regional standards, the Commission considered in its merits report that a rape perpetrated by a state agent will always result in the intimidation, humiliation, and/or coercion of the victim, among other prohibited aims and purposes identified in existing legal standards related to torture.<sup>86</sup> This is due to the severe and long-lasting mental and physical suffering inherent in all acts of rape, due to its non-consensual and invasive nature, affecting the victim, her family and community. This is aggravated when the perpetrator is a state agent, because of the physical and psychological power the aggressor can abusively exercise over the victim due to his position of authority.

91. In accordance with the applicable international standards and its own case law, the Commission concluded that material facts of the instant case demonstrate the commission of the crime of torture.<sup>87</sup> The Commission therefore asks the Court to rule that the abuse of Valentina Rosendo Cantú’s physical, mental, and moral integrity, committed by agents of the Mexican State, constitutes torture.

**b. Right to a fair trial and judicial protection (Articles 8(1) and 25 of the American Convention, in conjunction with Article 1(1) thereof)**

92. The inter-American human rights system has affirmed the obligation of states to act with due diligence in connection with human rights violations.<sup>88</sup> This duty includes four obligations: preventing, investigating, punishing, and providing redress for human rights violations.<sup>89</sup>

93. In this regard, the Inter-American Court has ruled that:

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<sup>80</sup> See: IACHR, Report on Merits No. 53/01, Ana, Beatriz, and Cecilia González Pérez (Mexico).

<sup>81</sup> See: IACHR, Report on Merits No. 53/01, Ana, Beatriz, and Cecilia González Pérez (Mexico).

<sup>82</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, paragraph 312.

<sup>83</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, paragraph 307.

<sup>84</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, paragraph 307.

<sup>85</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, paragraph 311.

<sup>86</sup> IACHR, Report No. 36/09 (Merits), Case 12.579, *Valentina Rosendo Cantú et al*, Mexico, March 27, 2009; Appendix 1, para. 120.

<sup>87</sup> IACHR, Report on Merits No. 53/01, *Ana, Beatriz, and Celia González Pérez*, Mexico.

<sup>88</sup> See: I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4.

<sup>89</sup> See: I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4.

This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of legally ensuring the free and full enjoyment of human rights. As a consequence of this obligation, states must prevent, investigate, and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.<sup>90</sup>

94. The state's obligation to act with due diligence includes facilitating access to suitable, effective judicial remedies for dealing with human rights violations.<sup>91</sup> The Inter-American Court has ruled that all individuals who have suffered violations of their human rights are entitled "to obtain clarification of the events that constituted violations as well as the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution as established in Articles 8 and 25 of the Convention."<sup>92</sup> The Inter-American Court has also stated that the power of access to justice must ensure, within a reasonable period of time, the right of the alleged victims or their next of kin that everything possible is done to know the truth of what happened and that the possible responsible parties are punished.<sup>93</sup>

95. Article 25 of the American Convention provides that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, before a competent court or judge, that protects them against acts that violate his fundamental rights recognized by the constitution, laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
  - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
  - b. to develop the possibilities of judicial remedy; and,
  - c. to ensure that the competent authorities shall enforce such remedies when granted.

96. Similarly, Article 8(1) of the American Convention stipulates:

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.

97. The protection of these rights is strengthened by Article 1(1) of the American Convention. In this regard, the Inter-American Court of Human Rights has ruled that:

Article 25, read in conjunction with Article 1.1 of the American Convention, requires the State to guarantee to all persons access to the administration of justice and, in particular, to prompt and simple recourse for, among other results, having the persons responsible for human rights violations judged, and to obtain reparations for the harm suffered... Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society." That article is closely linked to Article 8.1, which provides that every

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<sup>90</sup> I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraph 166.

<sup>91</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007; Annex 1.

<sup>92</sup> I/A Court H. R., *Barrios Altos Case*, Judgment of March 14, 2001, Series C No. 75, paragraph 48.

<sup>93</sup> See: I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 382; I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 171.

person has the right to a hearing, with due guarantees [...] for the determination of his rights, whatever their nature.<sup>94</sup>

98. The main objectives of the regional human rights system and the principle of effectiveness require that those guarantees be upheld. Consequently, when exercise of any of those rights is not yet guaranteed *de jure* and *de facto* by a state within the sphere of its jurisdiction, under Article 2 of the American Convention it is required to adopt such legislative or other measures as may be necessary to enforce them. Thus, the duty of the state to provide judicial remedies is not limited to making them formally available to the victims, but also to ensuring that those remedies are suitable for remedying the human rights violations involved.<sup>95</sup> The Inter-American Court has ruled that:

The absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.<sup>96</sup>

99. Inter-American precedent stresses the importance of conducting an immediate, exhaustive, serious, and impartial investigation into human rights violations. The Court has held that the investigation must be undertaken:

In a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.<sup>97</sup>

100. Similarly, the Commission has stated that the investigation must not be “the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth”<sup>98</sup> but should instead be aimed at exploring all the possible lines of inquiry to identify the perpetrators of the crime with a view to their subsequent prosecution and punishment.

101. In this, the Court has ruled that the State may be responsible for not having “ordered, practiced, or evaluated” evidence that could have been crucial for the due clarification of

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<sup>94</sup> I/A Court H. R., *Loayza Tamayo Case*, Reparations, Judgment of November 27, 1998, Series C No. 42, paragraph 169; I/A Court H. R., *Velásquez Rodríguez Case*, Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, paragraph 91; I/A Court H. R., *Fairén Garbí and Solís Corrales Case*, Preliminary Objections, Judgment of June 26, 1987, Series C No. 2, paragraph 90; I/A Court H. R., *Godínez Cruz Case*, Preliminary Objections, Judgment of June 26, 1987, Series C No. 3, paragraph 93.

<sup>95</sup> In this connection, the Inter-American Court has ruled that: “In regards to this case, the Court considers that in order to satisfy the right to access to an effective remedy it is not sufficient that final judgments be delivered in the appeal for legal protection proceedings, ordering protection of plaintiffs’ rights. It is also necessary that there are effective mechanisms to execute the decisions or judgments, so that the declared rights are protected effectively. As it is established, one of the effects of the judgment is its binding character. The enforcement of judgments should be considered an integral part of the right to access to the remedy, encompassing also full compliance with the respective decision. The contrary would imply the denial of this right.” I/A Court H. R., *Case of Acevedo Jaramillo et al.*, Judgment of February 7, 2006, Series C No. 144, paragraph 220.

<sup>96</sup> I/A Court H. R., *The Street Children Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, paragraph 235; I/A Court H. R., *Castillo Petruzzi Case*, Judgment of May 30, 1999, Series C No. 52, paragraph 185; I/A Court H. R., *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25, and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, paragraph 24.

<sup>97</sup> I/A Court H. R., *Godínez Cruz Case*, Judgment of January 20, 1989, Series C No. 5, paragraph 188; I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraph 177; I/A Court H. R., *The Street Children Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, paragraph 226.

<sup>98</sup> IACHR, Report No. 55/97, Case 11.137, *Juan Carlos Abella et al.*, Argentina, November 18, 1997, paragraph 412.

the incident.<sup>99</sup> Specifically, the Inter-American Court has ruled that the duty of investigating is an obligation of means and not of results.<sup>100</sup> In order to comply with the obligation to investigate and punish, the Inter-American Court has ruled that the State must: remove all *de facto* and *de jure* obstacles and mechanisms that maintain impunity; grant sufficient guarantees of security to witnesses, judicial authorities, prosecutors, other judicial agents, and the victims' next of kin; and use all measures available to it to advance the proceedings.<sup>101</sup>

102. Impunity surrounds human rights violations when there is a "total lack of investigation, prosecution, capture, trial, and conviction of those responsible for violations of the rights protected by the American Convention," and "the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenseless of victims and their relatives."<sup>102</sup>

103. To prevent impunity, the State has the obligation, under Article 1 of the American Convention, of respecting and ensuring the rights enshrined in the Convention:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.<sup>103</sup>

104. In the following sections the IACHR will analyze the alleged violation of Articles 8.1 and 25 of the American Convention under three headings: (3.1) obstruction of access to justice by denying medical attention, (3.2) investigations carried out by the authorities as a result of the complaint filed, and (3.3) the military criminal justice system.

#### **i. Obstruction of Access to Justice by Denying Medical Attention**

105. Two days after she was raped, Valentina Rosendo Cantú felt poorly and went to the state emergency clinic in the village of Caxitepec, two hours away from her home.<sup>104</sup> There, she described what had happened to the duty physician. As stated by the petitioners at the merits hearing on the case, the clinic's doctor refused to attend to Valentina Rosendo Cantú because he did not want problems with the military and, as a result, she returned home. That claim was not disputed by the Mexican State.

106. According to Article 55 of the Code of Criminal Procedure, when a public servant is made aware, in the exercise of his duties and by reason thereof, that a crime has been committed, he is required to report it immediately, if it is a crime that can be prosecuted on an *ex officio* basis,

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<sup>99</sup> I/A Court H. R., *The "Street Children" Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, paragraph 230.

<sup>100</sup> I/A Court H. R., *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147, paragraph 93.

<sup>101</sup> I/A Court H. R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, paragraph 134.

<sup>102</sup> I/A Court H. R., *Loayza Tamayo Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of November 27, 1998, Series C No. 42, paragraph 170, citing: I/A Court H. R., *The "Panel Blanca" Case (Paniagua Morales et al.)*, Judgment of March 8, 1998, Series C No. 37, paragraph 173.

<sup>103</sup> IACHR, Report on Merits, No. 54/01, Maria Da Penha Fernandes (Brazil), April 16, 2001, paragraph 42, citing: I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraph 176, and *Godínez Cruz Case*, Judgment of January 20, 1989, Series C No. 5, paragraph 175.

<sup>104</sup> Merits Hearing No. 27, Case of Valentina Rosendo Cantú (Mexico), 130th regular session, October 2007; Communication dated February 26, 2002, from Valentina Rosendo Cantú and Fidel Bernardino Sierra, addressed to the Governor of Guerrero.

or to inform his superiors, if it is a crime that can be prosecuted by means of a complaint or other equivalent formalities lodged with the authorities; and that failure to do so is punishable by law.<sup>105</sup> That same obligation is also covered by Article 71 of the Code of Criminal Procedure of the State of Guerrero, which states that

when an injured party requires prompt medical attention, any person may come to his assistance and convey him to a place where he may receive it, communicating to the authorities, promptly, such information as he has about the injured party, about the circumstances in which he was injured, and about the injuries suffered.<sup>106</sup>

107. Similarly, Article 140 of the Guerrero State Health Law (No. 159) states that personnel of the state health system must give preferential and immediate attention to children and senior citizens who have suffered any form of mistreatment that threatens their physical and mental health and to any person who has been the victim of crimes against physical or mental integrity or against the normal psychosomatic development of the individual: a requirement that was not met in the instant case, even though it involved a minor-aged child who had been the victim of a crime.<sup>107</sup>

108. The severity of the situation in this case is heightened by Valentina Rosendo Cantú's status as an indigenous person and as a minor who, after being raped by members of the armed forces, did not receive proper attention. The World Health Organization's Guidelines for Medico-legal Care for Victims of Sexual Violence emphasize the importance of the treatment given by health practitioners in dealing with victims of sexual violence, in order to avoid contributing to a second victimization.<sup>108</sup>

109. In this regard, pursuant to the principle of nondiscrimination enshrined in Article 1.1 of the Convention, the Inter-American Court has established that to guarantee access to justice by the members of indigenous peoples, "it is necessary that the States grant an effective protection taking into account their specific features, economic and social characteristics, as well as their special situation of vulnerability, their common law, values, uses and customs."<sup>109</sup>

110. In the case at hand, the physician at the health center hindered Valentina Rosendo Cantú's access to justice. According to the Inter-American Court, any regulation or practice of the domestic order that makes individual access to the courts difficult and is not justified by the reasonable needs of the administration of justice itself shall be understood as contrary to Article 8.1 of the American Convention.<sup>110</sup> The Commission notes that after the refusal of the public servant to furnish the requested medical care, days went by before Valentina Rosendo Cantú went to the hospital in Ayutla de los Libres to receive attention, because she had to prepare herself for a nine-hour walk notwithstanding the ailments she was suffering as a result of the rape.<sup>111</sup> Hence, Valentina Rosendo Cantú arrived at the hospital in Ayutla de los Libres on February 25, 2002, where she received no treatment because she didn't have an appointment and later because there was no female doctor. On March 19, 2002 she was given a medical examination by a forensic expert. The examination found only physical traces of violence.

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<sup>105</sup> Code of Criminal Procedure of the State of Guerrero, Article 55.

<sup>106</sup> Code of Criminal Procedure of the State of Guerrero, Article 71.

<sup>107</sup> Guerrero State Health Law (No. 159), published on February 27, 1985.

<sup>108</sup> World Health Organization, *Guidelines for Medico-legal Care for Victims of Sexual Violence*, 2003, p 32.

<sup>109</sup> I/A Court H. R., *Case of Tiu Tojin*, Merits, Reparations, and Costs, Judgment of November 26, 2008, paragraph

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<sup>110</sup> I/A Court H. R., *Case of Tiu Tojin*, Merits, Reparations, and Costs, Judgment of November 26, 2008, paragraph

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<sup>111</sup> Merits Hearing No. 27, Case of Valentina Rosendo Cantú (Mexico), 130th regular session, October 2007.

111. Consequently, the Commission considered in its merits report that the refusal of a public servant to provide her with timely medical attention translated into an obstruction of justice for the securing of evidence that would have helped identify her attackers.

**ii. Investigations carried out as a result of the complaint filed before the Civilian Courts**

112. Valentina Rosendo Cantú's gynecological examination focused on a physical and gynecological exploration that did not comply with the minimum parameters necessary to investigate the alleged rape and failed to pay any attention to psychological issues. The United Nations Commission on Human Rights has defined a series of principles to be taken into account by medical practitioners in investigating rape allegations.<sup>112</sup> The "accurate written report" to be prepared promptly by the medical expert is to include, at the least, the following elements:

- i) Circumstances of the interview: name of the subject and affiliation of those present at the examination; the exact time and date; the location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanor of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor.
- ii) History: a detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms.
- iii) Physical and psychological examination: a record of all physical and psychological findings on clinical examination including appropriate diagnostic tests and, where possible, color photographs of all injuries.
- iv) Opinion: an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination.
- v) Authorship: the report should clearly identify those carrying out the examination and should be signed.

113. The IACHR, in its report *Access to Justice for Women Victims of Violence*, stressed the need for evidence other than physical evidence and testimonies to be considered in ruling on cases of violence against women, particularly those involving sexual violence.<sup>113</sup>

114. Similarly, the International Criminal Court's Rules of Procedure and Evidence has established the factors that may prevent a victim from physically resisting a sexual attack, even

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<sup>112</sup> United Nations, *Torture and other cruel, inhuman or degrading treatment or punishment*, "Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment," Annex, E/CN.4/RES/2000/43, April 20, 2000.

<sup>113</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 138.

when consent has not been given, and how those factors are to be taken into consideration in legal proceedings. Rule 70 specifically states that in cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles:<sup>114</sup>

- (a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;
- (b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;
- (c) Consent cannot be inferred by reason of the silence or lack of resistance by, a victim to the alleged sexual violence;
- (d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

115. Likewise, the Istanbul Protocol states that the most significant component of a medical evaluation may be the examiner's assessment of background information and demeanor of the individual, bearing in mind the cultural context of the woman's experience.<sup>115</sup>

116. The IACHR concluded, and requests the Court to declare, that Valentina Rosendo Cantú did not have access to the medical services she required as a rape victim, and that the lack of due diligence in making available and providing those services, together with the investigation conducted before the military courts, has contributed to the impunity that surrounds her case; and that the investigation methods of the military justice system that were described by the victim during the merits hearing at the IACHR were not in compliance with the standards set in the Istanbul Protocol.<sup>116</sup>

### iii. Military justice system

117. The investigation by the military authorities was active for two years; that it then remained inactive for almost three years after it was archived; and that during that time, no steps were taken to cast light on the incident, leaving the victim totally defenseless.

118. Article 13 of the Mexican Constitution, with respect to the military justice system, provides as follows:<sup>117</sup>

No one may be tried by private laws or special tribunals. No person or corporate body shall have privileges or enjoy emoluments other than those given in compensation for public services and which are set by law. Military jurisdiction shall be recognized for the trial of crimes against and violation of military discipline, but military tribunals shall in no case have jurisdiction over persons who do not belong to the army. Whenever a civilian is implicated in a military crime or violation, the corresponding civil authority shall deal with the case.

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<sup>114</sup> United Nations, Rule 70, *Principles of evidence in cases of sexual violence*, International Criminal Court, Rules of Procedure and Evidence, U.N. Doc. PCNICC/2000/1/Add.1(2000).

<sup>115</sup> United Nations, *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Istanbul Protocol), 2001, paragraph 227.

<sup>116</sup> The Istanbul Protocol states that because of the nature of torture cases and the trauma individuals suffer as a result, it is particularly important to show sensitivity to alleged torture victims and other witnesses. The Protocol also stipulates that states are obliged to protect victims of torture, witnesses, and their families from violence, threats of violence, or any other form of intimidation that may arise from the investigation. It also requires that any treatment that would increase the psychological trauma of a torture survivor be avoided. United Nations, *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Istanbul Protocol), 2001, paras. 87 and 216.

<sup>117</sup> Constitution of the United Mexican States, Art. 13.

119. Similarly, Article 57.II.A of the Code of Military Justice provides:

Article 57: The following are offenses against military discipline:

II. Those covered by local or federal jurisdiction, when their commission involves any of the circumstances listed below:

(a) when committed by military personnel on active service or in actions related to that service.

120. Article 37 of the Internal Service Regulations of Units, Agencies, and Installations of the Mexican Army and Air Force defines the term "service actions" in the following way:

Service actions are those performed by members of the military within the military sphere, either in pursuit of a mission, under a received order, or in the performance of the operational or administrative functions for which they are competent, in accordance with their position in the hierarchy, posting, or commission, and in accordance with the laws, regulations, and rules of the Army and Air Force.<sup>118</sup>

121. On March 8, 2002, Valentina Rosendo Cantú, an indigenous child of the Me'phaa (Tlapanec) people, informed the competent authority – the Public Prosecution Service for local jurisdiction offenses – that members of the Mexican Army had raped her while she was by the river. Following a conflict of jurisdiction, whereby the case was transferred to the from the Allende Judicial District to the Morelos Judicial District headquartered in Tlapa de Comonfort, on May 16, 2002, the agent of the Public Prosecution Service for local jurisdiction crimes of the Morelos Judicial District declared herself incompetent and referred the preliminary inquiry to the Director General for Preliminary Inquiries of the office of the State Attorney General for Justice, for it to forward it to the corresponding Military Prosecution Service. The reasons for that was "since it is the military venue where the case belongs, according to how the law applies to persons."<sup>119</sup>

122. The rape of Valentina Rosendo Cantú cannot be held to affect legal interests particular to the military order. Neither was it an excess committed while the soldiers were performing the legitimate functions entrusted to them under Mexican law. The IACHR believes there is no link with any kind of activity inherent to the armed forces that could justify the intervention of the military justice system in the investigation of a complaint of rape perpetrated against a civilian.

123. The Commission has repeatedly said that military justice should be used only to judge active-duty military officers for the alleged commission of service-related offenses in the strictest sense. Human rights violations must be investigated, tried, and punished in keeping with the law, by the regular criminal courts. Inverting jurisdiction in cases of human rights violations should not be allowed, as this undercuts judicial guarantees, under an illusory image of the effectiveness of military justice, with grave institutional consequences, which in fact call into question the civilian courts and the rule of law.<sup>120</sup>

124. Similarly, the Inter-American Court has ruled that in democratic states, military criminal jurisdiction is to be restricted and exceptional in scope and be intended to protect special juridical interests associated with the functions that the law assigns to the armed forces.<sup>121</sup> Therefore, it must only try military men for the commission of crimes or offenses that due to their

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<sup>118</sup> Internal Service Regulations of Units, Agencies, and Installations of the Mexican Army and Air Force , D.O.F., November 28, 2005.

<sup>119</sup> Communication signed by Miguel Barreto Sedeño, Assistant Attorney General for Criminal Procedure, dated April 8, 2002, document 0676.

<sup>120</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, doc. 59 rev. June 2, 2000, Chapter II, paragraph 214.

<sup>121</sup> I/A Court H. R., *Case of Almonacid Arellano et al.*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 154, paragraph 131.

nature may affect military interests.<sup>122</sup> That same line was held by the Constitutional Court of Colombia in judgment C-357/98 of August 5, 1997.<sup>123</sup>

125. As the Inter-American Commission has said, “when the State permits investigations to be conducted by the entities with possible involvement, independence and impartiality are clearly compromised,” as a result of which it is “impossible to conduct the investigation, obtain the information, and provide the remedy that is allegedly available,” and what occurs is *de facto* impunity, which “has a corrosive effect on the rule of law and violates the principles of the American Convention.”<sup>124</sup>

126. The Inter-American Court has ruled that “any person subject to a proceeding of any nature before an organ of the State must be guaranteed that this organ is impartial and that it acts in accordance with the procedure established by law for hearing and deciding cases submitted to it.”<sup>125</sup> In particular, the IACHR has determined that, as a result of their nature and structure, military courts do not meet the requirements of independence and impartiality imposed by Article 8.1 of the American Convention in cases involving human rights violations.<sup>126</sup>

127. Particularly, in cases that potentially involve torture, the Inter-American Court has upheld states’ obligation to conduct an effective investigation to identify, prosecute, and punish the perpetrators:

In the light of the general obligation to guarantee all persons under their jurisdiction the human rights enshrined in the Convention, established in Article 1.1 of the same, along with the right to humane treatment pursuant to Article 5 (Right to Humane Treatment) of said treaty, there is a state obligation to start *ex officio* and immediately an effective investigation that allows it to identify, prosecute, and punish the responsible parties, when there is an accusation or well-grounded reason to believe that an act of torture has been committed.<sup>127</sup>

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<sup>122</sup> I/A Court H. R., *Case of Almonacid Arellano et al.*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 154, paragraph 131; *Case of Palamara Iribarne*, Judgment of November 22, 2005, Series C No. 135, paragraph 124; *Case of the “Mapiripán Massacre,”* Judgment of September 15, 2005, Series C No. 134, paragraph 202; *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 165.

<sup>123</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, Chapter V, paragraphs 31-32

<sup>124</sup> IACHR, Report No. 53/01, Case 11.565, Ana, Beatriz, and Celia González Pérez (Mexico), April 4, 2001.

<sup>125</sup> I/A Court H. R., *Case of Herrera Ulloa*, Judgment of July 2, 2004, Series C No. 107, paragraph 169; *Constitutional Court Case*, Judgment of January 31, 2001, Series C No. 71, paragraph 77; *Case of Almonacid Arellano et al.*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 154, paragraph 130.

<sup>126</sup> IACHR, Report No. 53/01, Case 11.565, Ana, Beatriz, and Celia González Pérez (Mexico), April 4, 2001, paragraph 81. The fact that the military courts are not suited to the investigation, prosecution, and punishment of cases involving human rights violations has been addressed by rulings of the Inter-American Commission:

The military criminal justice system has several unique characteristics which prevent access to an effective and impartial judicial remedy in this jurisdiction. First, the military justice system may not even be properly referred to as a true judicial forum. The military justice system does not form part of the judicial branch of the Colombian State. Rather, this jurisdiction is operated by the public security forces and, as such, falls within the executive branch. The decision-makers are not trained judges, and the Office of the Prosecutor General does not fulfill its accusatory role in the military justice system.

IACHR, *Third Report on the Situation of Human Rights in Colombia* (1999), pp. 175 to 186. Similarly, the Constitutional Court of Colombia has ruled:

For the military criminal justice system to have competence over a crime, there must be from the onset an evident link between the crime and the inherent activities of military service. In other words, the punishable action must constitute an excess or abuse of power occurring within the context of an activity that is directly related to a legitimate function of the armed forces. The link between the criminal action and the activity related to military service breaks down when the crime is extremely serious, such as is the case with crimes against humanity. In such circumstances, the case must be referred to the civilian courts.

Constitutional Court of Colombia, Decision C-358 of August 5, 1997.

<sup>127</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 345; *Case of Vargas Areco*, Judgment of September 26, 2006, Series C No. 155, paragraph 79; *Case of Gutiérrez*

128. This concern is shared by other international agencies that work to protect human rights. For example, on his visit to Mexico in 1998, the United Nations Special Rapporteur on Torture specifically recommended that the State ensure that human rights violations perpetrated by members of the armed forces against civilians be investigated and prosecuted under civilian jurisdiction:

88(j) Cases of serious crimes committed by military personnel against civilians, in particular torture and other cruel, inhuman or degrading treatment or punishment, should, regardless of whether they took place in the course of service, be subject to civilian justice.<sup>128</sup>

129. Similarly, the United Nations Special Rapporteur on the Independence of Judges and Lawyers concluded that:

The want of impartiality of the military courts and the reluctance or unwillingness of civilian witnesses to appear before military courts to give evidence against military personnel are matters of concern.<sup>129</sup>

130. He also formulated the following recommendation for the Mexican State:

(d) With regard to the military and military courts: Crimes alleged to be committed by the military against civilians should be investigated by civilian authorities to allay suspicions of bias. In any event current legislation should be amended to provide for the civil judiciary to try cases of specific crimes of a serious nature, such as torture and killings, alleged to have been committed by the military against civilians outside the line of duty. Urgent consideration should be given to removing the military from policing public law and order in society.<sup>130</sup>

131. The IACHR has maintained that the problem of impunity in the military justice system is not tied only to the acquittal of defendants: criminal investigations carried out in the military justice system impede access to an effective and impartial judicial remedy. When the military justice system conducts the investigation of a case, the possibility of an objective and independent investigation by judicial authorities which do not form part of the military hierarchy is precluded. Investigations into the conduct of members of the State's security forces carried out by other members of those same security forces generally serve to conceal the truth rather than to reveal it. Thus, when an investigation is initiated in the military justice system, a conviction will probably be impossible even if the case is later transferred to the civil justice system, because the necessary evidence will probably not have been gathered in an effective and timely manner.<sup>131</sup>

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*Soler*, Judgment of September 12, 2005, Series C No. 132, paragraph 54; and *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147, paragraph 156. In this connection, see: Eur.C.H.R., *Case of İlhan v. Turkey* [GC], Judgment of June 27, 2000, App. No. 22277/93, paragraphs 92 and 93; and Eur.C.H.R., *Case of Assenov and others v. Bulgaria*, Judgment of October 28, 1998, App. No. 90/1997/874/1086, paragraph 102. See also: IACHR, Report No. 53/01, Case 11.565, Ana, Beatriz, and Celia González Pérez (Mexico), April 4, 2001.

<sup>128</sup> United Nations, *Report of the Special Rapporteur on Torture*, Report E/CN.4/1998/Add.2, January 14, 1998. United Nations, *Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhuman or degrading treatment or punishment*, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38, E/CN.4/1998/38/Add.2, January 14, 1998, paragraph 88.

<sup>129</sup> United Nations, *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Mr. Dato'Param Kumaraswamy, E/CN.4/2002/72/Add., January 24, 2002, p. 44.

<sup>130</sup> United Nations, *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Mr. Dato'Param Kumaraswamy, E/CN.4/2002/72/Add., January 24, 2002, p. 48.

<sup>131</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, Chapter V.

132. With particular reference to this case, the IACHR notes that the State's authorities told it that the military justice system intervened solely to determine whether a breach of military discipline had been committed:

Its intervention was thus exclusively intended to probe whether a breach was committed, whether the military personnel deployed in an area close to the village had been separated, whether one had abandoned his post in some way and reached the village to commit the crime in question.<sup>132</sup>

133. Furthermore, the State reported that the Military Prosecution Service, after exhausting the resulting formalities and analyzing the evidence, resolved to shelve the inquiry case file, because "the investigation of the facts indicated no breach of military discipline or the participation of military personnel in the commission of any illicit action."<sup>133</sup> In this, reference is made to Articles 453 and 454 of the Code of Military Justice, dealing with the commission of an offense.<sup>134</sup> The IACHR considers that the military authorities went beyond the determination of whether there was an infraction to the military discipline. They additionally established that military personnel had not participated in the rape of Valentina Rosendo Cantú, thereby surpassing their competence contrary to international standards.

134. The local justice system declined competence in favor of the military justice system on May 16, 2002, and at the merits hearing on this case held in October 2007, the State informed the IACHR that the summary of the preliminary inquiry had not yet been returned from the Office of the Attorney General for Military Justice. The Commission therefore notes that the inquiry before the military courts was shelved on March 12, 2004, after which proceedings were suspended for three years because, during that period, the parties submitted no information on the performance of any formalities for clearing up the incident; and the result of this was a delay in conducting a timely and effective investigation.

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<sup>132</sup> Merits Hearing No. 27, Case of Valentina Rosendo Cantú (Mexico), 130th regular session, October 2007.

<sup>133</sup> Communication from the Mexican State, Note OEA-01787, dated July 6, 2007. Emphasis added.

<sup>134</sup> Opinion of the Third and Sixth Agents of the Prosecution Service attached to the office of the Attorney General for Military Justice, arising from the filing proposal made by the Fourteenth Investigating Agent; cited in: Communication from the Mexican State, Note OEA-01787, dated July 6, 2007.

Articles 453 and 454 of the Mexican Military Code provide:

ARTICLE 453. The basis for criminal proceedings is the proven existence of an act or omission defined by law as a crime; without that, there can be no subsequent proceedings. In determining the elements that constitute a defined crime, all the forms of evidence admitted by this Code shall have their full legal strength, with preference given to those indicated in this chapter, and the authorities shall enjoy the broadest discretion to use the means of investigation they deem appropriate, provided that they are not prohibited by law.

In determining the *corpus delicti*, all the forms of evidence admitted by this Code shall have their full legal strength, with preference given to those indicated in this chapter, and the authorities shall enjoy the broadest discretion to use the means of investigation they deem appropriate, provided that they are not prohibited by law.

ARTICLE 454. The Prosecution Service shall accredit the *corpus delicti* in question and the probable responsibility of the accused, as the basis for taking legal action. The judicial authority shall, in turn, verify that both requirements are met in the case documents.

*Corpus delicti* shall be taken as meaning the set of objective or external elements that constitute the substance of the action defined by law as a crime, together with the regulatory elements in those cases in which the description so requires.

The probable responsibility of the accused shall be taken as proven when, from the evidence that exists, it is possible to deduce his participation in the crime or the willful or culpable commission thereof, and when no grounds for legality or the exclusion of guilt on his part has been established.

135. According to information furnished by the State on January 10, 2008, the National Secretariat forwarded the inquiry to the Office of the Attorney General for Justice of the State of Guerrero for that office to complete the inquiry. The basis for that was “the steps taken by the Mexican State and in response to the petitioners’ request for the preliminary inquiry to be completed by the local justice system [...] brought against the person or persons responsible for the crime of rape committed against Valentina Rosendo Cantú under local jurisdiction.”<sup>135</sup> With regard to that, the Mexican State claims that the proceedings referred to in this case are currently before the civilian courts. In other words, that the State has remedied, on its own, the initial violation of this right.

136. In these situations, the Court has maintained that that the transfer of the proceedings to the regular courts is not enough for the State to comply with its international commitments derived from the American Convention.<sup>136</sup> In accordance with the State’s claims, the Commission understands that upon the return of the case to its jurisdiction, the civilian justice system reopened its investigation exclusively with respect to the possible participation of civilians, given that the investigation before the military courts had ruled that no members of the military were involved. In connection with this, the IACHR notes that the partial transfer of jurisdiction by the military justice system for the investigation of civilians alone is incompatible with the American Convention on Human Rights.

137. In this case, the Inter-American Commission finds that the State failed to meet its guarantee obligation under Article 1(1) of the American Convention, which requires the states parties to ensure enjoyment of the rights and freedoms enshrined therein with respect to all persons under its jurisdiction. That obligation implies the duty to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the states parties must prevent, investigate, and punish all violations of the rights recognized by the American Convention.

138. Based on the considerations set out above, the Commission concluded, and requests the Court to declare, that in this case the State failed in its duty of acting with due diligence to conduct an adequate investigation, to punish the incident described in the complaint submitted by Valentina Rosendo Cantú, and to avoid impunity, in contravention of Articles 8(1) and 25 of the American Convention, all in conjunction with Article 1(1) thereof.

139. Moreover, the Commission believes that the Mexican State’s unjustified delay in clearing up the incident is intrinsically more serious because the victim, suffering the aftereffects of her rape, has for years had to pursue formalities before the authorities for the investigation of the case to be conducted by the regular justice system and to narrate, on different occasions and to different officials, the traumatic incident of which she was a victim.

140. The instant case is steeped in impunity, in that more than seven years after the human rights violations established herein were committed and reported, the State has not met its duty of investigating, prosecuting, and punishing those responsible for the actions denounced by Valentina Rosendo Cantú, nor has it provided redress for the harm arising from those violations. On the contrary, the State has failed in its duty of due diligence in investigating the matter and the investigation was transferred to the military justice system, which clearly lacks competence over the substance of the case, in accordance with the Mexican Constitution, and lacks the impartiality necessary to establish the facts in accordance with due process. In any case, even if the military

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<sup>135</sup> Communication from the State, dated October 16, 2008, Note OEA-02829.

<sup>136</sup> I/A Court H. R., *Case of Escué Zapata*, Judgment of July 4, 2007, Series C No. 165, paragraph 106.

jurisdiction had competence under national law to investigate the facts alleged in this case, said competence would be incompatible with human rights international standards.

**c. Right to live free of violence and discrimination (Article 7 of the Convention of Belém do Pará)**

141. The Convention of Belém do Pará, the instrument of the inter-American human rights system with the most ratifications,<sup>137</sup> establishes that the obligation of acting with due diligence has a special connotation in cases of violence against women. The Convention reflects the Hemisphere's shared concern about the seriousness of the problem of violence against women, its relationship with historical discrimination, and the need to adopt comprehensive strategies for preventing, punishing, and eradicating it. The Convention of Belém do Pará acknowledges the critical link that exists between women's access to appropriate judicial protection after suffering violence, and the elimination of the problem of violence and discrimination that perpetuates it.

142. Article 7 of the Convention of Belém do Pará sets out a set of complementary and immediate obligations whereby the State can ensure effective prevention, investigation, sanction, and redress in cases of violence against women. These include:

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

143. Additionally, Article 9 of the Convention of Belém do Pará provides that the states parties shall take special account of women's vulnerability to violence by reason of, among others, their race or ethnic background or their socio-economically disadvantaged status.

144. As the Inter-American Court has stated, Article 7.b of the Convention of Belém do Pará obliges states to act with due diligence in investigating and punishing violence against

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<sup>137</sup> The Convention of Belém do Pará has been ratified by 32 OAS member states.

women.<sup>138</sup> That provision creates specific obligations and complements the State's obligations as regards complying with the rights enshrined in the American Convention.<sup>139</sup>

145. The IACHR has ruled that among its most important principles, the State's obligation in cases of violence against women includes the duty to investigate, prosecute, and punish the guilty, along with the duty to "prevent these degrading practices."<sup>140</sup> The IACHR has stated that judicial ineffectiveness in cases of violence against women creates a climate that is conducive to violence "since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts."<sup>141</sup>

146. In the case at hand, the denial of medical care by a public servant who claimed he did not want problems with the military constituted a serious obstacle to Valentina Rosendo Cantú's access to justice. Not only did it hinder the gathering of expert evidence, it also showcased the second victimization that women experience when they attempt to report what they have suffered.<sup>142</sup>

147. This situation is worsened by the fact that Valentina Rosendo Cantú was an indigenous person and a minor. The IACHR has received information about the obstacles faced by indigenous women in securing access to justice, particularly when they have been victims of rapes committed by state agents.<sup>143</sup>

148. The IACHR has received, from various sources as well as through the inter-American system's mechanisms, information on the obstacles faced by indigenous women in securing access to justice, which are generally related to the social exclusion and ethnic discrimination they have historically suffered.<sup>144</sup> The IACHR, in its Report on the Merits in the case of González Pérez sisters, underscored the fact that the pain and humiliation suffered by those women as victims of torture was aggravated by their condition as members of an indigenous group: first of all, because of their lack of knowledge of the language of their aggressors and of the other authorities; and then because they were repudiated by their own community as a consequence of the established violations.<sup>145</sup> Likewise, in the case at hand, Valentina Rosendo Cantú invariably had to appear before the authorities in the company of people who spoke Spanish, to help her convey her allegations, claims, and demands to the State's officials and also to understand in full what they were telling her.

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<sup>138</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, paragraph 378.

<sup>139</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, paragraph 379.

<sup>140</sup> IACHR, Report on Merits No. 54/01, Maria Da Penha Fernandes (Brazil), April 16, 2001, paragraph 56.

<sup>141</sup> IACHR, Report on Merits No. 54/01, Maria Da Penha Fernandes (Brazil), April 16, 2001, paragraph 56.

<sup>142</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 172.

<sup>143</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007. Amnesty International maintains that the lack of due diligence negatively impacts other cases of violence against women, in that the victims and their families have to live with the serious consequences their denunciations have. Similarly, "this lack of justice has a profound knock-on effect on indigenous communities, particularly women, and how they respond to the presence of the military." Amnesty International, *Mexico: Indigenous Women and Military Injustice*, AI: AMR 41/033/2004, November 23, 2004, p. 5.

<sup>144</sup> The most common definition of social exclusion is: a chronic shortage of opportunities and access to good quality basic services, to labor and credit markets, to proper physical conditions and infrastructure, and to the justice system.

<sup>145</sup> IACHR, Report on Merits No. 53/01, Ana, Beatriz, and Cecilia González Pérez (Mexico), paragraph 95.

149. As it has been established by the IACHR in the case at hand, the response given by the State to Valentina Rosendo Cantú – who was, along with her family, ostracized by her community for seeking justice – has caused emotional harm to both her and her family that constitutes humiliation and degradation in violation of the right to humane treatment and to privacy guaranteed by the American Convention, which went as far as to force her to flee from her community amid fear, shame, and humiliation.

150. The IACHR has noted that the obstacles such women face in securing access to suitable and effective judicial remedies to redress violations can be even more daunting because they suffer from a combination of various forms of discrimination: as women, because of their ethnic or racial origin, and/or by virtue of their socioeconomic status.<sup>146</sup>

151. Along the same lines, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has spoken of the threefold discrimination and marginalization suffered by indigenous women:<sup>147</sup>

Indigenous women continue to be discriminated against and marginalized in many parts of the world. The threefold discrimination they suffer (for being women, indigenous and poor) marginalize them even further – even compared with indigenous men – regarding economic and political opportunities for employment, social services, access to justice, and, more particularly, access to land and other productive resources.

152. The established facts indicate that Valentina Rosendo Cantú's rape accusation was referred to the military justice system for investigation, which, as stated above, clearly lacks competence over the substance of the case. The IACHR also notes that one day before Valentina Rosendo Cantú officially reported the rape to the civilian judicial authorities, the military justice system issued a press release denying the allegations and identifying Valentina Rosendo Cantú as a possible criminal.

153. In connection with this, the IACHR has received information indicating that in cases involving the rape of indigenous women, instead of taking steps to conduct exhaustive and impartial investigations, military investigators frequently set about refuting the allegations, causing the burden of proof to fall on the victim. Amnesty International has said that: "Investigation mechanisms including lodging a complaint, the ratification process, initial investigations, visit to the site, identity parades, protection of witnesses, medical examinations have all been seriously deficient and have been conducted in a manner that at times has been both threatening and disrespectful. There has been virtually no oversight of the proceedings and certainly no accountability."<sup>148</sup>

154. This tendency toward assuming the truth lies with the assailants rather than with the victims who report cases of sexual violence has also been documented by the Economic Commission for Latin America and the Caribbean (ECLAC), which said:

It is common for the victim to be victimized all over again in very important legal cases like these, where their female condition renders them suspect. There are several critical moments for victims which discourage them from exercising their rights, preferring not to report crimes in order to avoid repeating the trauma and facing the incompetence of the institutions. These

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<sup>146</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 195.

<sup>147</sup> United Nations, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, Rodolfo Stavenhagen, A/HRC/4/32, February 27, 2007, paragraph 67.

<sup>148</sup> Amnesty International, *Mexico: Indigenous Women and Military Injustice*. AI: AMR 41/033/2004, November 23, 2004, p 14.

include: complicated procedures to certify the crime, the high administrative costs of procedures, lack of confidentiality, fear and even resistance from professionals – especially in the health sector – to investigate the causes of lesions or trauma, distrust of officials and ignorance of the laws which benefit them<sup>149</sup>

155. Reports from institutions indicate that Valentina Rosendo Cantú's case reflects the general climate of impunity that surrounds the military courts system, since none of the guilty has been brought to justice.<sup>150</sup>

The women [...] who have dared to confront the very real cultural, economic and social barriers that exist to seek redress from the state have had to contend with a system that offers poor medical care, substandard forensic examinations and a judicial system that appears reluctant or incapable of providing even minimum guarantees of a successful outcome [...] The principal obstacle in these cases, however, has been the transfer of the cases to military jurisdiction which continues to demonstrate an alarming lack of accountability towards those who denounce serious human rights violations committed by military officials. This failure to investigate, hold accountable and bring to justice members of the armed forces suspected of being responsible for serious human rights violations is almost absolute and has been extensively documented by Amnesty International and other national and international non-governmental organizations.<sup>151</sup>

156. In its judgment in *The Plan de Sánchez Massacre v. Guatemala*, the Inter-American Court said that: "Access to the State's justice system is very difficult for indigenous peoples, given the geographical distances and linguistic particularities. The courts usually hear them in Spanish and, even though there are interpretation services, insufficient importance is given to the task of the interpreters; also, the difference in cosmovisions makes this interpretation very difficult."<sup>152</sup> In addition, some judicial officials continue to display discrimination and racism toward members of indigenous peoples, which serves as a major factor in discouraging those people from pursuing justice. On occasions, the costs of pursuing a trial and of hiring counsel to represent their interests can convince them to abandon their quest for justice in a given matter.

157. More than six years have gone by since the incident in the case at hand was reported, and the perpetrators have not been identified. The Commission concluded, and requests the Court to declare it, that the State failed in its duty of acting with due diligence to prevent, investigate, and punish the acts of violence committed against Valentina Rosendo Cantú, in breach of Article 7 of the Convention of Belém do Pará.

#### **d. Rights of the Child (Article 19 of the American Convention)**

158. Article 19 of the American Convention provides 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." The Inter-American Court has ruled that both the American Convention and the Convention on the Rights of the Child, which was ratified by the Mexican State on October 21, 1990, form part of a very comprehensive international *corpus juris* for the protection of the child that should help "establish the content and scope of the general provision established in Article 19

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<sup>149</sup> ECLAC, *No more! The right of women to live a life free of violence in Latin America and the Caribbean*, October 2007.

<sup>150</sup> Amnesty International, *Mexico: Indigenous Women and Military Injustice*, AI: AMR 41/033/2004, November 23, 2004, p. 5.

<sup>151</sup> Amnesty International, *Mexico: Indigenous Women and Military Injustice*. AI: AMR 41/033/2004, November 23, 2004.

<sup>152</sup> I/A Court H. R., *Case of the Plan de Sánchez Massacre*, Reparations and Costs, Judgment of November 19, 2004, Series C No. 116, p. 19, expert report of Augusto Willemsen-Díaz,

of the American Convention.”<sup>153</sup> Article 19 of the American Convention must be construed as an added right which that Convention establishes for those who, because of their physical and emotional development, require special protection.<sup>154</sup>

159. The Convention on the Rights of the Child stipulates that all children, by reason of their lack of physical and mental maturity, require special protection and care. In addition, the Convention on the Rights of the Child establishes that “child” means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier (Article 1)<sup>155</sup>. The Convention on the Rights of the Child recognizes that no child shall be subjected to arbitrary or unlawful interference with his or her private life and affords all children the protection of the law against such interference or attacks (Article 16), and its states parties are to ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment.

160. The Convention of Belém do Pará requires that states, in acting with due diligence in connection with acts of violence, take special account of the vulnerability of women to violence and discrimination by reason of their minority age and other risk factors.<sup>156</sup> The IACHR has established that the reason for this provision is that discrimination, in its different manifestations, does not always affect all women to the same degree: there are women who are particularly exposed to the infringement of their rights and to suffer acts of violence and discrimination.<sup>157</sup>

161. Within that framework of international responsibility, the duties of states under the instruments of the Inter-American human rights system acquire a particular dimension in cases involving girls. The Inter-American Court has ruled that children “have the same rights as all human beings [...] and also special rights derived from their condition, and these are accompanied by specific duties of the family, society, and the State.”<sup>158</sup> Consequently, the State must take special measures to provide children with particular protection, with greater care and responsibility in accordance with the principle of the best interest of the child.<sup>159</sup> This duty is in turn heightened by the particular vulnerability and exposure of indigenous girls to acts of violence against women, as recognized in the Convention of Belém do Pará. Consequently, the Mexican State was subject to a heightened duty to protect the human rights of Valentina Rosendo Cantú, because she was of minor age, because of her sex and indigenous status, and because of the obligation of adopting special measures of care and protection.

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<sup>153</sup> I/A Court H. R., *The Street Children Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, paragraph 194.

<sup>154</sup> I/A Court H. R., *Juridical Status and Human Rights of the Child*, Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, paragraph 54. See also: I/A Court H. R., *Case of the “Juvenile Reeducation Institute,”* Judgment of September 2, 2004, Series C No. 112, paragraph 147.

<sup>155</sup> In accordance with the Convention on the Rights of the Child, the Civil Code of the State of Guerrero established that the age of majority is acquired at 18 years of age: “the physical persons that have not reached the age of 18 are minors. In the State of Guerrero it is of public order and social interest the protection and care of the physical and mental health of minors, as well as their education.”

<sup>156</sup> Article 9, Convention of Belém do Pará.

<sup>157</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II.124/Doc.6, October 18, 2006, paragraph 140.

<sup>158</sup> I/A Court H. R., *Juridical Status and Human Rights of the Child*, Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, paragraph 54.

<sup>159</sup> I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, paragraphs 124, 163-164, and 171; *Case of Bulacio*, Judgment of September 18, 2003, Series C No. 100, paragraphs 126 and 134; and I/A Court H. R., *The Street Children Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, paragraphs 146 and 191. See also: I/A Court H. R., *Juridical Status and Human Rights of the Child*, Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, paragraphs 56 and 60.

162. The Committee on the Rights of the Child has recommended that the Mexican State “intensify its action against all violence resulting in cases of ill-treatment of children, in particular when committed by members of the police forces and security services and the military. The State party should ensure that cases of crimes committed against children by members of the armed forces or the police are tried before civilian courts.”<sup>160</sup>

163. Valentina Rosendo Cantú was 17 years old at the time of the facts established in this report. The Inter-American Commission finds that the rape of this girl, and the actions of the military justice system in investigating the case and the consequent impunity enjoyed by the perpetrators, which continues to date, constitute a clear violation of the Mexican State’s duty to provide her with the special protection ensured by the American Convention and the other applicable international instruments.

164. Accordingly, the IACHR found, and requests the Court to declare so, that the Mexican State is internationally responsible for the violation, with respect to Valentina Rosendo Cantú, of Article 19 of the American Convention, in conjunction with the general obligation of respecting and ensuring those rights set out in Article 1.1 thereof.

**e. Obligation to investigate and punish torture (Articles 1, 6, and 8 of the Convention against Torture)**

165. The investigation that states must conduct into alleged violations of Article 5.1 of the Convention is additionally and specifically regulated by Articles 1, 6, and 8 of the Convention to Prevent and Punish Torture, which require the states parties to take all effective measures to prevent and punish all acts of torture occurring within their jurisdiction and to guarantee that cases of torture are examined impartially.<sup>161</sup>

166. The Inter-American Court has said that when a complaint has been filed or when there are sufficient reasons to believe that an act of torture has been committed, the State has the obligation to immediately initiate *ex officio* an effective investigation to identify, prosecute, and punish the perpetrators, in accordance with the general obligation of ensuring all persons under its jurisdiction the human rights enshrined in the Convention as set out in Article 1.1 thereof in conjunction with the right to humane treatment.<sup>162</sup>

167. The Tribunal has ruled that since the Torture Convention came into effect, “the State has been required to abide by the obligations set out therein.”<sup>163</sup> Confronting the facts of this case with the above exposition reveals that the Mexican State conducted some judicial proceedings in connection with the incident. It is apparent, however, that the investigation has not been adequate

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<sup>160</sup> United Nations, *Concluding observations of the Committee on the Rights of the Child: Mexico*, CRC/C/15/Add.13, February 7, 1994, paragraph 17. That Committee also recommended that State’s authorities should allocate resources to children, “particularly children living and/or working in the streets, children belonging to minority groups or indigenous communities and other vulnerable children” (paragraph 16).

<sup>161</sup> I/A Court H. R., *Case of Baldeón García*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, paragraph 157; *Case of Gutiérrez Soler*, Merits, Reparations, and Costs, Judgment of September 12, 2005, Series C No. 132, paragraph 54; and *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114, paragraph 159.

<sup>162</sup> I/A Court H. R., *Case of Baldeón García*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, paragraph 156; *Case of Gutiérrez Soler*, Merits, Reparations, and Costs, Judgment of September 12, 2005, Series C No. 132, paragraph 54; and *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114, paragraph 159; *Case of Ximenes Lopes*, Merits, Reparations, and Costs, Judgment of July 4, 2006, Series C No. 149, paragraph 148. See also: *Eur.C.H.R., Assenov and others v. Bulgaria*, No. 90/1997/874/1086, Judgment of October 28, 1998, paragraph 102; and *Eur.C.H.R., İlhan v. Turkey* [GC], No. 22277/93, Judgment of June 27, 2000, paragraphs 89-93.

<sup>163</sup> I/A Court H. R., *Case of Vargas Areco*, Judgment of September 26, 2006, Series C No. 155.

because, to date, the perpetrators have been neither identified nor punished. Regardless of whether or not the individuals she accuses were responsible for those illegal actions, it was incumbent on the State to undertake an exhaustive and impartial investigation to identify and punish the perpetrators.

168. The United Nations Committee against Torture, in its concluding observations on Mexico given in 1997, said:<sup>164</sup>

The fragility of the culture of respect for guarantees of the rights of individuals and insufficient awareness on the part of the various authorities of the importance of punishing torture harshly and in accordance with the law [...] are subjective factors which probably make it more difficult fully to guarantee the fulfillment of the obligations imposed on the State party by the Convention.

169. In light of the facts established in the case at hand, the IACHR request the Court to declare that the lack of an impartial investigation of the torture, together with the full impunity the perpetrators enjoy to date, constitute a violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

**f. Right to humane treatment of Valentina Rosendo Cantu's daughter (article 5(1) of the American Convention)**

170. The Inter-American Court has stated that under the general obligation set out in Article 1.1 of the American Convention, whereby states parties are to respect and ensure the rights of all individuals subject to their jurisdiction, the State has the duty of starting, immediately and on its own initiative, an effective investigation to identify, prosecute, and punish the guilty when a complaint has been made or good reason exists to believe that an act of torture has been committed in violation of Article 5 of the American Convention. In the case at hand, as has already been seen, the State did not act in accordance with those precepts.<sup>165</sup>

171. In the hearing on the merits of this case held at IACHR headquarters, the petitioners claimed that as a result of the incident, Valentina Rosendo Cantu's husband left her and that she was forced to abandon her community and relocate to Chilpancingo, along with her daughter. That situation affected her daughter in that she was unable to grow up and live in her community or to study at a school where the Tlapanec language is taught. In response, at the merits hearing, the State offered Valentina Rosendo Cantu psychological support and legal guidance through the office of the Assistant Attorney for Legal Matters and the Attention of Crime Victims.<sup>166</sup> The State made no statements regarding the members of the alleged victim's family.

172. Article 5.1 of the American Convention stipulates that "every person has the right to have his physical, mental, and moral integrity respected." Based on international human rights case law, under certain circumstances, the anguish and suffering imposed on the close relatives of the victims of serious human rights violations also constitute a violation of the right of those persons to humane treatment.<sup>167</sup> Among the elements to be considered are the existence of close family ties, the particular circumstances of the bond with the victim, and the way in which the family witnessed

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<sup>164</sup> Committee against Torture, *Report on the Fifty-second Session: Mexico*, Supplement No. 44 (A/52/44), September 10, 1997.

<sup>165</sup> I/A Court H. R., *Case of Tibi*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 7, 2004, Series C No. 114, paragraph 159.

<sup>166</sup> IACHR, Merits Hearing No. 27, Case of Valentina Rosendo Cantu (Mexico), 130th regular session, October 2007. The hearing was told that this office was created only recently to support the victims of crime.

<sup>167</sup> IACHR, Report on Merits No. 53/01, Ana, Beatriz, and Cecilia González Pérez (Mexico), April 4, 2001.

the violations or was involved in the quest for justice, in light of the subsequent actions or omissions of the state authorities in connection with the facts.<sup>168</sup>

173. The daughter of Valentina Rosendo Cantú saw her physical integrity affected by both the consequences of the incidents described in the complaint and by the authorities' actions and omissions in investigating Valentina Rosendo Cantú's torture allegations. It has been shown that numerous circumstances in the instant case affected the members of Valentina Rosendo Cantú's family, such as their rejection by the community and their subsequent exile, the powerless and insecurity that Valentina Rosendo Cantú's family felt vis-à-vis the presence of the Mexican Army operating in the area they inhabit, the impact on their relations with their own indigenous community, as well as others.

174. In accordance with the above, the Commission requests the Court to declare that the Mexican State is responsible for violating Article 5(1) of the American Convention, in conjunction with Article 1(1) thereof, with respect to the daughter of Valentina Rosendo Cantú, through the absence of a prompt and timely investigation and through the lack of a judicial response.

### VIII. REPARACIONES Y COSTAS

175. In light of the facts alleged in this application and of the constant jurisprudence of the Inter-American Court, which establishes "that it is a principle of International Law that any violation of an international obligation that has caused damages triggers the duty to make adequate amends,"<sup>169</sup> the Commission hereby submits to the Court its views on the reparations and costs that Mexican State must provide as a result of its responsibility in the human rights violations committed with respect to the victim and her next-of-kin.

176. In line with the Court's Rules of Procedure, which grant individuals autonomous representation, the Commission will at this time simply outline the general guidelines related to reparations and costs it believes the Court should apply in the case at hand. The Commission understands that it falls to the victim and her representatives to substantiate their claims, in compliance with Article 63 of the American Convention and the Articles 24 *et al.* of the Rules of Procedure of the Court.

#### a. Obligation to make reparations

177. One essential function of justice is to remedy the harm inflicted on the victim. This function must be expressed through rectification or restitution, and not only through compensation, which does not reset the moral balance nor return what was taken.

178. Article 63.1 of the American Convention provides 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

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<sup>168</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, paragraph 335; *Case of Servellón García et al.*, Merits, Reparations, and Costs, Judgment of September 21, 2006, Series C No. 152, paragraph 128; and *Bámaca Velásquez Case*, Merits. Judgment of November 25, 2000, Series C No. 70, paragraph 163.

<sup>169</sup> I/A Court H. R., *Case of Perozo et al.*, Judgment of January 28, 2009, Series C No. 195, paragraph 404; I/A Court H. R., *Case of Tristán Donoso*, Judgment of January 27, 2009, Series C No. 193, paragraph 170; and I/A Court H. R., *Case of Valle Jaramillo et al.*, Judgment of November 27, 2008, Series C No. 192, paragraph 198.

measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

179. In turn, Article 7.g of the Convention of Belém do Pará states 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: [...]

- g. Establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies.

180. As the Court has consistently maintained in its jurisprudence, "Article 63.1 of the American Convention contains a rule of customary law that constitutes one of the fundamental principles of contemporary international law on State responsibility. The occurrence of a wrongful act that is attributable to a State gives rise to the State's international liability, and its resulting duty to make reparation for and remove the consequences of the violation."<sup>170</sup>

181. Reparations are crucial in ensuring that justice is done in a given case, and they are the mechanism whereby the Court's decisions move beyond the realm of mere moral condemnation. Reparations consist of measures that tend to make the effects of violations disappear. Reparation of harm caused by a violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of restoring the situation that existed before the violation occurred.

182. If full restitution is not possible, as in the instant case, it is for the international court to determine a set of measures, in addition to ensuring the rights abridged, to address the consequences of the infractions, as well as ordering payment of a compensation for the damage caused.<sup>171</sup>

183. A respondent state may not invoke domestic legal provisions to modify or avoid complying with its obligations to redress, which are regulated in all their aspects (scope, nature, modes, and establishment of the beneficiaries) by international law.<sup>172</sup>

184. In the present case the Inter-American Commission has shown that the Mexican State incurred international responsibility for the violation of Article 5 (Right to Humane Treatment), Article 8 (Right to a Fair Trial), Article 11 (Right to Privacy), Article 19 (Rights of the Child) and Article 25 (Right to Judicial Protection) of the Convention, in conjunction with the general obligation to respect and guarantee human Rights established in Article 1.1 of the same instrument, as well as Article 7 of the Convention of Belém do Pará, with prejudice against Valentina Rosendo Cantú, and

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<sup>170</sup> I/A Court H. R., *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162, paragraph 200; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 414; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006, Series C No. 150, paragraph 116.

<sup>171</sup> I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraph 201; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 415; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2006, Series C No. 158, paragraph 143.

<sup>172</sup> I/A Court H. R., *Case of Cantoral Huamani and García Santacruz*, Judgment of July 10, 2007, Series C No. 167, paragraph 190; I/A Court H. R., *Case of Zambrano Vélez et al.*, Judgment of July 4, 2007, Series C No. 166, paragraph 148; I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraph 200; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 415.

of Article 5 (Right to Humane Treatment), in conjunction with the general obligation to respect and guarantee human Rights established in Article 1.1 of the same instrument, with prejudice against her daughter; and for failing to meet its obligations under Articles 1, 6 and 8 of the Convention Against Torture.

185. Redress in the case at hand must serve to vindicate the rights of the victim and of her loved ones. It must serve to require the State to resolve this case and to take specific steps to prevent, punish, and eradicate gender-based violence. The impunity prevailing in this case and other similar cases in the state of Guerrero sends society the message that crimes of this kind are not a priority. It is vital that the reparations set in the case at hand transmit a message of prevention and protection. In this connection, the UN Special Rapporteur on violence against women, its causes, and consequences and the Special Rapporteurs on the rights of women of the Inter-American Commission on Human Rights and of the African Commission on Human and Peoples' Rights made the following statement in a joint declaration:

We reiterate that international standards of human rights protect women from violence and discrimination by private non-state actors. States have a duty to take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise. States are held to a due diligence standard to prevent, prosecute, and punish those who commit violence against women and to take measures to permanently eradicate violence against women in their societies [...]

We highlight the fact that women who have been subjected to violence and discrimination generally lack access to effective judicial protection and remedies. Strategies must be implemented that involve law reform and, in particular, reform of the criminal justice system. Training is required for policy makers, police, judges, and prosecutors. There must also be provision of legal, medical and psychological counseling and adequate social services for the victims. States should use the education system and awareness-raising campaigns aimed at the general public to assist them in implementing international standards at the national level.<sup>173</sup>

#### **b.      Reparation measures**

186. In circumstances such as those at hand, to remedy the situation of the victim and her next-of-kin, the State must meet the following obligations: "obligation of investigating and disclosing the facts that can be reliably established (truth); obligation of prosecuting and punishing the guilty (justice); obligation of making comprehensive reparations for the moral and material injuries inflicted (redress); and obligation of removing from the security forces all individuals known to have committed, ordered, or tolerated such abuses (creation of security forces worthy of a democratic state). These obligations are neither mutual alternatives nor optional; the responsible state must comply with each of them to the extent that it can and in good faith."<sup>174</sup>

187. The United Nations Special Rapporteur on the right to restitution, compensation, and rehabilitation for victims of gross violations of human rights has classified the components of that right into four general categories: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.<sup>175</sup> In the opinion of the United Nations Special Rapporteur on the

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<sup>173</sup> Joint declaration of the Special Rapporteurs on women's rights, available at: <http://www.cidh.org/women/declaracion.mujer.htm>.

<sup>174</sup> Méndez, Juan E., "The Right to Truth in Serious Human Rights Violations," in: *The Application of Human Rights Treaties by National Courts*, CELS, 1997, p. 517.

<sup>175</sup> Principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, prepared by Dr. Theodore Van Boven pursuant to Human Rights Sub-Commission decision 1995/117. E/CN.4/sub.2/1997/17.

impunity of perpetrators of human rights violations, these measures include: the cessation of continuing violations; verification of the facts and full and public disclosure of the truth; an official declaration or a judicial decision restoring the dignity, reputation, and legal rights of the victim and/or of persons connected with the victim; an apology, including public acknowledgement of the facts and acceptance of responsibility, judicial or administrative sanctions against persons responsible for the violations; and the prevention of further violations.

188. In addition, the United Nations Commission on Human Rights has stated that:

In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>176</sup>

189. Similarly, the Court has said that reparations tend to eliminate the effects of the violations committed.<sup>177</sup> These measures cover the different ways in which a state can meet the international responsibility in which it incurred and, in accordance with international law, can be measures of restitution, compensation, rehabilitation, satisfaction, and guarantees of nonrepetition.<sup>178</sup>

190. In light of the above remarks, the Inter-American Commission seeks for the Court to order comprehensive measures of reparation; these would, in turn, send a message against the impunity that surrounds the vast majority of human rights violations in the member States of the Organization of American States. That demands establishing and strengthening the judicial and administrative mechanisms that enable victims to obtain redress through *ex officio*, swift, fair, affordable, and accessible procedures.

191. In consideration of the criteria established by Inter-American and universal jurisprudence, the Commission presents its conclusions and aspirations regarding the forms of redress due in the case of Valentina Rosendo Cantú and her next-of-kin.

#### **i. Measures of cessation**

192. Cessation of the wrongful conduct is a fundamental element once a state is determined to be responsible for human rights violations.<sup>179</sup>

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<sup>176</sup> United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The Administration of Justice and the Human Rights of Detainees: Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, prepared by Mr. Theo Van Boven pursuant to Sub-Commission decision 1995/117 of May 24, 1996, paragraph 7.

<sup>177</sup> I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraph 202; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 416; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2006, Series C No. 158, paragraph 144.

<sup>178</sup> See: United Nations, Final Report submitted by Theo Van Boven, Special Rapporteur on the Right to Reparation to Victims of Gross Violations of Human Rights, E/CN.4/Sub2/1990/10, July 26, 1990. See also: I/A Court H. R., *Blake Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of January 22, 1999, Series C No. 48, paragraph 31; I/A Court H. R., *Case of Suárez Rosero Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of January 20, 1999, Series C No. 44, paragraph 41.

<sup>179</sup> I/A Court H. R., *Castillo Páez Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of November 27, 1998, Series C No. 43, paragraph 52.

193. The Court has consistently held that the identification of those responsible is a natural outcome of the obligations established by the Convention and a requirement for eliminating impunity.<sup>180</sup>

194. The Court has also held that impunity is a violation of the state's duty, that it is harmful to victims, their next-of-kin, and society as a whole, and that it fosters chronic recidivism of the human rights violations in question.

195. The Commission thus believes that an investigation is not just a measure of satisfaction; it is also a measure of cessation, since so long as the State is in noncompliance with its obligation of duly investigating, prosecuting, and punishing the human rights violations committed in the instant case, it is in continuing violation of the right established in Articles 8.1 and 25 of the Convention and of its obligation under Article 1.1 thereof, and in continuing violation of its obligations under Articles 1, 6, and 8 of the Convention against Torture.

196. The Court has stated on repeated occasions that all individuals, and society as a whole, have the right to be informed about incidents involving human rights violations.<sup>181</sup> Similarly, the United Nations Commission on Human Rights has recognized that for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators and their accomplices are essential steps towards rehabilitation and reconciliation; consequently, it has urged states to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations can be investigated, and it has encouraged victims to participate in that process.<sup>182</sup>

197. The Court has also ruled that:

The State must also remove all *de facto* and legal mechanisms and obstacles that maintain impunity [...] it must provide sufficient security measures to the judicial authorities, prosecutors, witnesses, legal operators, and victims, and use all means available to it so as to expedite the proceeding.<sup>183</sup>

198. Pursuant to the Court's jurisprudence, and in light of the particular seriousness of the human rights violations in the case at hand, full redress requires the Mexican State to investigate the rape and torture of Valentina Rosendo Cantú with due diligence and in a serious, impartial, and exhaustive way, in order to clarify the historical truth of the incident and to prosecute and punish all those responsible, both the physical perpetrators and the masterminds behind it. To this end, it must adopt all the judicial and administrative measures necessary to complete the investigation before the regular courts, to locate, prosecute, and punish all those who participated in the incident, and to report on the outcome thereof. The State is also obliged to investigate and punish those

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<sup>180</sup> In this regard, see: I/A Court H. R., *Case of Blanco Romero et al.*, Judgment of November 28, 2005, Series C No. 138, paragraph 94; I/A Court H. R., *Gómez Palomino Case*, Judgment of November 22, 2005, Series C No. 136, paragraph 76.

<sup>181</sup> I/A Court H. R., *Case of Bueno Alves*, Merits, Reparations, and Costs, Judgment of May 11, 2007, Series C No. 164, paragraph 90; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 347.

<sup>182</sup> E/CN.4/RES/2001/70.

<sup>183</sup> I/A Court H. R., *Case of Heliodoro Portugal*, Judgment of August 12, 2008, Series C No. 186, paragraph 246; I/A Court H. R., *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162, paragraph 226; I/A Court H. R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, paragraph 134. See also: I/A Court H. R., *Case of Almonacid Arellano*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 154, paragraph 156.

responsible for the impunity, obstructions of justice, and concealments that have characterized this case.

199. On November 29, 1985, the General Assembly of the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,<sup>184</sup> according to which victims “are entitled to access to the mechanisms of justice and to prompt redress,” for which purpose “the views and concerns of victims [must] be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.”

200. Accordingly, the victim and her next-of-kin must be given full access and authority to appear at all phases and stages of those investigations, in accordance with domestic law and the provisions of the American Convention. The State must also ensure effective compliance with the decisions adopted by the domestic courts under this obligation. The result of this process must be made public, to make Mexican society aware of the truth.<sup>185</sup>

201. In addition, and as another means of cessation, the State must guarantee the security of the victim, her next-of-kin, and her representatives, since they have already suffered acts of harassment and persecution on account of their efforts to obtain justice in this case.

## ii. Measures of satisfaction

202. Satisfaction has been defined as all measures that the perpetrator of a violation is required to adopt under international instruments or customary law with the purpose of acknowledging the commission of an illegal act.<sup>186</sup> It takes place when, generally in sequential order, apologies or any other gesture showing acknowledgement of responsibility for the act in question are offered and, when applicable, the individuals responsible are prosecuted and punished.<sup>187</sup>

203. The serious nature of the facts in this case demands that, in addition to conducting an investigation, the State take steps intended to restore the victim’s dignity. Thus, the Commission asks the Court to order, *inter alia*:

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<sup>184</sup> A/RES/40/34, *Access to justice and fair treatment*. “4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. 5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. 6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) Providing proper assistance to victims throughout the legal process; (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.”

<sup>185</sup> I/A Court H. R., *Case of Tiu Tojin*, Judgment of November 26, 2008, Series C No. 190, paragraph 72; I/A Court H. R., *Case of Heliodoro Portugal*, Judgment of August 12, 2008, Series C No. 186, paragraph 247; I/A Court H. R., *Case of Huilca Tecse*, Judgment of March 3, 2005, Series C No. 121, paragraph 107; I/A Court H. R., *Case of the Serrano Cruz Sisters*, Judgment of March 1, 2005, Series C No. 120, paragraph 175.

<sup>186</sup> Brownlie, *State Responsibility*, Part 1. Clarendon Press, Oxford, 1983, p. 208.

<sup>187</sup> *Ibid.*

- The public dissemination of the outcome of the domestic investigation and sanctioning process, in order to uphold the right to truth of the victim, her next-of-kin, and Mexican society as a whole;
- The publication, in a national newspaper, of whatever judgment the Court may hand down; and,
- A public acknowledgement of the State's responsibility in the harm inflicted and in the grave violations perpetrated.

**iii. Guarantees of nonrepetition**

204. In addition, the Commission believes that the State is obliged to prevent the reoccurrence of human rights violations such as those in the instant case; consequently, it asks the Court to order Mexico to adopt, *inter alia*, the following measures:

- Impose on the military justice system a restrictive and exceptional scope, limited exclusively to the prosecution of members of the military for the commission of crimes or offenses that, by their nature, affect legal interests particular to the military order. In particular, take the legislative, administrative, and other measures necessary to ensure that the military justice system is disqualified from hearing human rights violations, particularly cases involving sexual violence;
- Guarantee indigenous women access to justice through the design of a policy that respects their cultural identity; and,
- Design and implement multidisciplinary health services for women who are victims of rape that cover the specific needs of indigenous women to ensure their recuperation, rehabilitation and reintegration into the community.
- Develop participatory programs to facilitate the full reintegration of indigenous women who were victims of rape into their communities;
- Design protocols to facilitate and encourage the effective, uniform, and transparent investigation of acts of physical, sexual, and psychological violence, including a description of the complexity of the evidence and a detailing of the minimum evidence that must be gathered to provide an adequate evidentiary grounding, in consideration of the international provisions set forth in the Istanbul Protocol;
- Develop training programs for state officials, taking into account the international provisions set forth in the Istanbul Protocol, to ensure those officials have the technical and scientific elements necessary for evaluating potential cases of torture or cruel, inhuman, or degrading treatment;
- Implement, within a reasonable time frame, permanent human rights education programs within all hierarchical levels of the Mexican Armed Forces, and include in the curriculum of those training programs a particular reference to international human rights instruments, specifically those related to the protection of the rights of women, particularly their right to a life free of violence and discrimination.

**iv. Measures of rehabilitation**

205. Mexico must adopt measures for the medical and psychological rehabilitation of the victim and her next-of-kin. Those measures must include the design and implementation of mental health plans, arrived at in consensus between mental health professionals and indigenous women

who have suffered rape, for their recovery, rehabilitation, and full reincorporation into the community.

#### **v. Measures of compensation**

206. The Court has established basic criteria that should guide fair compensation intended to make adequate and effective economic amends for harm arising from violations of human rights. The Court has also ruled that indemnification is merely compensatory in nature, and that it is to be granted in volume and fashion sufficient to repair both the material and the nonmaterial harm inflicted.<sup>188</sup>

207. The Commission believes that the Court must establish the compensation due to the various victims in this case in accordance with the criteria of equity that have always guided its decisions regarding reparations and in line with its existing jurisprudence.

##### **v.1. Material damages**

208. In its jurisprudence on reparations, the Court has been consistent in maintaining that material damages include consequential damages and lost profit, together with non-pecuniary and moral damages, for both the victims and, in certain cases, their immediate families.<sup>189</sup>

209. Consequential damages have been defined as the direct and immediate effect of the incident on property.<sup>190</sup>

210. On the other hand, lost profits are understood as the loss of economic income or benefits not accrued on account of a given circumstance, which can be quantified using certain measurable and objective indicators.<sup>191</sup>

211. Without prejudice to the claims that the representatives of the victim and her next-of-kin may submit at the appropriate procedural moment, the IACHR asks the Court to fairly set the amount of indemnification payment for the consequential damages and lost profits, in exercise of its broad knowledge in these matters.

##### **v.2. Non-pecuniary damages**

212. With respect to non-pecuniary damages, the Court has stated that:

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<sup>188</sup> I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraph 210; I/A Court H. R., *Case of Hilaire, Constantine, Benjamin et al.*, Judgment of June 21, 2002, Series C No. 94, paragraph 204; I/A Court H. R., *Garrido and Baigorria Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of August 27, 1998, Series C No. 39, paragraph 41.

<sup>189</sup> I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraphs 213 and 214; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 423; I/A Court H. R., *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114.

<sup>190</sup> I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraph 215; I/A Court H. R., *Loayza Tamayo Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of November 27, 1998, Series C No. 42, paragraph 147; and I/A Court H. R., *Aloeboetoe et al. Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of September 10, 1993, Series C No. 15, paragraph 50.

<sup>191</sup> See, for example: I/A Court H. R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, paragraphs 105 *et seq.*; I/A Court H. R., *Case of De la Cruz Flores*, Judgment of November 18, 2004, Series C No. 115, paragraphs 151 and 152.

Non-pecuniary damages may include the suffering and affliction caused to the direct victims and to their next-of-kin and the impairment of values that are very significant for a person, together with changes, of a non-pecuniary nature, in the living conditions of victims or their next-of-kin. As it is not possible to assign a precise monetary equivalent to non-pecuniary damages, for purposes of integral reparation to the victims all that can be done is for them to receive compensation, and this in two ways. First, by means of the payment of an amount of money or by providing goods or services that can be appraised in monetary terms, to be determined by the Court through reasonable use of judicial discretion and in terms of equity. Secondly, by carrying out acts or public works whose scope or public repercussion have an effect in terms of the remembrance of the victims, recovery of their dignity, consolation to their relatives or issuing a message of official reproof of the violations of human rights involved and of commitment to avoid their repetition.<sup>192</sup>

213. In the instant case, the Commission asks the Court, in light of the nature of the case and the severity of the harms suffered by the victim and her family members, to fairly set an amount as monetary compensation for non-pecuniary damages.

**c. Beneficiaries**

214. Article 63.1 of the American Convention requires that the consequences of a violation be remedied and that “fair compensation be paid to the injured party.” The persons entitled to this compensation are generally those who suffered direct harm as a result of the violation in question.

215. In accordance with the nature of the instant case, the beneficiaries of the reparations that the Court may order the Mexican State to pay are: the victim, Valentina Rosendo Cantú as well as her family members who suffered material and/or nonmaterial harm as a consequence of the human rights violations argue—her daughter, who is also a victim of an Article 5 violation, Yenys Bernardino Rosendo, Mr. Victoriano Rosendo Morales, the victim’s father, and Mrs. María Cantú García, the victim’s mother.

**d. Costs and expenses**

216. In accordance with the Court’s consistent jurisprudence, costs and expenses must be included in the reparations described in Article 63.1 of the American Convention. This is because the activities pursued by the injured parties, their heirs, or their representatives in securing access to international justice imply expenditures and financial commitments that must be compensated<sup>193</sup>.

217. In the instant case the Commission requests that the Court, after hearing the representatives of the victim and her next-of-kin, order the reimbursement by the Mexican State of such reasonable and necessary costs and expenses as they duly evidence as originating from the processing of the case.

**IX. CONCLUSION**

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<sup>192</sup> I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraph 216; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 430; I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 383; I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 254.

<sup>193</sup> I/A Court H. R., *Case of Perozo et al.*, Judgment of January 28, 2009, Series C No. 195, paragraph 417; I/A Court H. R., *Case of Tristán Donoso*, Judgment of January 27, 2009, Series C No. 193, paragraph 212; and I/A Court H. R., *Case of Valle Jaramillo et al.*, Judgment of November 27, 2008, Series C No. 192, paragraph 243.

218. The Commission concludes that the Mexican State is responsible for violating the rights to a fair trial and to judicial protection enshrined in Articles 8.1 and 25 of the American Convention, in conjunction with Article 1.1 thereof; and Articles 5.1, 11, and 19 of the American Convention, in conjunction with Article 1.1 thereof. It further concludes that the State is responsible for violating 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, with prejudice against Valentina Rosendo Cantú. With respect to Valentina Rosendo Cantú's daughter, it concludes that the State is responsible for violating Article 5.1 of the American Convention, in conjunction with the general obligation of respecting and ensuring those rights set forth in Article 1.1 thereof.

#### **X. PETITION**

219. Based on the considerations of fact and law set out above, the Inter-American Commission on Human Rights asks the Court to conclude and declare that:

- a) The Mexican State is responsible for violating Articles 8(1) (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention, in conjunction with the obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof, with prejudice against Valentina Rosendo Cantú;
- b) The Mexican State is responsible for violating Articles 5(1) (Right to Humane Treatment), 11 (Right to Privacy), and 19 (Rights of the Child) of the Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof, with prejudice against Valentina Rosendo Cantú;
- c) The Mexican State is responsible for violating Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (hereinafter "the Convention of Belém do Pará") with prejudice against Valentina Rosendo Cantú;
- d) The Mexican State failed to meet its obligations under Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "the Convention against Torture") with prejudice against Valentina Rosendo Cantú; and
- e) The Mexican State is responsible for violating Article 5(1) (Right to Humane Treatment), in conjunction with Article 1(1) of the American Convention, with prejudice against Valentina Rosendo Cantú's daughter.

220. In consideration of the above, the Inter-American Commission asks the Court to order that the Mexican State:

- a) Complete a timely, immediate, serious and impartial investigation, before the regular criminal courts of Mexico, to clear up the incidents reported in the complaint lodged by Valentina Rosendo Cantú, to identify those responsible, and to impose the corresponding punishments. It should also refer all previous proceedings conducted before the military justice system to the civilian courts;
- b) Provide reparations to Valentina Rosendo Cantú and her daughter for the human rights violations established in the merits report of the IACHR and contained herein;
- c) Adopt the measures necessary to impose on the military justice system a restrictive and exceptional scope, limited exclusively to the prosecution of members of the military for the commission of crimes or offenses that, by their nature, affect legal interests particular to the military order. In particular, it should take the legislative, administrative, and other measures necessary to ensure that the military justice system is disqualified from hearing human rights violations, particularly cases involving sexual violence;

- d) Guarantee indigenous women access to justice through the design of a policy that respects their cultural identity;
- e) Design and implement multidisciplinary health services for women victims of rape, which address the specific needs of indigenous women, for the recovery, rehabilitation, and full community reincorporation;
- f) Develop participatory programs to contribute to the reincorporation fully into their communities of indigenous women who have been victims of rape;
- g) Design protocols to facilitate and encourage the effective, uniform, and transparent investigation of acts of physical, sexual, and psychological violence, including a description of the complexity of the evidence and a detailing of the minimum evidence that must be gathered to provide an adequate evidentiary grounding, in consideration of the international provisions set forth in the Istanbul Protocol;
- h) Develop training programs for state officials, taking into account the international provisions set forth in the Istanbul Protocol, to ensure those officials have the technical and scientific elements necessary for evaluating potential cases of torture or cruel, inhuman, or degrading treatment; and
- i) Implement, within a reasonable time, permanent human rights education programs within all hierarchical levels of the Mexican Armed Forces, and include in the curriculum of those training programs a particular reference to international human rights instruments, specifically those related to the protection of the rights of women, particularly their right to a life free of violence and discrimination.

## **XI. EVIDENCE**

### **a. Documentary evidence**

221. The documentary evidence available at this time is listed below:

**APPENDIX 1.** IACHR Merits Report No. 36/09, Case 12.5790, *Valentina Rosendo Cantú and others*, Mexico, March 27, 2009.

**APPENDIX 2.** IACHR Admissibility Report No. 93/06, Petition 972-03, *Valentina Rosendo Cantú and other*, Mexico, October 21, 2006

**APPENDIX 3.** Case file from the Inter-American Commission on Human Rights.

**ANNEX 1.** IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007. Also available at: <http://www.cidh.oas.org/women/Acceso07/indiceacceso.htm>

**ANNEX 2.** *Diagnosis of the Situation of Human Rights in Mexico*, Office of the United Nations High Commissioner for Human Rights in Mexico, 2003, available at: <http://www.sre.gob.mx/derechoshumanos/docs/Diagnostico.pdf>.

**ANNEX 3.** Power of attorney

**ANNEX 4.** IACHR Audio of the Hearing on the Merits No 27, Case: *Valentina Rosendo Cantú* (Mexico), 130<sup>o</sup> ordinary period of sessions, October 2007

- ANNEX 5.** Statement of Valentina Rosendo Cantú before the Agent of the local Public Ministry, Office of the Judicial District of Allende, dated March 8, 2002.
- ANNEX 6.** Communication dated February 26, 2002, issued by Valentina Rosendo Cantú and Fidel Bernardino Sierra, addressed to the Constitutional Governor of the State of Guerrero.
- ANNEX 7.** Document No. PGJE/DGSP/ND/XXVIII-2/207/2002 dated March 15, 2002, issued by Mr. Amador Suárez Cervantes, of the Attorney General's Office of the State, addressed to Mrs. Concepción Barragán Alonso, Agent of the local Public Ministry Office.
- ANNEX 8.** Document PGJE/DGAP/3157/2002 dated April 5, 2002 issued by the General Office of Preliminary Investigations.
- ANNEX 9.** Document 0676 dated April 8, 2002, issued by the Assistant Attorney General for Legal Procedures, Mr. Miguel Barreto Sedeño.
- ANNEX 10.** Statement of Estela Bernardino Sierra before the titular agent of the local Public Ministry, specializing in Sex Crimes and Domestic Violence, dated April 22, 2002.
- ANNEX 11.** Resolution dated August 30, 2002 issued by the First District Judge of the State of Guerrero.
- ANNEX 12.** Sentence issued on November 12, 2002 by the First Tribunal of the 21<sup>st</sup> District, A.R.P. 184/2002.
- ANNEX 13.** Communication dated December 11, 2002, Exp. 2002/597/04 issued by Mr. Rodolfo H. Lara Ponte, Fourth General Visitor of the National Commission of Human Rights, addressed to the Attorney General of Military Justice with respect to the complaint file related to the alleged human rights violations against Valentina Rosendo Cantú.
- ANNEX 14.** National Defense Secretary, Press Release No. 025, 7 of March 2002
- ANNEX 15.** Documentation issued by the petitioners that contains copy of the judicial file of the military proceedings, contained in 10 volumes.
- ANNEX 16.** Request for *amparo* remedy filed by Valentina Rosendo Cantú on September 17, 2003, before the First Tribunal of the 21<sup>st</sup> District of the State of Guerrero, Chilpancingo, Guerrero.
- ANNEX 17.** Document No. 130/2002. Gynecological Medical Certificate dated March 19, 2002, issued by the legal doctor, Dr. Enoch Dolores Flores, MD, addressed to Mrs. Cristina Estrada Martínez, titular agent of the local Public Ministry, specializing in Sex Crimes and Domestic Violence.
- ANNEX 18.** Document No. 279 dated March 18, 2002, issued by Mr. Lucas Moisen Catarino, titular agent of the local Public Ministry, addressed to the Head of Preliminary Investigations of the Central Sector of the Office of the Prosecutor for Military Justice.
- ANNEX 19.** Document No. 195 dated April 15, 2002, issued by Mrs. Cristina Estrada Martínez, titular agent of the local Public Ministry, specializing in Sex Crimes and Domestic Violence of the District of Morelos, addressed to the Head of Preliminary Investigations of the Central Sector of the Office of the Prosecutor for Military Justice.

- ANNEX 20.** Request for *amparo* remedy filed by Valentina Rosendo Cantú on June 6, 2002, before the First Tribunal of the 21<sup>st</sup> District of the State of Guerrero, Chilpancingo, Guerrero.
- ANNEX 21.** Document dated November 28, 2002 filed by Valentina Rosendo Cantú before the local Public Ministry, belonging to the 35 Castrense Zone.
- ANNEX 22.** Agreement AP-I-3577, issued on January 20, 2003 by the Head of Preliminary Investigations of the Central Sector of the Office of the Prosecutor for Military Justice.
- ANNEX 23.** Request for *amparo* remedy No. 246/2003-V, filed by Valentina Rosendo Cantú on February 11, 2003, before the Fifth “B” Tribunal of the District of Amparo in Criminal Matters, with residency in Mexico.
- ANNEX 24.** Resolution of the *amparo* remedy 246/2003-V, issued by the Fifth “B” Tribunal of the District of Amparo in Criminal Matters, with residency in Mexico, notified on May 9, 2003.
- ANNEX 25.** Resume of Rodolfo Stavenhagen, expert offered by the Commission.
- ANNEX 26.** Resume of Jan Perlin, expert offered by the Commission.
- ANNEX 27.** Resume of Paloma Bonfil Sánchez, expert offered by the Commission.
- ANNEX 28.** Resume of Lorena Frías Monleón, expert offered by the Commission.
- ANNEX 29.** Resume of Federico Andreu Guzmán, expert offered by the Commission..
- ANNEX 30.** Resume of Marcos Arana Cedeño, expert offered by the Commission.

222. The Commission notes at this juncture that the copies of the documents it is sending as annexes and appendices are the best that it has and has been able to obtain to date.

223. The Commission believes it is essential and expressly requests the Mexican State, in order to ensure the Court has all the elements needed to reach a decision, to submit certified copies of all documents relating to the judicial, administrative, and other investigations conducted at the domestic level in connection with these facts, together with authenticated copies of the applicable laws and regulatory provisions.

**b. Witness evidence**

224. The Commission asks the Court to hear statements from the following persons:

- Valentina Rosendo Cantú, victim, who will give statements on the events of February 16, 2002; the actions taken with the end of uncovering the historical truth of the events, identifying, processing and punishing those responsible; the response and attitude of the State authorities Howard such actions; the obstacles she encountered in her search for justice; the obstacles faced in her attempts to access health services; the consequences of the human rights violations of this case on her personal life and for her family; and other issues of relevance to the purpose and scope of this application.
- Obtilia Eugenio Manuel, member of the Organization of Indigenous Community Tlapaneco, who will give statements on the kind of access to justice that indigenous women who have been victims of violence have in the Municipality of Ayutla and on the search for justice by

Valentina Rosendo Cantú; and other issues of relevance to the purpose and scope of this application.

- Cuauhtémoc Ramírez Rodríguez, member of the Organization of Indigenous Community Tlapaneco, who will give statements on the context in which the rape of Valentina Rosendo Cantú occurred and on the use of this practice as a form of repression, threat and harassment against the work of those who defend the indigenous from military abuses; and other issues of relevance to the purpose and scope of this application.
- Hipólito Lugo Cortés, General Visitor for the National Commission on Human Rights for the State of Guerrero (CODDEHUM-GRO), who will give statements on the investigation conducted by CODDEHUM-GRO in the case of Valentina Rosendo Cantú and the follow-up conducted with the victim to present the complaint before the Office of the Attorney General of Justice in the State of Guerrero; and other issues of relevance to the purpose and scope of this application.

**c. Expert evidence**

225. The Commission asks the Court to hear the opinions of the following expert witnesses:

- Rodolfo Stavenhagen, an anthropologist and sociologist, former United Nations Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples, to present an expert opinion on: the situation of the indigenous population in the state of Guerrero; the behavior of the Mexican armed forces toward the indigenous population; the impact on indigenous Mexicans of the constraints on access to justice and of the impunity that surrounds human rights violations; and other issues of relevance to the purpose and scope of this application.
- Jan Perlin, a lawyer and former director of the project for a diagnosis on access to justice by indigenous people in Mexico of the Office of the United Nations High Commissioner for Human Rights, to present an expert opinion on the access to justice of indigenous people in Mexico and the corrective measures that should be adopted in that regard, and on other issues of relevance to the purpose and scope of this application.
- Paloma Bonfil Sánchez, an ethnohistorian, researcher, and consultant on topics related to gender and indigenous women, to present an expert opinion on discrimination against indigenous women in Mexico and on other issues of relevance to the purpose and scope of this application.
- Lorena Fries Monleón, a lawyer specializing in women's rights and gender violence, to present an expert opinion on: the problem of violence against women in general; its relationship with the discrimination suffered in the past; rape as a form of torture; the challenges faced by women in securing access to justice in cases involving sexual violence; evidence gathering in sexual violence cases; reparations in cases of sexual violence; and other issues of relevance to the purpose and scope of this application.
- Federico Andreu Guzmán, a lawyer specializing in human rights, to present an expert opinion on the use of military courts to investigate and prosecute military non-service crimes and, in particular, human rights violations; and other issues of relevance to the purpose and scope of this application.
- Dr. Marcos Arana Cedeño, MD, Specialist in Public Health and Women's Care, to present

an expert opinion on the obstacles that indigenous women face in accessing health services in Mexico and the minimum requirements that health professionals should follow for evidence collection in cases of sexual violence; and other issues of relevance to the purpose and scope of this application.

## **XII. INFORMATION ON THE VICTIMS AND THEIR REPRESENTATIVES**

226. In accordance with the provisions of Article 34 of the Rules of Procedure of the Court, the Inter-American Commission holds the victims in the case at hand to be Valentina Rosendo Cantú and her daughter.

227. Valentina Rosendo Cantú extended a power of attorney to the Organization of the Tlapanec (Me'phaa) Indigenous People, A.C., the Tlachinollan Human Rights Center of the Mountain, A.C., and the Center for Justice and International Law (CEJIL) for them to represent her in the judicial phase of proceedings before the System, as indicated in the enclosed document.<sup>194</sup>

228. The representatives of the victim and her next-of-kin have indicated, as their joint domicile, the following address: [REDACTED].

Washington, D.C.  
August 2, 2009

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See: Annex 3, power of attorney.