

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF GUZMÁN ALBARRACÍN ET AL. V. ECUADOR

JUDGMENT OF JUNE 24, 2020
(Merits, reparations and costs)

In the case of *Guzmán Albarracín et al.*,

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

Elizabeth Odio Benito, President
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge
Eugenio Raúl Zaffaroni, Judge, and
Ricardo Pérez Manrique, Judge,

also present,

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, Deputy Secretary,

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

* Judge L. Patricio Pazmiño Freire, Vice President of the Court and an Ecuadorian national, did not take part in the deliberation and signing of this judgment, pursuant to Articles 19(2) of the Court’s Statute and 19(1) of its Rules of Procedure.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On February 7, 2019, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of *Guzmán Albarracín et al.* against the Republic of Ecuador (hereinafter “the State” or “Ecuador”). The Commission indicated that the case concerns the alleged sexual violence suffered by Paola del Rosario Guzmán Albarracín (hereinafter “Paola,” “Paola Guzmán” or “Paola Guzmán Albarracín”) while at school, when she was between 14 and 16 years old, and her subsequent suicide by swallowing “*diablillos*” (white phosphorus firecracker pellets) on December 12, 2002, which caused her death the following day. The Commission alleged that Paola was the victim of sexual abuse committed by the vice principal of the public school that she attended and also by the school’s doctor, and that these events had a causal link with her suicide. The Commission also indicated that criminal proceedings were instituted against the vice principal, who fled prior to his arrest, which was ordered on February 13, 2003, and that on September 18, 2008, the criminal action was declared closed owing to the statute of limitations. The Commission concluded that the State is responsible for the violation of several articles of the American Convention on Human Rights, of the Additional Protocol to the Convention on Economic, Social and Cultural Rights or “Protocol of San Salvador” (hereinafter “San Salvador Protocol”), and of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women, “Convention of Belém do Pará” (hereinafter “Belém do Pará Convention”).

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

- a) *Petition.* On October 2, 2006, the Commission received the initial petition.¹
- b) *Admissibility Report.* On October 17, 2008, the Inter-American Commission adopted Admissibility Report No. 76/08 (hereinafter “the Admissibility Report”).
- c) *Friendly settlement procedure.* Between 2009 and 2014, a friendly settlement procedure took place before the Commission in relation to this case. On December 23, 2013, the petitioners notified the Commission of their irrevocable decision to withdraw from the friendly settlement procedure; therefore, on January 7, 2014, the Commission informed the parties that it would continue to examine the merits of the case.
- d) *Merits Report.* On October 5, 2018, the Commission adopted Merits Report No. 110/18 (hereinafter “Merits Report”), in which it reached a series of conclusions² and made several recommendations to the State.

¹ The petition was presented by the *Centro Ecuatoriano para la Promoción y Acción de la Mujer/* Ecuadorian Center for the Promotion and Action of Women (CEPAM-Guayaquil, hereinafter CEPAM) and the Center for Reproductive Rights (hereinafter, in reference to both organizations, “the representatives”). Both civil society organizations acted jointly before the Court in representation of the presumed victims, alleging human rights violations against Paola del Rosario Guzmán Albarracín, Petita Paulina Albarracín Albán and Denisse Selena Guzmán Albarracín (*infra* para. 7).

² The Commission concluded that the State is responsible for the violation of the rights established in Articles 4(1), 5(1), 11, 19, 24 and 26 of the American Convention, in relation to the obligations to respect and guarantee rights established in Article 1(1) thereof; and of the right recognized in Article 13 of the Protocol of

3. *Notification to the State.* The Merits Report was notified to the State by the Inter-American Commission on November 7, 2018, which granted it two months to provide a report on compliance with the recommendations. According to the Commission, on January 9, 2019, Ecuador presented a report on its compliance with the recommendations; however, with the “corresponding withdrawal of the preliminary objections [in this] regard,” it did not request the suspension of the period contemplated in Article 51(1) of the Convention for the submission of the case before the Court.

4. *Submission to the Court.* On February 7, 2019, the Commission submitted the case to the Court given “the need to obtain justice and reparation” for the victims.

5. *Requests of the Commission.* Based on the foregoing, the Inter-American Commission asked the Court to find and declare the international responsibility of the State for the violations contained in the Merits Report and to require the State, as measures of reparation, to implement the recommendations included therein. This Court notes, with concern, that more than twelve years have elapsed between the presentation of the initial application to the Commission and the submission of this case to the Court.

II PROCEEDINGS BEFORE THE COURT

6. *Notification to the State and the representatives.* The submission of the case was notified to the parties on March 19, 2019.³

7. *Brief with pleadings, motions and evidence.* On May 21, 2019, the representatives submitted their brief with pleadings, motions and evidence (hereinafter “pleadings and motions brief”). They alleged violations of the same provisions as the Commission (*supra* footnote 2), with the exception of Article 24 of the American Convention. The representatives also held that the State was responsible for acts of torture and for the violation of the rights to personal liberty and freedom of thought and expression, in violation of, respectively, Articles 5(2), 7 and 13(1) of the American Convention. They further alleged that Ecuador violated Articles 1 and 8 of the Inter-American Convention to Prevent and Punish Torture.

8. *Answering brief.* On September 9, 2019, the State submitted to the Court its brief containing a preliminary objection and its answer to the submission of the case by the Commission, together with observations to the pleadings and motions brief (hereinafter “answering brief”). In this brief the State included an argument described as a “preliminary objection” (*infra* para. 28), denied its responsibility and contested the appropriateness of the reparations.

9. *Observations to the “preliminary objection.”* On October 24 and 30, 2019, the Commission and the representatives, respectively, submitted their observations on

San Salvador and the obligations set forth in Articles 7.a and 7.b of the Belém do Pará Convention, to the detriment of Paola del Rosario Guzmán Albarracín. It also concluded that Ecuador is responsible for the violation of the rights established in Articles 5(1), 24, 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, and of the obligation established in Article 7.b of the Belém do Pará Convention, to the detriment of Paola del Rosario Guzmán Albarracín’s relatives.

³ Previously, on February 28, 2019, the Commission forwarded the documentary annexes to its Merits Report and a copy of the case file processed before the Commission. On March 4, 2019, it forwarded the Spanish version of the curriculum vitae of Mrs. Patricia Viseur Sellers, whom it proposed as an expert witness.

Ecuador's argument, characterized as a "preliminary objection," requesting that it be dismissed.

10. *Public hearing.* On December 10, 2019, the President of the Court at that time issued an order in which he summoned the Commission and the parties to a public hearing.⁴ On December 16, 2019, Ecuador asked the Court to revoke and amend that order. On January 27, 2020, this Court decided to reject the first request by the State, and admit the second.⁵ The public hearing took place on January 28, 2020, at the seat of the Court in San José, Costa Rica, during the 133rd Regular Session.

11. *Amici Curiae.* The Court received nine *amicus curiae* briefs from the following organizations: 1) Human Rights Club of the Private Technical University of Loja and the Center for Social Action and Legal Policy;⁶ 2) Latin American Consortium against Unsafe Abortion (CLACAI);⁷ 3) *Fundación Desafío*;⁸ 4) the Committee of Experts of the Follow-up Mechanism of the Belém do Pará Convention (MESECVI);⁹ 5) the Center for the Study of Law, Justice and Society (*DeJusticia*);¹⁰ 6) ECPAT International;¹¹ 7) Human Rights Watch;¹² 8) the O'Neill Institute for National and Global Health Law¹³ and 9) the Center for Support and Protection of Human Rights SURKUNA.¹⁴

⁴ Cf. *Case of Guzmán Albarracín et al. v. Ecuador. Summons to a Hearing.* Order of the President of the Inter-American Court of Human Rights, December 10, 2019. Available at: http://www.corteidh.or.cr/docs/asuntos/guzman_albarracin_10_12_19.pdf.

⁵ Cf. *Case of Guzmán Albarracín et al. v. Ecuador.* Order of the Inter-American Court of Human Rights of January 27, 2020. Available at: http://www.corteidh.or.cr/docs/asuntos/guzman_27_01_20.pdf.

⁶ The brief was signed by Lucianne Anabell Gordillo Placencia, Arianna Fernanda Ríos Jiménez, Claudia de los Ángeles Benítez Paccha, Abigail Tello López, Pedro José Gutiérrez Unda, Ana Dolores Verdú Delgado, Gabriela Estefanía Cabrera Febres, María Verónica Valarezo Carrión, Carla Patricia Luzuriaga Salinas and María Isabel Espinosa Ortega. The document contains a legal analysis of the case, primarily based on the characterization of Paola Guzmán Albarracín as a "person in a situation of vulnerability."

⁷ The brief was signed by Beatriz Galli and Susana Chávez Alvarado. It refers to the State's obligations in relation to sexual violence, harassment and abuse and due diligence in cases of gender-based violence and the obligation to ensure access to comprehensive sexual education.

⁸ The brief was signed by Virginia Gómez de la Torre Bermúdez and describes the context of sexual violence against girls in Ecuador.

⁹ The brief was signed by Luz Patricia Mejía Guerrero. It analyzes the State's obligations under the Belém do Pará Convention, based on the facts described in the Merits Report.

¹⁰ The brief was signed by Mauricio Albarracín Caballero, Nina Chaparro González, María Ximena Dávila Contreras and Alejandro Jiménez Ospina. It refers to good practices for tackling sexual harassment in schools.

¹¹ The brief was signed by Marie-Laure Lemineur. It analyzes the State's obligation to define sexual offenses against children and the legislation on sexual abuse and offenses against children.

¹² The brief was signed by Aisling Reidy. It describes the consequences of sexual violence in schools and access to comprehensive sex education.

¹³ The brief was signed by Oscar A. Cabrera and Rebecca Reingold. It describes the content of the right to health and, specifically, of the right to health in cases of sexual abuse against girls and adolescents in educational establishments.

¹⁴ The brief was signed by Ana Cristina Vera Sánchez and Mayra Tirira Rubio. The document discusses the context of sexual violence in Ecuador's schools and barriers of access to justice for victims of sexual violence in schools.

12. *Final written arguments and observations.* On February 28, 2020, the State and the representatives presented their final written arguments, together with the annexes, and the Inter-American Commission submitted its final written observations. On March 23, April 7 and May 25, 2020, the Commission, the representatives and the State, respectively, forwarded their observations to the documents attached to the written arguments of the parties.¹⁵

13. *Evidence requested from the representatives.* On May 26, 2020, pursuant to Article 58(2) of the Rules, the Court ordered the representatives to forward a document mentioned in their pleadings and motions brief and available via an internet link, which had not been possible to access. The following day, the representatives forwarded the document requested (*infra* para. 36 and footnote 25).

14. *Deliberation of this case.* The Court deliberated this judgment during a virtual session held on June 22 – 24, 2020.¹⁶

III JURISDICTION

15. The Court has jurisdiction to hear this case, pursuant to Article 62(3) of the American Convention, because Ecuador has been a State Party to this instrument since December 28, 1977, and accepted the contentious jurisdiction of the Court on July 24, 1984.

IV ACKNOWLEDGMENT OF RESPONSIBILITY

A. Acknowledgement of responsibility by the State and observations of the representatives and the Commission

16. During the public hearing and in its written arguments, the **State** presented the following considerations as an express “acknowledgement of certain facts”:

1. In the administrative aspect, and in relation to reports of an alleged relationship between the [vice principal of the school attended by Paola del Rosario Guzmán Albarracín,] professor Bolívar [Eduardo] Espín [Zurtía,] and the adolescent Paola Guzmán, at the time of the events and in this specific case, the State did not implement adequate and effective measures to investigate and verify the facts denounced and, if appropriate, punish those responsible. Although administrative proceedings were instituted, and the teacher Bolívar [Eduardo] Espín [Zurtía] was dismissed from the school, the complaint filed by Paola’s mother was not resolved.

2. In relation to possible acts of sexual violence at the educational institution in question, at the time of the facts the State did not implement an adequate and effective public policy to prevent such acts from occurring. In this regard, the State recognizes that at that time, there were no mechanisms for reporting, investigating and punishing such acts, or measures for preventing situations of sexual violence within this institution.

¹⁵ It is important to clarify that on March 17, 2020, through Agreement 1/20, the Court decided to suspend the calculation of all time limits currently in progress until April 21, 2020, owing to the emergency caused by the COVID-19 pandemic. On April 16, 2020, through Agreement 2/20, the Court decided to extend the suspension of time limits until May 20, 2020.

¹⁶ Given the exceptional circumstances caused by the COVID -19 pandemic, this judgment was deliberated and approved during the 135th Regular Session of the Court, which took place virtually, pursuant to its Rules of Procedure.

3. In relation to the criminal investigation, the State acknowledges that during the judicial proceedings in the domestic courts, it was not possible to determine whether the behavior denounced fitted a specific criminal definition, owing to the lack of diligence of the State authorities in locating and capturing the defendant. This resulted in the prescription of the criminal proceedings that had been suspended at the summons stage, due to the absence of the accused. Therefore, the State recognizes that the prescription of the criminal proceedings is attributable to its officials.

17. During the public hearing, the State “ratified its willingness to provide redress for the human rights violations in this case.” It “offer[ed] Mrs. Petita [Paulina] Albarracín [Albán] and Denisse [Selena] Guzmán [Albarracín],” the mother and sister of Paola, respectively, “a public apology for any actions or omissions by the Ecuadorian State that may have violated the rights of Paola Guzmán [and] for those [...] that violated their rights during their search for truth and acknowledgement.” The State admitted that it “ha[d] made mistakes and that those failings ha[d] resulted in the violation, not only of Paola’s rights, but also of Mrs. Petita [Paulina Albarracín Albán] and of Denisse [Selena] Guzmán [Albarracín]” (hereinafter, respectively, “Mrs. Albarracín,” “Mrs. Petita,” or “Petita Albarracín,” and “Denisse Guzmán” or “Denisse”). As measures of reparation, Ecuador offered to declare an official day against sexual violence in schools and to award Paola a posthumous high school diploma in the context of a public event.

18. The **representatives** pointed out that the State’s acknowledgement was made “under a confused rationale,” since Ecuador referred to several facts of the case but without clarifying “the legal implications of that acknowledgement.” The **Commission** also assessed the State’s acquiescence; however, given the lack of clarity, it considered it necessary that the Court resolve those matters still in dispute in its judgment. It also considered that the State’s comments were not an acknowledgement of responsibility, but rather an acknowledgement of facts.

B. Considerations of the Court

19. Pursuant to Articles 62 and 64 of the Rules, and in exercise of its authority in relation to the international protection of human rights, a matter of international public order, the Court must ensure that such acts are acceptable for the purposes sought by the Inter-American System.¹⁷ The Court will now proceed to analyze the situation in this specific case.

20. The Court asked the State to specify the scope of the acknowledgement presented in its final written arguments. The State explained that its intention was to acknowledge the facts indicated “for evidentiary purposes” and that the Court, pursuant to Article 62 of the Rules, could confer on those facts the legal effects it deemed pertinent. However, from the foregoing arguments, it appears that the State acknowledged that it committed human rights violations and considered the measures of reparation acceptable. In the Court’s view, Ecuador’s acknowledgement of responsibility is contradictory, because while it referred to violations of rights during the public hearing, in its final written arguments it affirmed that it only recognized “facts.” Despite the apology presented by the State during the hearing, the State’s acquiescence cannot be regarded as an act that, of itself, could offer redress to the relatives of Paola Guzmán. Nevertheless, the Court will proceed to examine its scope.

B.1 Regarding the facts

¹⁷ Cf. *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of Noguera et al. v. Paraguay. Merits, reparations and costs*. Judgment of March 9, 2020. Series C No. 401, para. 21.

21. As is apparent from the terms of its acknowledgement, the “facts” acknowledged by Ecuador refer to acts of omission. Indeed, Ecuador recognized that: a) in the administrative sphere, it failed to implement measures to investigate and verify reports of the alleged relationship between Paola Guzmán Albarracín and the teacher Bolívar Eduardo Espín Zurtía, who was vice principal of the school that she attended (hereinafter “Bolívar Espín” or “the vice principal”); b) it failed to adopt an adequate policy to prevent acts of sexual violence in Paola’s school; c) there were no “mechanisms to report, investigate and sanction” abuse, or measures to “prevent situations of sexual violence” in that educational institution; d) the domestic courts failed to determine whether the reported behavior was classified as a crime, and e) the State authorities failed to take the necessary action to locate and capture the perpetrator.

22. Furthermore, a dispute persists regarding certain facts that were not accepted by the State, particularly regarding the alleged pregnancy of Paola Guzmán Albarracín and the school doctor’s alleged involvement in sexual abuse against her, which Ecuador characterized as “facts not acknowledged” (*infra* para. 103).

B.2 Regarding the legal claims

23. The State did not expressly acknowledge its violation of any conventional right or obligation. Nevertheless, it accepted its responsibility for: a) failure to adopt general and specific measures to prevent acts of sexual violence in the public school that Paola Guzmán Albarracín attended, and b) lack of due diligence in the administrative and judicial investigations, as well as in the application of the criminal statute of limitations. The Court considers that this acknowledgement is an admission by the State of its failure to ensure the rights to judicial guarantees and judicial protection through a lack of diligent action (Articles 8 and 25 of the Convention) in violation of its obligations under Article 1(1) thereof, as well as an acknowledgement that it failed in its duty to adopt measures to prevent and address acts of sexual violence (Article 7.c of the Belem do Pará Convention).

24. Based on the foregoing, the dispute persists regarding the violation of the following: the rights to life, personal integrity, personal liberty, protection of honor and dignity, freedom of thought and expression, the Rights of the Child, the right to health and the right to education, pursuant to Articles 4(1), 5(1), 5(2), 7, 11, 13, 19 and 26 of the American Convention and 13 of the Protocol of San Salvador; of the obligations established in Article 1(1) of the American Convention in relation to such rights; and of those established in Articles 7(a) and 7(b) of the Belém do Pará Convention and 1 and 8 of the Inter-American Convention to Prevent and Punish Torture.

B.3 Regarding the reparations

25. A dispute also persists regarding the appropriateness of the measures of reparation requested by the Commission and by the representatives. Nevertheless, the State has accepted the duty to provide redress and has proposed two measures for that purpose: a) to declare an official Day against Sexual Violence in Schools, and b) to posthumously award Paola Guzmán Albarracín a high school diploma in the context of a public event.

B.4 Assessment of the State’s acquiescence

26. As indicated previously, the State's acquiescence was contradictory (*supra* para. 20). Nevertheless, it produces legal effects in the terms indicated. The Court will define the scope of such effects when examining the merits of the alleged human rights violations. Although disputes persist regarding these violations, the Court must deliver a judgment in which the facts are determined, based on the evidence gathered during the proceedings before this Court and the acceptance of those facts, as well as their legal consequences.

V EVIDENCE

A. Admission of the documentary evidence

27. The Court received documents presented as evidence by the parties and the Commission together with their main briefs (*supra* paras. 1, 4, 7 and 8). It also received documents attached to the final written arguments of the representatives and the State. (*supra* para. 12) In this case, as in others, the Court admits those documents that were presented at the proper procedural opportunity by the parties and the Commission, or that were requested as helpful evidence by the Court or its President, and the admissibility of which was not challenged or disputed.¹⁸ Also, pursuant to Article 58 (a) of the Rules, the Court includes three documents containing certain domestic regulatory provisions considering them useful and of a public nature.¹⁹

28. In its answering brief, the **State** claimed as a "preliminary objection" that its right of defense was impaired by the Commission's "irregular actions." Subsequently, in its final written arguments, it explained that its claim did not constitute a preliminary objection, since it "[was] not questioning the Court's jurisdiction to hear the case;" rather it "[was] requesting that the Court exclude evidence gathered unlawfully that obligated the Commission." Specifically, it alleged that the Commission held a hearing without convening the State in a timely manner,²⁰ and that it was unable to cross-examine the deponents, namely, the mother of Paola Guzmán Albarracín and the expert witness Ximena Cortés Castillo (hereinafter "Ms. Cortés"). The State also pointed out that the Commission included an expert witness, Dr. José Mario Nájera Ochoa (hereinafter "Dr. Nájera Ochoa" or "the expert Nájera"), who "was not proposed and did not act during the aforementioned hearing." Therefore, it asked the Court to exclude the evidence "gathered unlawfully."

29. The **Commission** considered that Ecuador "has not proven serious impairment of its right to defense." It argued that the State was duly notified of the hearing and, in

¹⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 12, 2020. Series C No. 402, para. 34.

¹⁹ These are: 1.-Text of the Criminal Code of 1971; 2. - Official Registry of Ecuador No 45, of June 23, 2005, and 3.-Law on "Sexual Education and Love" of 1998. Available at, respectively: http://www.oas.org/juridico/PDFs/mesicic4_ecu_penal.pdf; <https://www.derechoecuador.com/registro-oficial/2005/06/registro-oficial-23-de-junio-del-2005#anchor535379>, and <http://www.efemerides.ec/1/junio/sexual.htm>.

²⁰ The State explained that on October 7, 2015, it received a communication from the Commission referring to a hearing (which took place on October 19) supposedly convened in a communication dated September 18, 2015. It argued that it did not receive that communication and requested that the hearing be rescheduled; however, the Commission refused, saying it had "backups" to prove that the summons to the hearing had been sent on September 18, 2015. The State also alleged that the Commission did not provide proof to confirm this.

any case, that it had an opportunity to present observations on the merits at the hearing (which was of a public nature). The **representatives** agreed with the Commission's arguments.

30. The **Court** notes that the State itself has admitted that its argument does not constitute a preliminary objection, and therefore the Court will not analyze it as such. Moreover, the Court does not consider it necessary to determine when Ecuador actually received the summons to that hearing. In this regard, the Court finds that the State had an opportunity, after the hearing, to refer to the statements made during it and to comment on the statement of Dr. Nájera Ochoa. Therefore, the Court does not find that the State's right to defense was seriously impaired and that it would warrant the exclusion of the evidence mentioned, which was produced at the hearing before the Commission. Therefore, the Court rejects Ecuador's request to exclude said evidence.

31. The **State** also forwarded 11 documents with its final written arguments, five of which were already included in the case file. Regarding five other documents, the **representatives** argued that these should be declared inadmissible, since they did not answer the questions raised by the Court during the public hearing, adding that the remaining document was submitted extemporaneously. As to the admissibility of these six documents challenged by the representatives, the **Court** finds that these are related to the questions asked by this Court during the public hearing; therefore, they will be admitted.²¹

32. For their part, the **representatives** submitted two statements and additional information on costs and expenses with their final written arguments. They explained that these statements "could not be presented in advance for reasons of *force majeure* and serious impediment." They also pointed out that the statements of I.I. and E.T. "are useful and relevant to assist the Court in determining what happened," inasmuch as the deponents were both school friends of Paola at the "Dr. Miguel Martínez Serrano" National Technical High School for Business and Administration (hereinafter "the school" or "the Martínez Serrano High School") when the events of this case took place.²² The **Commission** considered it pertinent to admit these statements. However, the **State** argued that the two statements presented by the representatives did not constitute supervening evidence and noted that they did not justify the reasons of "*force majeure*" or "serious impediment" that prevented those statements from being offered previously, at the proper procedural moment.

33. Regarding the proper procedural opportunity granted to the parties to submit documentary evidence, pursuant to Article 57(2) of the Rules, this must generally be presented together with the pleadings and motions or answering briefs, as appropriate. The Court recalls that any evidence submitted outside the proper procedural opportunities is not admissible, except in the circumstances established in Article 57(2)

²¹ During the hearing the State was asked to provide information on: how the domestic laws on prevention of sexual abuse in schools have changed from the time of the facts of this case to the present day; whether the State has statistics on cases of sexual abuse against children and adolescents; and any changes that have taken place in the educational system. The six documents provided contain statistical data or information related to actions to address sexual violence in schools.

²² It should be noted that, with the exception of some individuals whose names were mentioned in the Merits Report published on the web site of the Inter-American Commission prior to the issue of this judgment, this document uses initials to refer to persons who were not involved in the international processing of the case before the Inter-American Commission or the Inter-American Court, or else refers to their positions.

of the Rules, namely, *force majeure*, serious impediment or if the evidence concerns an event that occurred after those procedural opportunities.²³

34. The Court observes that the representatives did not present arguments to justify that, for reasons of serious impediment or *force majeure*, they were unable to present the two statements at the proper procedural moment. They merely stated that the deponents had “distanced themselves” from Paola’s family, and gave no reason to support their inability to locate them in a timely manner.²⁴ Therefore, the Court will not admit those statements.

35. As to the evidence on expenses forwarded by the representatives together with their final written arguments, the Court considers it admissible and will take it into account when considering any new costs and expenses incurred by the representatives during the proceedings before this Court, that is, those made after the presentation of the pleadings and motions brief.

36. The Court also admits the documentary evidence requested from the representatives on May 26, 2020 (*supra* para. 13). The document in question was mentioned in the pleadings and motions brief, with instructions on how to access it via an electronic link.²⁵ The State did not make observations on the document requested by the Court from the representatives, pursuant to Article 58 (b) of its Rules, after confirming that the electronic link provided was not useful.

B. Admission of the testimonial and expert evidence

37. The Court finds it pertinent to admit the statements provided during the public hearing²⁶ and by affidavit,²⁷ insofar as these are in keeping with the purpose defined by the Order that required them (*supra* para. 10) and the purpose of this case.

²³ Cf. *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C No. 234, para. 22, and *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of January 27, 2020. Series C No. 398, para. 43.

²⁴ The representatives explained that they were only able to locate the deponents after finding out from a press report published one day before the public hearing that the latter had been in contact with a journalist. This does not explain why it was not possible for the representatives to locate them beforehand. Indeed, they pointed out that the journalist had located the deponents through a search in the “social networks,” without explaining why the representatives themselves had been unable to do so.

²⁵ This refers to the following document: “Cordero, T. and Vargas G. M. *A mí también: acoso y abuso sexual en colegios del Ecuador: discursos opuestos y prácticas discriminatorias*. Quito, Ecuador. National Women’s Council, 2001.”

²⁶ During the public hearing, the Court heard the statements of: Petita Paulina Albarracín Albán, an alleged victim and mother of Paola, proposed by the representatives; Ximena Cortés Castillo, an expert witness proposed by the representatives; and the expert witnesses Marlon Alexis Oviedo Ramírez and Guillermo Barragán Moya, proposed by the State, who prepared and presented a joint expert opinion.

²⁷ The Court received the written statement, rendered by affidavit, of Denisse Selena Guzmán Albarracín, sister of Paola, proposed as a witness by the representatives. In addition, the Court received, by affidavit, the expert opinions of Vernor Muñoz Villalobos, an expert witness proposed by the representatives; Lidia Casas, an expert witness proposed by the representatives; Iván Patricio Jácome Artieda, an expert witness proposed by the State; Juan Genaro Ayala Yépez and Romel Vladimir Aguirre, proposed by the State to provide a joint expert opinion; Freddy Herrera Almagro, an expert witness proposed by the State; Alex Iván Valle Franco, an expert witness proposed by the State; the expert witnesses Juan Carlos Cobos Velasco and Johana Patricia Bustamante Torres, proposed by the State to provide a joint expert opinion; Ximena Andrea Gauché Marchetti, an expert witness proposed by the Commission, and Patricia Viseur Sellers, an expert witness also proposed by the Commission.

38. In its final written arguments, the **State** alleged that it found “several irregularities” in the expert opinion of Mrs. Lidia Casas, including the fact that the “document cites as true certain facts that are being challenged, such as the alleged pregnancy and abortion” of the victim, and that “she exceeds her remit in her expert opinion.” As to the expert opinion of Mr. Vernor Muñoz Villalobos, Ecuador indicated that his “expert report goes beyond its remit, since he makes judgments as to whether or not Paola’s rights were violated” and also “accepts as true certain facts that are disputed.” Regarding the expert opinion of Mrs. Ximena Cortés Castillo, the State questioned her methodology in relation to the number of people interviewed and the time that had elapsed since the event, arguing that this “weakens the precision” of her assessment. The State also argued that there was a “lack of scientific rigor in the psychological autopsy carried out.” With respect to the expert opinion of Mrs. Ximena Gauché Marchetti, Ecuador requested that the Court, “when reviewing the document, analyze exclusively those aspects relevant to the purpose of her expert opinion.” Finally, in relation to the expert opinion of Mrs. Patricia Viseur Sellers, the State argued that “the document assumes as true certain facts that are being disputed” and, furthermore, noted that the expert opinion was presented in English “without meeting the requirements of the Court” and was presented extemporaneously, thereby affecting “the procedural equality of the parties.”

39. Based on prior decisions of a similar nature, this **Court** decides to admit the expert report of Patricia Viseur Sellers, considering that the translation into Spanish was received within the deadline established by this Court and that the State had ample opportunity to review it.²⁸

40. The Court observes that other considerations of the State regarding this and other expert opinions are related to their evidentiary value, not to the admissibility of the evidence. Therefore, this Court decides to admit these expert reports. The concerns expressed by Ecuador will be taken into consideration in the assessment of the evidence.

VI FACTS

41. The facts of this case are related to the sexual violence committed against Paola del Rosario Guzmán Albarracín, when she was between 14 and 16 years old, by members of staff at the public school she attended, the Martínez Serrano High School, and specifically by the vice principal of that institution. They also include her subsequent suicide, two days after her sixteenth birthday, and the judicial and administrative proceedings initiated after her death, which occurred in Guayaquil on December 13, 2002.

42. This section presents the facts described by the Commission and by the representatives regarding the sexual violence to which Paola Guzmán Albarracín was subjected and her subsequent suicide, as well as the facts related to the judicial and administrative proceedings. The Court will then present the relevant legal assessments (*infra* Chapter VII).

²⁸ In the case of *Yarce et al. v. Colombia*, the Court found that an expert opinion had been submitted in English, and therefore granted an additional period to obtain a translation, which was received opportunely (*Cf. Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs. Judgment of November 22, 2016. Series C No. 325, para. 70*).

43. In their pleadings and motions brief, the representatives alluded to a contextual situation that is relevant to this case. The Court notes that this background was not mentioned by the Commission in its Merits Report. Nevertheless, the Court finds that some of the representatives' statements, which are based on reports by governmental institutions or international organizations, are linked to the State's acknowledgement of the lack of policies to address sexual violence in the education system. To that extent, they are useful in assessing the circumstances surrounding the facts *sub judice*, and therefore will be taken into consideration (*infra* paras. 44 to 47).²⁹ Thus, the Court will consider the following: a) sexual violence in Ecuador's educational institutions; b) facts related to the sexual violence suffered by Paola Guzmán Albarracín and her subsequent suicide; c) investigations and criminal proceedings pursued after the death of Paola Guzmán Albarracín, and d) the civil lawsuit for moral damages and administrative actions related to the facts of this case.

A. Sexual violence in Ecuador's educational institutions

44. At the time of the facts of this case, several reports by national and international organizations described a situation of sexual violence, harassment and abuse in Ecuador's educational institutions. In 1998, the Committee on the Rights of the Child (CRC) expressed "concern" at the "practice" of child abuse in Ecuador, including sexual abuse in schools. It recommended that adequate mechanisms be established to address reports of child abuse and also expressed concern at "the incidence of suicides among young women and insufficient access by adolescents to [...] education on reproductive health."³⁰

45. According to the CRC, and to other committees of the United Nations system, such as the Human Rights Committee, the Committee against Torture, the Committee on Economic, Social and Cultural Rights (hereinafter "ESCR Committee"), and the Committee for the Elimination of Discrimination Against Women (hereinafter, "CEDAW Committee"), situations of ill-treatment and sexual violence, including in schools, as well as a lack of education on reproductive health, have continued to occur more recently (2008, 2010, 2015 and 2017).³¹ According to a study conducted by the World Health

²⁹ This case is based on the factual framework described in the Merits Report of the Commission; however, it is also necessary to consider facts that explain, clarify or reject that factual framework (*Cf. Case of "Five Pensioners" v. Peru. Merits, reparations and costs. Judgment of February 28, 2003. Series C No. 98, paras. 153 and 155, and Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2019. Series C No. 394, para. 48*).

³⁰ *Cf. Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: Ecuador, October 26, 1998, CRC/C/15/Add.93, paras. 21 and 23.*

³¹ *Cf. Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: Ecuador, March 2, 2010, Doc. CRC/C/ECU/CO/4, paras. 60 and 65; Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Ecuador, October 26, 2017, Doc. CRC/C/ECU/CO/5-6, paras. 24, 26, and 35; CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women: Ecuador, November 7, 2008, Doc. CEDAW/C/ECU/CO/7, paras. 20, 32, and 33; Concluding observations on the combined eighth and ninth periodic reports of Ecuador, April 10, 2017, Doc. CEDAW/C/ECU/CO/8-9/Add.1, paras. 18, 19, 26 and 27; Human Rights Committee, Concluding observations of the Human Rights Committee: Ecuador, November 4, 2008, Doc. CCPR/C/ECU/CO/5, para. 9; Human Rights Committee, Concluding observations on the sixth periodic report of Ecuador, August 11, 2016, Doc. CCPR/C/ECU/CO/6, paras. 16 and 17; Committee Against Torture, Concluding observations on the seventh periodic report of Ecuador, December 7, 2010, Doc. CAT/C/ECU/CO/4-6, para. 18; Committee Against Torture, Concluding observations on the seventh periodic report of Ecuador, January 11, 2017, Doc. CAT/C/ECU/CO/7, paras. 47 and 48, and ESCR Committee, Concluding observations on the third periodic report of Ecuador, December 13, 2012, Doc. E/C.12/ECU/CO/3.*

Organization, in 1991 - many years prior to the facts of this case- three out of every ten children surveyed said they had suffered sexual abuse when they were aged between 11 and 16 years; and, in 2008, 23.3% of the children surveyed in Guayaquil reported having been victims of some form of sexual abuse. The report considered that these figures would likely increase if no action were taken to address this issue.³²

46. In addition, according to information produced by the State in 2001, sexual abuse and sexual harassment were “known problems in educational establishments, which [had] not been systematically addressed, nor [had] there been sustained efforts to prevent, report and punish” such behavior. At that time, the National Council for Women (CONAMU) concluded that “sexual harassment and sexual abuse are a reality in the educational setting” and noted that teachers are “typical aggressors.”³³

47. Thus, as is apparent from the circumstances described below, the facts of this case occurred in a public school where there were no measures in place to prevent sexual violence, and where such behavior was normalized. In the case of Paola Guzmán, the abuse occurred in a sustained manner and over a long period of time.

B. The sexual violence suffered by Paola Guzmán Albarracín and her subsequent suicide

48. Paola del Rosario Guzmán Albarracín was born on December 10, 1986, in the city of Guayaquil. She was the daughter of Petita Paulina Albarracín Albán and Máximo Enrique Guzmán Bustos (hereinafter “Mr. Guzmán Bustos”). From the age of 12 she attended the *Dr. Miguel Martínez Serrano* National Technical High School for Business and Administration in Guayaquil, a public school for girls³⁴ under the supervision of the Ministry of Education of the Republic of Ecuador. Paola lived with her mother, her grandmother (now deceased) and her younger sister, Denisse Selena Guzmán Albarracín.

49. According to the evidence, in 2001, when she was 14 years old and in her second year at the school, Paola began having difficulties with certain subjects and faced the prospect of having to repeat the year. The vice principal of the school, Bolívar Eduardo Espín Zurtía, offered to help her pass to the next grade, on condition that she would

³² Cf. World Health Organization, *Understanding and addressing violence against women: intimate partner violence*, 2013, page 5. Available at: https://apps.who.int/iris/bitstream/handle/10665/98821/WHO_RHR_12.37_spa.pdf?sequence=1&isAllowed=y, and amicus curiae brief presented by the Committee of Experts of the Follow-up Mechanism of the Convention of Belém do Pará (hereinafter also “Committee of Experts of MESECVI”).

³³ That information was published in the context of the Equal Opportunities Plan 1996-2000, by CONAMU, an Ecuadorian governmental organization. Cf. Cordero, T. and Vargas G., M. *A mí también: acoso y abuso sexual en colegios del Ecuador: discursos opuestos y prácticas discriminatorias*. Quito, Ecuador: National Council for Women, 2001, page. 35. The document also states that: (i) it is difficult to define harassment and sexual abuse, although teachers know about cases in their own schools; (ii) among teachers there is “a perception that (female) students bear some responsibility in cases of sexual abuse,” since they consider that “they provoke or accept it”, and (iii) there is a tendency to minimize the problem or ignore the effects on the victims, [...] by denying cases, or not conceptualizing certain practices by teachers as abuse, or not perceiving them as crimes. According to a World Bank document cited by the representatives in their pleadings and motions brief, in 2004 one in every four high school students in Ecuador had experienced sexual abuse and one in every three students knew about a case of abuse. Cf. Cevallos, Maluf and Sánchez. *Análisis situacional de la juventud en el Ecuador*, 2004, pages 144 and 145. Available at: https://books.google.com.co/books?redir_esc=y&hl=es&id=GgeaAAAIAAJ&focus=searchwithinvolume&q=.

³⁴ The complaint filed on December 17, 2002 (*infra*, para. 59) describes it as a school “for young ladies.”

have sexual relations with him.³⁵ At a public hearing before the Commission, Mrs. Albarracín mentioned that she noticed a change in Paola around October 2001.³⁶ According to a statement given by Paola's "cousin in law" to the Prosecutor's Office, Paola told her that she needed higher scores to move up to the next grade but that "she was going to figure out how to handle it, and not to worry because she had a 'godfather' at the school." The cousin added that she accompanied Mrs. Petita to speak to Mr. Bolívar Espín about this matter and, when Paola arrived, he turned to her and said: "but I already talked with you, right princess?" and took her by the shoulder. She added that Paola told her (the deponent) that the vice principal always treated her that way, "affectionately."³⁷

50. There are also testimonies and indications of sexual acts carried out by the vice principal with Paola,³⁸ as well as statements suggesting that the staff at the school knew about the relationship between the two, and that Paola had not been the only student with whom the vice principal had had close contacts of that nature.³⁹ Evidence in the

³⁵ In her statement, one of Paola's schoolmates, E.T. (*infra* para. 65), mentioned that Paola and the assistant principal had been "going out since 2001, because she was falling behind in a subject and he told her that he would help her enroll in third year, but with conditions [...], she had to go out with him and have romantic relations with him." In the same statement, E.T. says that Paola told her that she began having sexual relations with the vice principal in 2002. On March 20, 2003, Paola's 'cousin in law' stated that she had accompanied Paola and her mother to the school, and had noticed that the vice principal spoke to Paola using "very familiar" terms and that he insisted on speaking with her alone. She added that Paola had tried to calm her down, saying that his treatment of her was "simply affectionate." See a similar statement by V.O. of March 20, 2003 (*infra*, para. 67 and footnote 60).

³⁶ Similarly, a school friend of Paola, J.M., stated on January 31, 2003 (*infra* para. 65) that Paola "was a cheerful and fun-loving girl," but that she noticed that she had become very tense from November 2002.

³⁷ Cf. Statement made by V.O. on March 20, 2003 (*infra* para. 67 and footnote 60). V.O. referred to Paola's "cousin in law" in this way in her statement.

³⁸ In addition to the information contained in footnotes 35 and 40, E.T.'s statement of January 31, 2003 (*infra* para. 65) mentions that in order to see Paola, the vice principal would ask her to attend a "recovery class" on Saturdays, even though she did not need to go, and that "he would also arrange for her to see the school doctor." Other school friends made similar comments (Cf. statement of J.M. of January 31, 2003 (*infra* para. 65) and statement of I.I. of March 14, 2003 (*infra*, para. 67). This information is also mentioned in a police report dated March 16, 2003 (*infra* para. 68), which refers to comments made by several of Paola's school friends to the media. The summons to a trial (*infra* para. 74) mentions that a teacher at Paola's school said she was informed by the Inspector General that a student, who was Paola, "was in love" with the vice principal, and that the school principal admitted that he "was aware of what was going on and that [it was] nothing." The charges filed by the public prosecutor on June 12, 2003 mention an "anonymous survey" of students carried out by the Provincial Office of Education (*infra* para. 51 and footnote 122) in which the majority of those surveyed answered "yes" to the question: "Do you think that the vice principal had something to do with what happened?" Also, on September 10, 2003, the supervisor of the grade in which Paola studied gave a statement to the prosecutor describing how she discovered that Paola was involved in a possible relationship with the vice principal (*infra*, para. 67).

³⁹ The summons to a trial (*infra* para. 74) includes a statement to this effect made by the mother of a former student at the school. Similar statements were also given by some of Paola's classmates (E.T, *infra* para. 65) and I.I., and by the grade supervisor (*infra*, para. 67). According to one of the notes written by Paola before she died, she was aware that the vice principal had relationships with other women. Furthermore, on August 15, 2003, Petita Paulina Albarracín Albán submitted a brief to the Public Prosecutor, stating that two students from Paola's school had appeared on TV news saying that the vice principal and the principal of their school had asked some students to have sexual relations with them so that they could move up to the next grade. On the same date, Mrs. Albarracín informed the prosecutor that according to a newspaper report published that day, in addition to Paola, and after her death, three more students had committed suicide, and one of them had been pregnant (Cf. briefs filed by Mrs. Albarracín of August 15, 2003, in the context of the criminal investigation N-79-2003 (evidence file, annex 37 to the pleadings and motions brief, folios 5844 to 5852).

case file also shows that the vice principal had sexual relations with Paola, including vaginal intercourse.⁴⁰

51. Based on the abovementioned statements it is clear that a number of people associated with the school, including the principal, knew that the vice principal was having sexual relations with Paola. Also, based on several statements made by Paola's school friends, and even on the anonymous survey carried out among the students (*infra* footnote 122), it may be inferred that the situation was widely known within the school. Although it is not known whether these facts were denounced by staff members at the school, there are reports of a different nature regarding efforts to protect vice principal after Paola's death (*infra* paras. 63, 65 and 137).

52. On December 11, 2002, the inspector for Paola's grade summoned her mother, Mrs. Petita Albarraçín to a meeting at the school the next day.⁴¹ According to the statement of the inspector, I.M., she had called the mother because the previous week Paola had missed classes, and also because the Inspector General often found the girl in the patio during class-time, without permission.⁴²

53. On Thursday December 12, 2002, the same day of the meeting and just two days after her sixteenth birthday, Paola swallowed some pellets containing white phosphorus (known colloquially as "diablillos") at home, sometime between 10:30 am and 11:00 am, (*supra* para. 1). Then she went to school. On the way she told her classmates what she had done, and when she arrived at school, they took her to the infirmary. Around midday, the Inspector General was informed of the situation and went to the infirmary, where she urged Paola to pray to God. The vice principal and the school doctor also went to the infirmary. According to statements from her classmates, they called Paola's mother, who arrived at the school nearly 30 minutes later, accompanied by two people, and then took Paola away in a taxi (which had been called by the school authorities) to

⁴⁰ In a statement, one of Paola's school friends said that Paola told her that she was pregnant and had shown her a pregnancy test. She said she had been having sexual relations with the vice principal since October 2002, although they had "been going out" since 2001. When this same friend was asked where the vice principal had sexual encounters with Paola, she answered "mostly, they met up in school, in his office." (*Cf.* statement of E.T. of January 31, 2003 (*infra* para. 65)). Another witness made a similar statement (*Cf.* statement of J.M. of January 31, 2003 (*infra* para. 65)). In addition, the "private lawsuit" filed by Paola's mother (*infra* para. 71) alleges that the adolescent became pregnant from the relationship with the vice principal, and referred to statements given by E.T and J.M, who said they knew the vice principal had given Paola money to buy an injection so that the school doctor could terminate her pregnancy. Also, the investigation file in the "private lawsuit" contained audio and video recordings of television news reports, in which students of the Martínez Serrano High School said that Paola had told them that she had sexual relations with the vice principal and had shown them lab tests of the pregnancy. The sexual relationship between the vice principal and Paola was also alleged by the representatives, who considered it "proven" that the vice principal "had sexual relations with Paola Guzmán on repeated occasions," and this appears to be confirmed in certain affirmations by the State during the processing of the case before the Commission: in brief dated November 16, 2007 submitted to the Commission, Ecuador mentioned as "facts" of the case, that "Paola [...] was victim of the crimes of sexual harassment and rape by the [...] vice principal of the school [she attended], a public education establishment where the minor studied." In its Admissibility Report and in its Merits Report, the Commission noted this comment by the State, considering that it implied an "acknowledgement of facts." It should be recalled that, as the Commission stated in its Merits Report, the Ecuadorian Criminal Code in force at the time of the facts defined "rape" as "copulation" through the use of "seduction or deception" to obtain consent, which was punished by imprisonment if the victim of the crime is older than 14 years of age and under 18 (*infra* footnote 70).

⁴¹ *Cf.* Communication from the petitioner of October 14, 2014 (evidence file, annex 1 to the Merits Report, folios 6 to 110) and clinical history (evidence file, annex 3 to the Merits Report, folios 115 to 135).

⁴² *Cf.* Statement of the grade inspector of January 7, 2003 (*infra* para. 62). See also the statement of the Inspector General of January 3, 2003 (*infra* para. 62), and the communication of the petitioners of October 14, 2014.

the Hospital Luis Vernaza, where they pumped her stomach. When she did not improve, they took Paola to the Clínica Kennedy.⁴³

54. On the morning of December 13, 2002 (*infra* para. 58), Paola del Rosario Guzmán Albarracín died at the Clínica Kennedy, in the city of Guayaquil, as a result of poisoning caused by voluntary ingestion of white phosphorus.⁴⁴

55. During the public hearing, (*supra* para. 10) Mrs. Albarracín stated that on the day after her daughter's death, the medical examiner called her and showed her Paola's body, naked and opened up, with her organs exposed. According to the statement, the doctor "showed [her] a small fleshy area and said: 'ma'am, this is your daughter's uterus, there's no pregnancy.'" The State did not dispute these facts.

56. Paola left three letters before she died. In one letter, addressed to the vice principal, Paola says that she felt "betrayed" by him, because he "had" many other women, and that she decided to take poison because she could no longer bear "all the things I've suffered."⁴⁵

⁴³ The formal charges filed on June 12, 2003 (*infra* para. 70) describe the facts in a manner consistent with this account, as does the complaint filed by Mr. Guzmán Bustos on December 17, 2002 (*infra* para. 59). The statement made by E.T. before the domestic court provides a similar account (*infra* para. 65). There are also records of other circumstances related to these events, such as a police report of February 3, 2003 (*infra* footnote 59) indicating that "Paola swallowed the *diablillos* with her food before going to school, while seated on a red plastic chair in the living room in front of the television." One of Paola's schoolmates who testified on January 31, 2003 (*infra* para. 65) recalled that when Paola was taken to the school infirmary, "they didn't do anything to help her," but only "made her talk" until her mother arrived. In this regard, the Inspector General (*infra* para. 62) stated that she told Paola that if she believed in God she should ask his forgiveness, and that they prayed together in the school infirmary. In her testimony on January 28, 2003 (*infra* para. 65), Paola's mother stated that her daughter had failed the previous grade, despite having asked for help from the vice principal, who, in turn, was unable to obtain the "help" of the mathematics teacher for that purpose. Mrs. Albarracín explained that they asked the Principal if Paola could remain at the school despite having failed the grade, which they managed to achieve. Mrs. Albarracín added that in October 2003, the Inspector General of the school told her that Paola visited the principal's offices very often, and that Paola then told her (Mrs. Albarracín) that this was true, but that she only went there to drink water. Mrs. Albarracín stated that on December 12, 2002, she had an appointment to go to the school because she had been summoned, but on that day, just before leaving home she received a call from the school informing her that Paola had swallowed "diablillos." She said she then went to the school, accompanied by a friend and a nephew, and found Paola on a couch, with the Inspector General, the vice principal and the school doctor present. She said that her daughter hugged her and asked her forgiveness, and that the vice principal told her "ma'am, this isn't the time for hugging or crying, take hold of your daughter and get her to a hospital." So, she walked out with Paola and took her in a taxi to the Luis Vernaza Hospital where she remained until 6 p.m. after which she was transferred to the Clínica Kennedy, where she died the following day. Mrs. Albarracín added that the following day a journalist called her, saying that a school friend of Paola had told her that she was pregnant by the vice principal. In her statement Mrs. Albarracín said that she received the call from the school on December 12, at around 1p.m. However, at the public hearing (*supra* para. 10), she stated that it was between 2p.m. and 2.30 pm. The statements of the vice principal and the school doctor, made in January 2003 at the Prosecutor's Office (*infra* paras. 61 and 62), are consistent with the accounts describing how the facts unfolded on December 12, from the time Paola arrived at the school until she was taken to the Hospital Luis Vernaza. In his statement, the school doctor indicates that Paola told him that she had swallowed the "diablillos" between 10.30 am and 11 00 am.

⁴⁴ In addition to the details provided below (*infra* para. 58), the autopsy examination of December 13, 2002, states that samples of different parts of Paola's body were taken for subsequent analysis. Medical information presented on February 4, (*infra* footnote 59) and March 31, 2003 (*infra* para. 69), respectively, confirmed the presence of phosphorus in samples taken from Paola's body and stated that she died by "poisoning with white phosphorus."

⁴⁵ Cf. Letter of Paola del Rosario Guzmán Albarracín addressed to the vice principal (evidence file, annex 82 to the pleadings and motions brief, folios 6013 to 6017). The complaint filed by Máximo Guzmán on December 17, 2002 (*infra* para. 59) states that Paola sent one of the letters to her mother, and the other two to the vice principal. The representatives suggested that one of these two letters appears to be a draft of the

C. Investigation and criminal proceedings after the death of Paola Guzmán Albarracín

57. On December 13, 2002, a police report was sent to the District Prosecutor of Guayas, informing him of the official removal of Paola's body from the morgue of the "Clínica Kennedy."⁴⁶

58. That same day, the duty prosecutor for homicides sent the Provincial Chief of the Civil Registry of Guayaquil the autopsy protocol in order to register the death. Based on the autopsy conducted by forensic doctors of the National Police of Guayas, the death certificate stated that the cause of death was "acute pulmonary edema and hemorrhagic pancreatitis."⁴⁷ The autopsy performed later that day (December 13) at 14:30, concluded that: "The cadaver is of female sex, mixed race, 16 years of age, 157 cms. tall, and died within the last 4 to 5 hours approximately, victim of: ACUTE PULMONARY EDEMA, which caused her death."⁴⁸

59. On December 17, 2002, Paola's father filed a complaint against the vice principal before the Office of Prosecutor of Guayas over the death of his daughter, requesting an investigation of his responsibility for that event. In the complaint Mr. Guzmán Bustos stated that "it is public knowledge that [Paola's] decision to swallow the poison in the *diablillos* [...] was in response to a romantic disappointment, since the school's vice principal, Mr. Bolívar [Eduardo] Espín Zurita, had seduced my daughter." With the complaint, he attached various letters written by Paola to her mother and to Mr. Bolívar Espín.⁴⁹

60. On December 19, 2002, the case was assigned to a Criminal Prosecutor, who asked the Chief of the Judicial Police to appoint an agent to investigate the facts of the case.⁵⁰

other. As to the letter addressed to her mother, a police report of March 16, 2003 (*infra* para. 68) states that the letter said "I won't be a hindrance to you anymore or make you feel ashamed." The indictment of June 12, 2003 (*infra* para. 70) also mentions that in her letter Paola apologized to her mother. On January 15, 2003, a report forwarded to the prosecutor appointed on December 19 (*infra* para. 60) found that there was "calligraphic identity" (similar handwriting) between the three letters left by Paola and other texts in her handwriting that were used for comparison (*Cf.* Expert report No. 008-03 of January 15, 2003; evidence file, annex 18 to the answering brief, folios 7018 to 7035). In addition to the information below (*infra* para. 68) the police report indicated that Paola and the vice principal had "argued on December 10, 2002," the day of her birthday. In a statement made on January 31, 2003 (*infra* para. 65), one of Paola's schoolmates said that Paola had told them (the deponent and other friends), referring to the vice principal and to the fact that she had swallowed "diablillos": "he knows why I did it," without explaining what she meant. Another school friend made a statement the same day (*infra* para. 65), saying that Paola had told her that she and the vice principal sometimes had arguments and, specifically, that on December 10, 2002, she and the vice principal had argued "after school, when there were [no teachers] around in the administration offices." See also, expert opinion of Ximena Cortés Castillo before the Commission (evidence file, annex 12 to the Merits Report, folios 174 to 202) and communication of the petitioners dated October 14, 2014.

⁴⁶ *Cf.* Police report of December 13, 2002 (evidence file, annex 7 to the answering brief, folios 6991 to 6993).

⁴⁷ *Cf.* Medical certificate of death (evidence file, annex 4 to the Merits Report, folios 137 and 138).

⁴⁸ *Cf.* Autopsy Report No. 931 of December 13, 2002 (evidence file, annex 5 to the Merits Report, folios 140 and 141).

⁴⁹ *Cf.* Complaint filed by Mr. Guzmán Bustos on August 17, 2002 (evidence file, annex 10 to the answering brief, folios 6998 to 7000), and communication of the petitioners of October 14, 2014.

⁵⁰ *Cf.* Communication of the Criminal Prosecutor of December 19, 2002 (evidence file, annex 6 al pleadings and motions brief, folio 5689).

61. On January 2, 2003, the vice principal Bolívar Espín appeared before the Criminal Prosecutor and provided a free and voluntary statement, in which he rejected the complaint made against him.⁵¹

62. On January 3, 7 and 13, 2003, the Criminal Prosecutor received several witness statements. On the first day, he received the statements of the school doctor, the concierge, the school's physical education teacher and the Inspector General. On the second day, the grade inspector made a statement and on the third day a schoolmate of Paola did so.⁵²

63. On January 16, 2003, Paola's father asked the Criminal Prosecutor to broaden the investigation into Bolívar Espín to include "intimidation, seduction, deception, false promises and rape." He also informed the Criminal Prosecutor that some students at the school were being pressured and threatened with expulsion to prevent them from testifying in the criminal proceedings. A similar allegation was made a few days later by one of Paola's classmates (*infra*, para. 65).⁵³ On January 22, 2003, Paola's mother requested that statements be taken from some of the students at the school and that blood tests be conducted on the sample obtained from Paola's body.⁵⁴ During the months of January and February 2003, the mothers of several students at the school presented identical letters addressed to the Criminal Prosecutor stating that he could not take any statements from their daughters.⁵⁵

⁵¹ The vice principal alleged that on November 12, 2002 he arrived at the school where he worked at approximately 2 pm and was in his office when the Inspector General came in and told him that a student had taken "diablillos," that she was in the school infirmary and it was urgent to contact her mother. The vice principal stated that when he heard what had happened, he immediately went to the infirmary where he found Paola, together with the doctor, the Inspector General, the school counsellors and several students and that Mrs. Albarracín had already been contacted. He added that when he saw Paola he asked her why she had swallowed the *diablillos*, and whether she had some problem at home or with a family member, to which Paola, in an apparent state of lucidity, cried and shook her head. Immediately after that, according to Mr. Bolívar Espín, the girl's mother arrived at the school, accompanied by others. The vice principal explained that because the school did not have the means to treat health emergencies, he ordered the doctor to arrange for Paola to be taken to the Hospital Luis Vernaza and, in addition, ordered the school's concierge to call a taxi to take the girl, her relatives, the doctor and the Inspector General to that hospital. Cf. Statement of Mr. Bolívar Eduardo Espín Zurita of January 2, 2003 (evidence file, annex 15 to the Merits Report, folios 222 and 223).

⁵² Cf. Statements of January 3, 2003, of R.O. (evidence file, annex 15 to the answering brief, folios 7011 and 7013); V.B. (evidence file, annex 12 to the answering brief, folio 7005); G.A. (evidence file, annex 13 to the answering brief, folio 7007), and L.A. (evidence file, annex 16 to the Merits Report, folio 225); statement made by the grade inspector of January 7, 2003 (evidence file, annex 16 to the answering brief, folio 7014), and statement of M.J. of January 13, 2003 (evidence file, annex 17 to the answering brief, folio 7017). It is important to note the doctor's reference to the events that occurred on the day prior to Paola's death (*supra* para. 53). He stated that the delay in taking Paola to hospital was "five minutes," but that by then her relatives had arrived; thus, he appears to refer to the time elapsed between the arrival of the mother and those who accompanied her and the time they left to go to the hospital. He also alleged that he had treated Paola earlier for a headache, and that he was not aware that the girl was pregnant. For her part, the last deponent, M.J., stated that she had never been a close friend of Paola and that she knew nothing about the situation.

⁵³ Cf. Statement of Mr. Guzmán Bustos of January 16, 2003 (evidence file, annex 21 to the Merits Report, folios 245 and 246). Also, a schoolmate of Paola stated that she (the deponent) and other students were pressured by the President of the Teacher's Association, O.T., to support the assistant principal.

⁵⁴ Cf. Brief of Mrs. Albarracín of January 22, 2003 (evidence file, annex 22 to the Merits Report, folio 248).

⁵⁵ Cf. Letters sent by the mothers of several students at the school (evidence file, annex 24 to the Merits Report, folios 252 to 274), stating that the prosecutor "may not take any statements from the minors who, in most cases, were not even classmates [of Paola] so that they could hardly know the reason for her suicide."

64. On January 27, 2003, Paola's father requested that a test be conducted on a blood sample taken from his daughter's body to determine whether or not she was pregnant at the time of her death. The Criminal Prosecutor ordered a test the following day and also on February 10, 2003; these tests were subsequently carried out ⁵⁶ (*infra* footnote 144).

65. On January 28 and 31, 2003, the Criminal Prosecutor received various statements: on the first day Paola's mother presented her testimony and the vice principal expanded his previous statement (*supra* para. 61).⁵⁷ On the second day two of Paola's schoolmates⁵⁸ made statements before the Criminal Prosecutor, accompanied by their representatives.

66. On February 3 and 4, 2003, the Criminal Prosecutor requested the arrest of the vice principal. Two days later, on February 6, the Third Criminal Judge of Guayas informed the judicial police that he had issued a warrant for the arrest of the vice principal. On February 13, the same judge issued a warrant to search the vice principal's home; however, according to information presented to the Commission, by the time the search was conducted, the suspect had fled.⁵⁹

67. On February 14, March 14 and 20, and September 10, 2003, the Criminal Prosecutor took statements from the school Principal; from another classmate of Paola; from her "cousin in law;" and from the director of Paola's grade.⁶⁰

68. On March 16, 2003, an investigator of the National Office of the National Police presented a report in which he concluded that Paola "poisoned herself to take her own

⁵⁶ Cf. Brief of Mr. Guzmán Bustos of January 27, 2003 (evidence file, annex 23 to the Merits Report, folio 250); Official letter No. 114-2003-MFD-G of January 28, 2003, from the Office of the District Prosecutor of Guayas and Galápagos (evidence file, annex 6 to the Merits Report, folio 143), and letter sent by the clinical pathologist, J.K., to Dr. J.M., Chief of the Medical Department of the Judicial Police of Guayas in Criminal Investigation No. 4541-14 (evidence file, annex 7 to the Merits Report, folio 145).

⁵⁷ Cf. Testimony given by Petita Paulina Albarracín Albán to the police officer I.Y., in Criminal Investigation N. 4541-14, of January 28, 2003 (evidence file, annex 9 to the pleadings and motions brief, folios 5695 to 5697). Also, in expanding his statement, the vice principal explained that he was presenting himself before the authorities to deny news reports by various media organizations, including press, radio and television (evidence file, annex 19 to the answering brief, folios 7037 to 7039).

⁵⁸ Cf. Statements of E.T. and J.M. of January 31, 2003 (evidence file, annexes 19 and 20 to the Merits Report, folios 233 to 236 and 239 to 243, respectively).

⁵⁹ Cf. Official letter No. 0134-MFD-G, forwarded to the Criminal Judge of Guayas by the Criminal Prosecutor in the criminal investigation, of February 4, 2003 (evidence file, annex 25 to the Merits Report, folio 276); Official letter Ex46-03.J.T.P.O, forwarded by the Third Criminal Judge of Guayas to the police, on February 6, 2003 (evidence file, annex 26 to the Merits Report, folio 278), and Official Letter No. 728-JTPG-46-2003, forwarded by the Third Criminal Judge of Guayas to the Chief of the Judicial Police of Guayas (evidence file, annex 27 to the Merits Report, folio 280). Without denying this, the State indicated that after the trial was suspended, on October 5, 2005 (*infra* para. 77), "the defendant Bolívar Espín became a fugitive." Also, according to information presented by the State, on February 3, 2003, the police issued a report on their search of Paola's home and school, attaching 12 photographs. On February 4, 2003, a toxicology report was presented (Toxicology report of February 4, 2003; evidence file, annex 25 to the answering brief, folio 7059).

⁶⁰ Cf. Statement of the Principal of February 14, 2003 (evidence file, annex 28 to the Merits Report, folios 282 and 283). Also, statements of I.I. of March 14, 2003 (evidence file, annex 29 to the Merits Report, folio 285); V.O. of March 20, 2003 (evidence file, annex 2 to the Merits Report, folios 112 and 113), and B.C. of September 10, 2003 (evidence file, annex 32 to the Merits Report, folios 311 to 313).

life." It also stated that the motives were unknown but that "the vice principal Bolívar Espín ha[d] been in a romantic relationship" with Paola."⁶¹

69. On March 31, 2003, the prosecutor received the results of the analysis of the organ samples taken at the autopsy of Paola's body (*infra* footnote 144).⁶²

70. On June 12, 2003, the Public Prosecutor filed formal charges against Mr. Bolívar Espín for the crime of sexual harassment and on August 22, 2003, he asked the judge of the Twentieth Criminal Court, which had been assigned the case, to order the pretrial detention of the vice principal.⁶³ According to the State, this request was denied on September 10, 2003; however, two days later the Prosecutor appealed that decision. The State added that on September 17, the appeal was admitted and a ruling was issued on December 16, 2003 (*infra* para. 73).

71. On October 13, 2003, Mrs. Albarracín brought a private prosecution against the vice principal for the crimes of sexual harassment, rape and abetting suicide. She alleged that her daughter had swallowed the poison because Mr. Bolívar Espín had exerted psychological pressure on her so that she would have sexual relations with him.⁶⁴ On October 28, the Prosecutor issued an indictment against the vice principal for the crime of sexual harassment.⁶⁵

72. According to the State, on November 10, 2003, Mrs. Albarracín filed a motion of recusal against the judge hearing the case, alleging that an excessive period of time had elapsed without a ruling being issued. The Twentieth Judge then excused himself and, on November 18, the criminal case was assigned to the Fifth Criminal Judge of Guayas (hereinafter "Fifth Judge").

⁶¹ Cf. Preliminary report S/N-PJG, prepared by the investigator from the National Office of the National Police (evidence file, annex 28 to the answering brief, folios 7065 to 7071).

⁶² Cf. Official letter 138-DINHMT, dated March 31, 2003, National Institute of Hygiene "Leopoldo Izquieta Pérez" (evidence file, annex 29 to the answering brief, folios 7073 to 7078).

⁶³ Cf. Formal accusation by the Criminal Prosecutor of Guayas against Bolívar Eduardo Espín Zurita of June 12, 2003 (evidence file, annex 31 to the Merits Report, folios 294 to 303); Official letter No. 1034-MFD-G of August 22, 2003 (evidence file, annex 33 to the Merits Report, folio 315.) The State indicated that earlier, on August 15 and 22, 2003, Mrs. Albarracín had asked the prosecutor to seek an order for the pre-trial detention of the vice principal. The crime of "sexual harassment is defined in Article 551 of the Criminal Code, in the following terms: "Anyone who solicits sexual favors for himself or for a third party, taking advantage of a position of authority in the workplace, classroom or similar situation, with the explicit or tacit understanding that harm may be caused in relation to the legitimate expectations that the victim may have in the context of that relationship, shall be punished with a prison term of six months to two years. [...] If sexual harassment is committed against a minor, it shall be punished with a prison term of two to four years."

⁶⁴ Cf. Complaint filed by Mrs. Albarracín on October 13, 2003 (evidence file, annex 35 to the Merits Report, folios 321 to 327). It is important to note that Article 512 of the Criminal Code in force at that time defined "rape" in the following terms: "Rape is carnal intrusion, through total or partial penetration of the male organ, orally, anally or vaginally; or vaginal or anal penetration with objects, fingers or body parts other than the male organ, of a person of any sex, in the following situations: 1. When the offended party is deprived of reason or consciousness, or when, due to illness or for any other reason, the victim cannot resist; and 3.- When violence, threats or intimidation are used." Under Article 515 of the Criminal Code, the punishments for such crimes were more severe when the perpetrator had authority or power over the victim or were committed by public officials who "have abused their offices to commit those offenses." Article 454 of that Code indicates that such actions "shall be punished with prison terms of one to four years and a fine of eight to seventy-seven dollars of the United States of America, to anyone who instigates or assists another person to commit suicide, if the suicide has been attempted or consummated." (Criminal Code of 1971. Evidence included *ex officio*).

⁶⁵ Cf. Criminal investigation No. 74-03, Prosecutor's report of October 28, 2003, issued by the Criminal Prosecutor of Guayas (evidence file, annex 34 to the answering brief, folios 7100 to 7109).

73. On December 16, 2003, the Superior Court of Justice of Guayaquil (hereinafter "Superior Court") ordered the pre-trial detention of the vice principal and on January 5, 2004, the Fifth Judge ordered that he be located and captured.⁶⁶

74. On August 23, 2004, the Fifth Judge issued an order to initiate the trial against the vice principal as the alleged perpetrator of sexual harassment.⁶⁷ On September 6, the judge ordered the Judicial Police to arrest the suspect.⁶⁸

75. On September 22, 2004, the vice principal, represented by his lawyer, filed an appeal for the annulment of the summons to a trial.⁶⁹

76. On September 2, 2005, the Superior Court dismissed the appeal filed by the accused, upheld the order to initiate the trial and amended the indictment to aggravated statutory rape. Among the reasons given by the Court for that amendment, the following stands out: "it is self-evident that the elements of the crime alleged [sexual harassment] are not present [...] Bolívar Espín did not pursue Paola Guzmán. Rather, she sought favors from him as an educator [because she was failing in a subject]. He [...] offered [to help her] in exchange for romantic relations." This was the "reason for the seduction." The Superior Court considered that the conduct of the vice principal was consistent with rape, based on the considerations presented below (*infra* para.190).⁷⁰

77. On October 5, 2005, the Fifth Criminal Judge of Guayas decided to suspend the proceedings until the accused appeared or could be captured.⁷¹

⁶⁶ Cf. Order for pretrial detention issued by the Superior Court of Justice on December 16, 2003 (evidence file, annex 38 to the Merits Report, folio 335) and Official letter No. 011-J-20PG (evidence file, annex 39 to the Merits Report, folio 337).

⁶⁷ Cf. Summons to a trial (evidence file, annex 38 to the answering brief, folios 7117 to 7123). Prior to this, on April 13, 2004, the Fifth Judge had summoned the parties to a "preliminary hearing" which, after several postponements, took place on August 20. According to the State, the hearing was originally scheduled for April 27, 2004, but on May 4 it was rescheduled for May 13. No reason was given as to why the hearing did not take place on April 27 and May 13. On May 17, 2004, the hearing was convened again for the last day of that month. However, it did not take place owing to the absence of the prosecutor. On August 9, the hearing was once again postponed until August 20.

⁶⁸ Cf. Criminal Trial 351-2003, Official letter 1273J-20PG of August 27, 2004, signed by the Fifth Criminal Judge of Guayas, addressed to the Provincial Chief of the Judicial Police of Guayas (evidence file, annex 39 to the answering brief, folio 7125).

⁶⁹ Cf. Criminal Trial 351-2003, brief submitted by the vice principal to the Fifth Criminal Judge of Guayas filing appeals against the summons to a trial and a motion of annulment (evidence file, annex 69 to the pleadings and motions brief, folios 5976 to 5980). According to the State, on that same date, the Fifth Criminal Judge of Guayas ordered an increase in the amount of the surety for the accused.

⁷⁰ Cf. Decision on the appeal, Superior Court of Justice of Guayaquil, September 2, 2005 (evidence file, annex 41 to the Merits Report, folios 344 and 345). The Court notes that in its Merits Report the Commission indicated that Articles 509 and 510 of the Criminal Code in force at the time stated, respectively: "Rape is copulation with a person, using seduction or deception to obtain their consent" and "rape shall be punished with a prison term of three months to three years if the victim is older than fourteen years of age and younger than eighteen." However, it has been confirmed that this wording corresponds to an amendment introduced in 2005, and that Article 509 previously stated "with an honest woman" instead of "with a person," and Article 510 stated "woman" instead of "victim" (Cf. Official Registry of Ecuador No 45, of June 23, 2005. Evidence included *ex officio*).

⁷¹ Cf. Decision of October 5, 2005 (evidence file, annex 42 to the Merits Report, folio 357).

78. On September 18, 2008, at the request of the defense, the prescription of the criminal action was declared and subsequently all measures against the accused were dropped.⁷²

D. Civil lawsuit for moral damages and administrative actions

79. In addition to the aforementioned criminal proceedings, the plaintiffs filed a civil lawsuit and administrative actions. Below is a summary of the main events.

80. *Civil proceedings.* On October 13, 2003, Mrs. Albarracín filed a civil lawsuit against the vice principal for "moral damages resulting from instigating [Paola's] suicide."⁷³ After several efforts and difficulties in notifying the accused of the proceedings, on April 15, 2004, he filed a response to the lawsuit, through his representatives.⁷⁴ On September 14, 2004 the judge declared Mr. Espín to have confessed (*declaró confeso*),⁷⁵ for having failed to appear at a hearing to provide a "judicial confession" at the request of the petitioners.

81. On June 7, 2005, the Twenty-third Judge ordered Mr. Bolívar Espín to pay compensation of USD\$ 25,000.00 (twenty-five thousand United States dollars) to Mrs. Albarracín for moral damages. On June 9, 2005, she also requested the payment of legal costs, which was denied, prompting her to appeal that decision on May 15, 2006.⁷⁶ The matter was then referred to the Superior Court of Justice of Guayaquil which, on September 1, 2006, annulled the proceedings because an appeal filed by the vice principal on June 10, 2005, had not been resolved.⁷⁷ The Superior Court returned the case to the original court to consider the appeal. On July 16, 2012, the Twenty-third Court declared the proceedings "abandoned" and ordered that the case be archived.⁷⁸

82. *Administrative actions.* Mrs. Albarracín also sent several letters to the authorities of the Ministry of Education on January 9 and August 19, 2003, and on January 14, 2004, as well as undated communication alleging that the school authorities had failed to provide assistance to Paola and requesting that the vice principal be punished for his behavior toward her.⁷⁹

⁷² Cf. Official letter No. 1703-J-20PG of November 18, 2008 (evidence file, annex 44 to the Merits Report, folio 362).

⁷³ Cf. Civil lawsuit of October 13, 2003 (evidence file, annex 45 to the Merits Report, folios 364 to 374).

⁷⁴ Cf. Brief answering the lawsuit of April 15, 2004 (evidence file, annex 50 to the Merits Report, folios 385 to 388).

⁷⁵ Cf. Decision of September 14, 2004 (evidence file, annex 53 to the Merits Report, folio 401).

⁷⁶ Cf. Appeal of May 15, 2006 (evidence file, annex 103 to the pleadings and motions brief, folios 6155 to 6156).

⁷⁷ Cf. Decision 341-06 of September 1, 2006, of the Second Chamber of the Superior Court of Justice of Guayaquil (evidence file, annex 51 to the answering brief, folio 7193).

⁷⁸ Cf. Decisions of February 13, 2007 (545-C-2007) and July 16, 2012 (545-2003) of the Twenty-third Civil Court of Guayaquil (evidence file, annexes 105 to the pleadings and motions brief and 54 to the answering brief, folios 6159 and 7195, respectively).

⁷⁹ Cf. Letter from Mrs. Albarracín to the Provincial Superintendent of Education of Guayas (evidence file, annex 58 to the Merits Report, folio 434); complaint submitted to the Undersecretary of the Ministry of Education (evidence file, annex 63 to the Merits Report, folio 451); communication of August 19, 2003 (evidence file, annex 67 to the Merits Report, folio 571), and brief of Mrs. Albarracín to the Provincial Director

83. On December 22, 2002, and January 23, 2003, the Provincial Superintendent of Education issued reports after interviewing a number of students at the school, in which he concluded that “the supposed romantic relationship cannot be confirmed” and found that there was no evidence that the vice principal had reciprocated Paola’s “infatuation.”⁸⁰ According to the State, on March 30, 2004, a summary administrative proceeding was opened against the vice principal for “alleged unjustified abandonment of his post.” The vice principal was subsequently dismissed from his post on December 30, 2004.⁸¹

VII MERITS

84. This case concerns the human rights violations perpetrated against the minor, Paola del Rosario Guzmán Albarracín, her younger sister Denisse Selena Guzmán Albarracín and their mother, Petita Paulina Albarracín Albán, based on allegations of sexual violence against the first. It is alleged that these acts of violence, including torture, were committed by public officials against Paola Guzmán, resulting in her death by suicide. All the events described took place at the public school attended by the adolescent. The plaintiffs also argue that the judicial and administrative actions undertaken after Paola Guzmán’s death were ineffective and violated the rights to judicial guarantees and judicial protection of her mother and her sister, whose personal integrity was also impaired.

85. The Court will first examine the alleged human rights violations related to the sexual violence suffered by Paola Guzmán, which allegedly impaired her right as a woman and a girl to live a life free from sexual violence at school, including an analysis of the different rights affected as a result. In second place, the Court will analyze the rights to judicial guarantees and judicial protection in connection with the judicial and administrative actions linked to those circumstances. In third place, the Court will consider the arguments regarding the violation of the right to personal integrity to the detriment of the mother and sister of Paola Guzmán Albarracín.⁸²

of Education of Guayas (evidence file, annex 70 to the Merits Report, folio 618). Also, in September 2003, four teachers at the school made a complaint to the administration alleging that the principal had covered up a “series of improprieties” and that the vice principal was having relations with a fourth year student; thus, Paola’s case was not isolated. In this regard, see the communication dated September 2003 (evidence file, annex 68 to the Merits Report, folios 574 to 576).

⁸⁰ Cf. First Report of the Provincial Office of Education, of December 22, 2002 (evidence file, annex 61 to the Merits Report, folios 444 to 447), and Second Report of the Provincial Office of Education, of January 23, 2003 (evidence file, annex 65 to the Merits Report, folios 562 to 566).

⁸¹ Cf. Communication of January 24, 2011 (evidence file, annex 71 to the Merits Report, folio 620). Prior to this, on May 14, 2003, the Provincial Supervisor of Education of Guayas informed the Provincial Sub-Director of Education of Guayas that the vice principal had not come to work in May 2003. See also the communication of May 14, 2003, signed by M.A., Provincial Supervisor of Education of Guayas, addressed to C.M., Provincial Sub-Director of Education of Guayas (evidence file, annex 55 to the answering brief, folio 7209).

⁸² The Court will consider the violations of rights alleged by the Commission and the representatives. In this regard, the Court has repeatedly indicated in its case law that “the representatives may invoke rights different to those indicated by the Commission in its Merits Report,” provided these are based on the factual framework presented by the Commission. Cf. *Case of Godínez Cruz v. Honduras. Merits*. Judgment of January 20, 1989. Series C No. 5, para. 172, and *Case López et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2019. Series C No. 396, para. 196.

VII.1 A CHILD'S RIGHT TO A LIFE FREE FROM SEXUAL VIOLENCE AT SCHOOL⁸³

A. Arguments of the Commission and of the parties

86. The **Commission** asserted that "there are many elements to conclude that Paola [...] was a victim of sexual violence at school." It emphasized that during the admissibility stage, the State itself had acknowledged that Paola Guzmán was the victim of sexual harassment and statutory rape by the vice principal.⁸⁴ The Commission argued that Paola was the victim "of violence based on her being a woman and a girl, [...] reflected [...] in a relationship based on sexual harassment which, in addition to being gender-based violence, should be considered as a serious situation of sexual violence." It held that similar violence was inflicted on her by the school doctor who allegedly "forced [Paola] to have sexual relations with him in exchange for performing an abortion of her possible pregnancy." The Commission considered that this situation impaired her "rights to health, personal integrity, honor and dignity, equality and non-discrimination, to live a life free from violence and the right to education, all as a result of violence committed against Paola, as a woman and a girl, including sexual violence."

87. The Commission argued that there were "multiple indications of a causal link" between the situation of violence suffered by Paola and her suicide. It stressed that "the Ecuadorian State did not deny this causal link" (in the procedure before the Commission) and that no alternative hypothesis regarding her death emerged from the domestic investigations. It also argued that the victim's "possible pregnancy [...] was] another pointer to a causal link between the violence endured by Paola and her suicide." The Commission considered that her death "and the circumstances that surrounded it" constituted a violation of Paola's rights to life and personal integrity.

88. The Commission indicated that all these circumstances are attributable to the State for its "failure to comply with its duty to respect [human rights]" and to "abide by its duty to guarantee those rights [prevention component]." It affirmed that both of these obligations "converge" in this case. First, the duty to respect, given that Paola's school was a State institution and the vice principal and the school doctor were public officials who took advantage of their positions of authority; and second, the duty of

⁸³ This section considers arguments concerning the violations of the rights to life, personal integrity, personal liberty, the protection of honor and dignity, freedom of thought and expression, the Rights of the Child, the right to equality before the law, the right to education and the right to health, as well as the obligations to respect and guarantee rights without discrimination, based on, respectively, Articles 4(1), 5(1), 5(2), 7(1), 11, 13, 19, 24, 26 and 1(1) of the American Convention. The Court also examines arguments on the right to education based on Article 13 of the Protocol of San Salvador. In addition, it considers arguments concerning the violation of Article 1 of the Inter-American Convention to Prevent and Punish Torture, which establishes the State's obligation to "prevent and punish torture," as well as the obligations to prevent and eradicate violence against women established in Article 7 of the Belém do Pará Convention. Ecuador ratified the Protocol of San Salvador on March 25, 1993, the Convention of Belém do Pará on September 15, 1995, and the Inter-American Convention to Prevent and Punish Torture on September 30, 1999. Those instruments entered into force, respectively, on November 16, 1999, March 5, 1995 and February 28, 1987.

⁸⁴ It is clear from paragraph 25 of the Admissibility Report (*supra* para. 2), under the heading "Position of the State," that "in relation to the facts, the State observed that Paola del Rosario was the victim of sexual harassment and statutory rape by the assistant principal, who took advantage of his authority to sexually harass her and ultimately forced Guzmán Albarracín, a child, into a sexual act than in the end left her pregnant." The text, as indicated in a footnote, is based on the following document: "Note N° 4-2-277/07 of the Ministry of Foreign Relations of Ecuador, dated November 16, 2007."

prevention because: a) the State should have known, or knew, about the situation at the school, since: i. the State education authorities should have been aware of what was happening in a public school, in fulfilment of their duties of supervision and inspection; and ii. it is "accredited" that the State "via other public officials and the school's own authorities, were aware of the situation of violence, including the sexual harassment that Paola was experiencing," and b) despite this fact, "no steps were taken to prevent or investigate the vice principal's behavior" prior to Paola's death. On this last point, the Commission indicated that the State of Ecuador did not report on any inspections carried out at the school, and had no "preventive or early warning tools" to address such situations.

89. The Commission added that, after learning that Paola had swallowed the white phosphorus pellets, the school authorities failed to take the necessary steps to ensure that she was immediately taken to a hospital. Instead, they waited until Paola's mother arrived to collect her daughter, which delayed her treatment by nearly 30 minutes.

90. In light of these considerations, the Commission concluded that the State is responsible for the violation of Articles 4(1), 5(1), 11, 19, 24 and 26 of the Convention, in conjunction with the obligations established in Article 1(1) thereof; of Article 13 of the Protocol of San Salvador; and of Articles 7.a and 7.b of the Belém do Pará Convention, to the detriment of Paola Guzmán.

91. The **representatives** indicated that two public officials at Paola's school, namely, the vice principal ("repeatedly") and the doctor ("within the context of the school's health services") committed acts of "sexual and gender-based violence in the education and health settings" against Paola, specifically, "harassment, abuse and rape." They considered that those acts violated Paola's rights to personal integrity, to "honor and private life," to health, education and "her right as an adolescent girl to a life free from gender-based violence." Therefore, the State violated Articles 5, 11, 19 and 26 of the American Convention, 7 of the Belém do Pará Convention and 13 of the Protocol of San Salvador.

92. The representatives further argued that the vice principal's relationship with Paola was based on "inequality of power," because he was both an "an authority figure" to "his student" and because he was "at least five decades" older than her. They stressed that, as a victim, she could not have given her "valid [...] consent" to that relationship, in which the vice principal took advantage of Paola's "academic vulnerability." As to the school doctor, they stated that, first, there was "sexual harassment" because he used his authority and power as an official, a health professional and an adult to request "sexual favors" from Paola in exchange for terminating her pregnancy. In addition, there was "sexual abuse" since the doctor took advantage of his power and of Paola's situation of vulnerability to engage in "activities of a sexual nature with her."

93. The representatives also alleged that Paola was the victim of rape, considering it proven that the vice principal had sexual intercourse with her, without her valid consent, as did the school doctor.⁸⁵ They considered that "Paola's special situation of vulnerability

⁸⁵ In their pleadings and motions brief, the representatives were not clear in their assertions regarding the doctor: on the one hand, they stated that "there are sufficient elements to consider that Paola" was the "victim of rape" by the school doctor, but on the other hand, they indicated that he had "possibly" had sexual relations with her. In their final written arguments the representatives held that "Paola was victim of rape by the school doctor."

meant that her consent could not be considered valid and therefore, her sexual encounters" with the vice principal "constituted rape."⁸⁶

94. They added that "harassment must be analyzed [...] not only in terms of gender-based discrimination, but also as a situation of intersectional discrimination; in [that] specific situation [...] various factors increased Paola's vulnerability to sexual violence."⁸⁷

95. The representatives also alleged that the State is responsible for Paola's suicide, both by "action" and by "omission." In the first case, they noted that her suicide was the "direct consequence" of the harassment she suffered from the vice principal and the doctor, both public officials. In the second case, the vice principal's behavior toward her was "tolerated by the rest of the school community," and therefore the State "should have taken steps to prevent Paola's suicide, given that the teachers at the school were aware of the harassment she suffered." The representatives also alleged that the State failed to take "reasonable and diligent" measures to save the adolescent's life after the school authorities found out that she had swallowed "diablillos." Thus, they considered that the State violated Paola's right to life, pursuant to Article 4 of the Convention.

96. Regarding the victim's right to education, the representatives alleged that this was impaired in two ways: first, because it encompasses the "right to sexual education," which is "a human right in itself," and Ecuador breached this right given that the Martínez Serrano High School "did not include sexual and reproductive health education in its curriculum." In second place, the representatives argued that Paola's right to "an education free from sexual violence" was impaired because "acts of harassment and rape [...] constitute[d] a violation of the right to education, recognized in Article 13 of the Protocol of San Salvador, a right that is also protected under Article 26 of the American Convention."⁸⁸ They emphasized that the "sexual harassment and rape" was committed by public officials, and noted the "tolerance" shown by the school staff. They added that "sexual harassment in a school constitutes a situation of discrimination that impedes access to education."

97. The representatives further argued that there was "arbitrary interference in [Paola's] decisions on reproductive health," given that "the vice principal forced [her] to have an abortion with the school doctor." They affirmed that the adolescent's free choice to terminate her pregnancy "was protected under the State's legal framework," but that in her case there was no free and informed choice, rather one imposed by Mr. Bolívar Espín "based on a relationship of power within the school environment." Therefore, they considered that her consent to the medical procedure was invalid.

⁸⁶ The representatives stated that "lack of information and education on her sexual and reproductive rights intensified Paola's situation of vulnerability and facilitated her subjection to the relationship of power perpetrated both by the vice principal and by the school doctor".

⁸⁷ As to the "factors that increased her vulnerability," the representatives mentioned that she was a girl and a woman, arguing that her "age and gender increased the individual risk of suffering violence within the educational context." They added that a lack of "sexual education" was another factor, since this was clearly insufficient in Paola's case. They indicated that "if [she] had been older, and had benefited from sexual education, she would have had the autonomy to take decisions on her sexuality and reproduction and to denounce any harassment to which she may have been subjected." They also mentioned her "economic situation."

⁸⁸ In support of their position they affirmed that "accessibility to education, as a component of the right to education [...] requires that girls and adolescents can attend school without being victims of sexual harassment, [which is] a barrier to access to education."

98. Similarly, they argued that lack of education and information on sexual and reproductive health and interference in that aspect of Paola's health amounted to violations, on the part of Ecuador, of Paola's rights to "personal integrity, progressive autonomy, reproductive freedom [,] to a life free from gender-based violence," to health and to education, enshrined in Articles 5, 7, 11, 13, 19 and 26 of the American Convention; 13 of the Protocol of San Salvador; and 7 of the Belém do Pará Convention. In their final written arguments they alleged that Article 13 of the American Convention, which recognizes the "right to freedom of thought and expression," was also violated, through her stigmatization in the media based on the events. They supported their assertion by citing, *inter alia*, the duty of journalists "to confirm, in a reasonable manner, the facts on which their opinions are based."

99. The representatives also alleged that Paola suffered torture. They argued that "the constant sexual harassment [she] endured, perpetrated by the vice principal [...] qualifies as an act of torture that culminated in the ultimate expression of Paola's suffering: her suicide." They considered that in this case the "constituent elements" of torture were present, namely: a) an intentional act; b) one that causes severe suffering, and c) committed with a specific aim or purpose. They explained that: a) the acts of harassment perpetrated against Paola were intentional; b) their "severity" "was reflected (1) in the nature of the acts to which she was subjected, (2) [in] the victim's situation of special vulnerability and (3) [in] her suicide as the final expression of suffering to which an adolescent girl, in her situation, was subjected," and c) the "specific purpose" of the vice principal was to "sexually abuse Paola, taking advantage of the relationship of power that existed between them." The representatives considered that the State violated her right to personal integrity in relation to the prohibition of torture, in breach of Articles 5(2) of the Convention and 1 of the Inter-American Convention to Prevent and Punish Torture.

100. Regarding the alleged sexual violence perpetrated against Paola, the **State** argued that it could not "offer a legal definition" of the relationship between her and the vice principal; therefore it could not accept or deny that their relationship was "improper" or constituted sexual harassment, or harassment of another type.⁸⁹

101. Nevertheless, the State acknowledged that, at the time of the facts of this case, it had "not implemented an adequate and effective public policy" to prevent sexual abuse "at the school in question." It also recognized "the absence of mechanisms for reporting, investigating and punishing [such behavior], and the lack of measures to prevent situations of sexual violence within [that] institution" (*supra* para. 16).

102. The State also argued that it could not be held responsible for Paola's suicide. First, it considered that it could not be held accountable for causing her suicide because "suicides do not have a single cause [,] but are the result of a sequence of events." It added that "it is the individual who takes the decision and acts to cause his own physical death." Therefore, "it cannot be affirmed that the girl's suicide was solely the result of the alleged sexual aggression suffered at the school." Furthermore, the State insisted that: a) it fulfilled its duty of "protection" since it has a regulatory system that protects the right to life, and b) it fulfilled its duty of "care" because Paola "received emergency medical assistance approximately four hours after she swallowed the white phosphorus,

⁸⁹ During the public hearing the State was asked whether or not it recognized that there had been an improper relationship between Paola and the vice principal. In its written arguments, Ecuador stated that it could not define that relationship, since the judgment issued during the criminal proceedings did not establish a legal definition for it.

and less than an hour after the school authorities were made aware of the fact.” Regarding the latter, Ecuador emphasized that: i.- “owing to the amount of white phosphorus swallowed, there was a high probability of a fatal outcome, even if [Paola] had received immediate medical care after swallowing the poison,” and ii.- “the duty of care of an educational institution cannot be equated with the duty of care of a health institution.” Consequently, Ecuador denied its responsibility for the violation of the right to life established in Article 4 of the Convention.

103. As to the representatives’ arguments regarding the supposed effects on the victim’s reproductive health, Ecuador denied the factual grounds for assuming that Paola had been coerced into terminating her pregnancy, given that, according to the relevant documentary evidence, “it is not possible to establish or determine the existence of [her] pregnancy.” The State also held that it had fulfilled its duty to be transparent in providing information on sexual and reproductive health, and therefore did not violate the right of access to information.

104. With respect to the arguments related to health and education, the State argued that it did not violate Article 26 of the Convention. It considered that the “controllable condition” of said article by the Court is the obligation of progressive development and the consequent duty of non-retrogression. In that regard, in its answering brief it mentioned various policies implemented in relation to rights of the child, health and education.⁹⁰

105. Ecuador further argued that is not responsible for acts of torture. It pointed out that the facts to which the case refers (which have been investigated by the domestic system) refer to “alleged sexual harassment,” not to the “alleged crime of rape.” It argued that, although sexual harassment is an act of violence against women, it is not a “serious human rights violation.” It argued that the CEDAW Committee “has indicated that sexual violence may constitute torture or cruel, inhuman or degrading treatment, particularly in cases of rape, domestic violence or harmful traditional practices,” circumstances that did not occur in this case. Therefore, the State held that it did not violate Article 5(2) of the Convention.

B. Considerations of the Court

⁹⁰ Among those policies, the State pointed out that: a) the Ministries of Health and Education implemented the “Comprehensive Health Manual for Educational Contexts” (which includes aspects of sexual and reproductive health); b) in 2014, the national campaign “*Nadie nunca mas!* Education without sexual violence” was launched; c) the Ministry of Education also implemented the Campaign for the Prevention of Sexual Violence in the Family “*Ponle los seis sentidos!*”; d) the “Super Heroes” campaign was also implemented to prevent sexual abuse; e) “under a similar approach the State launched the campaigns ‘Super Padres’ (Super Parents) and ‘Super Profes’ (Super Teachers)”; f) the “*Educa TV*” television program broadcasts “the teaching hour,” which includes content on violence and sexuality; g) since March 2016, the Ministry of Public Health has followed the “Operative Guidelines for the Prevention of Self-harm/Suicide”; h) in 2016 the “Guide to Community Mental Health” was disseminated; i) in 2017, the “Guide to Clinical Practice in Depression” was produced; j) the Ministry of Health implements local suicide prevention plans; k) the State has produced a “Manual of Standards and Procedures to Assist Victims of Domestic and Gender-based Violence”; l) Ministerial Agreement No. 267-2019 regulates the “First Assistance Service” and the “Mandatory Form for Notification of Cases of Presumed Gender-based Violence and Serious Human Rights Violations;” m) Ecuador has developed a “Sexual and Reproductive Health Plan (2017-2021);” n) since 2007, the State has adopted the “National Plan for the Prevention of Adolescent Pregnancy;” ñ) in 2010 Ecuador established the “Intersectional Strategy for the Prevention of Pregnancy and Family Planning in Adolescence (ENIPLA)”, and o) the State has implemented an “Intersectoral Policy for the Prevention of Pregnancy in Girls and Adolescents (2018-2025).”

106. The Court has already heard several cases related to acts of violence perpetrated against women⁹¹ and children in different situations, including those deprived of their liberty,⁹² armed conflicts,⁹³ operations by security forces⁹⁴ and in the context of human migration.⁹⁵ It has also had an opportunity to consider cases of sexual violence against girls.⁹⁶ However, this is the first time that the Court addresses a case of sexual violence specifically against a girl in an educational setting.

107. Furthermore, the Court finds that this case presents a number of circumstances that are connected with each other. The various human rights violations alleged are interrelated; thus, in part, each of the violations was caused by another or is the result of it. In other words, there is a close link between the different human rights violations implied in acts of sexual violence and the correlative obligations to ensure a woman's right to a life free from violence and those related to the protection of children and the right to education.

108. Bearing this in mind, the Court will proceed as follows: first, it will enumerate the various rights and obligations relevant to this situation; second, it will address the sexual violence suffered by Paola del Rosario Guzmán Albarracín; third, it will consider the representatives' arguments regarding the definition of the acts committed against Paola as 'torture'; fourth, it will examine arguments related to the violation of the right to life. Finally, the Court will present its conclusion.

B.1 The right of girls to a life free from sexual violence at school

109. The rights to personal integrity and to private life, recognized in Articles 5 and 11 of the American Convention, entail certain freedoms, including sexual freedom and control over one's own body. These rights may be exercised by adolescents in the measure that they develop the capacity and maturity to do so.⁹⁷

⁹¹ Cf., *Case of the Miguel Castro-Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 28, 2018. Series C No. 371.

⁹² Cf., *Case of the "Institute of Reeducation of Minors" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, and *Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations.* Judgment of May 14, 2013. Series C. No. 260.

⁹³ Cf., *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, and *Case of Vereda La Esperanza v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2017. Series C No. 341.

⁹⁴ Cf., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999, and *Case of Servellón García et al. v. Honduras.* Judgment of September 21, 2006. Series C. No. 152.

⁹⁵ Cf. *Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 272, and *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 282.

⁹⁶ Cf., *inter alia*, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, and *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary objections, merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 350.

⁹⁷ This Court has indicated that Article 5 of the Convention protects personal integrity, both physical and mental as well as moral (*infra* para. 148). For its part, Article 11 of the American Convention prohibits all arbitrary or abusive interference in the private life of persons. In cases of sexual violence, the violation of personal integrity is an infringement of private life, which "encompasses sexual life or sexuality." (*Cf. Case of*

110. In addition, Article 3 of the Belém do Pará Convention establishes the right of every woman to a life free from violence.

111. In this regard, the Court finds it necessary to stress that the concept of “violence” used to examine the State’s responsibility in this case is not limited to physical violence, but also includes “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere,” pursuant to Article 1 of the Belém do Pará Convention. Article 6 of the same treaty establishes that the right of every woman to be free from violence includes her right to “be free from all forms of discrimination” and to “be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.” Similarly, Article 2 of that international instrument specifically mentions sexual harassment in educational institutions as a form of violence against women.⁹⁸

112. Article 7 of the Belém do Pará Convention also imposes specific obligations on States to pursue policies to prevent violence “by all appropriate means and without delay,” and to “refrain from engaging in any act or practice of violence against women” and “ensure that their authorities [and] officials” act in conformity with this obligation. They must also “apply due diligence to prevent, investigate and impose penalties” for such conduct, and take all appropriate measures, including legislative and administrative or other measures to “prevent, punish and eradicate violence against women.”

113. Bearing in mind these provisions, the Court has considered that “violence directed against a woman for being a woman or violence that disproportionately affects women, is a form of discrimination against women,”⁹⁹ associated with the “manifestation of the historically unequal relations of power between women and men.”¹⁰⁰ The duties set forth

Fernández Ortega et al. v. Mexico. Preliminary objection, Merits, reparations and costs. Judgment of 30 August 2010. Series C No. 215, para. 129, and *Case of Azul Rojas Marín et al. v. Peru*, para. 141). In that regard, the Court has indicated that the protection of private life “includes a series of factors related to the dignity of the individual, including, for example, the capacity to [...] determine their own personal relationships. The concept of private life encompasses aspects of physical and social identity, including the right to personal autonomy, personal development and the right to establish and develop relationships with other human beings and with the outside world.” (Cf. *Case of Fernández Ortega et al. v. Mexico*, para. 129, and *Case of López et al. v. Argentina*, para. 97). The Committee on the Rights of the Child has indicated that “the freedoms that are of increasing importance in accordance with growing capacity and maturity, include the right to control one’s health and body, including sexual and reproductive freedom.” (Committee on the Rights of the Child. *General Comment 15 on the right of the child to the enjoyment of the highest attainable standard of health (Article 24)*. April 17, 2013. Doc. CRC/C/GC/15, para. 24).

⁹⁸ The same applies to Article 2 of the Declaration on the Elimination of Violence Against Women. In addition, Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women requires States to adopt the necessary measures to eliminate discrimination against women in education and ensure them equal rights with men in that sphere. The Convention entered into force on September 3, 1981, and Ecuador ratified it on November 9 of that same year.

⁹⁹ Cf. *Case of the Miguel Castro-Castro Prison v. Peru*, para. 303, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico*, para. 221.

¹⁰⁰ Cf. *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 124. See, also, *Case of Véliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 207. The Court shares the view of the Committee for the Elimination of Discrimination Against Women regarding the fact that “violence against women is a form of discrimination that seriously inhibits the capacity of women to enjoy rights and freedoms on an equal footing with men.” The Committee has stated that “violence against women [...] undermines or annuls women’s enjoyment of their human rights and fundamental freedoms,” and that “traditional attitudes that regard women as subordinate to men or as having stereotyped roles perpetuate

in the Belém do Pará Convention complement and reinforce the obligations established in the American Convention to ensure the rights established in this treaty. In this regard, the Court has indicated that “the States should adopt comprehensive measures to comply with due diligence in cases of violence against women,” which includes having “an appropriate legal framework for protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to the respective complaints.”¹⁰¹ The “comprehensive” nature of the prevention strategy should prevent the risk factors and, at the same time, strengthen the institutions that can provide an effective response in cases of violence against women.”¹⁰²

114. In the instant case, the Court also finds it relevant to consider the Convention on the Rights of the Child as part of a “very comprehensive international *corpus iuris* for the protection of children and adolescents,” since it is important to “establish the content and scope” of Article 19 of the American Convention that requires States to adopt “measures of protection” for children.¹⁰³ Article 19 of the Convention on the Rights of the Child requires States Parties to take all appropriate measures to “protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

115. The Committee on the Rights of the Child has understood that the term “violence” encompasses “all forms of damage to children enumerated in Article 19, paragraph 1” of the Convention on the Rights of the Child. It has explained that, while “in common parlance the term violence is often understood to mean only physical harm and/or intentional harm,” the Committee’s use of the word “violence” should not be interpreted as a way to “minimize the impact of, and need to address, non-physical and/or non-intentional forms of harm (such as, *inter alia*, neglect and psychological maltreatment).”¹⁰⁴ Similarly, the independent expert for the United Nations Study on Violence against Children adopts the concept of “violence” against children contained in Article 19 of the Convention on the Rights of the Child, also drawing on the “definition provided in the ‘World Report on Violence and Health’ (2002): the intentional use of physical force or power, threatened or actual, against a child, by an individual or group,

widespread practices involving violence or coercion” and that the “underlying consequences” of that violence “help to maintain women in subordinate roles.” It also recommends that States “take positive measures to eliminate all forms of violence against women” (Committee for the Elimination of Discrimination Against Women, General Recommendation No. 19, *Violence against women*, 1992, Doc. A/47/38, paras. 1, 7, 11 and 4, respectively).

¹⁰¹ Cf. *Case of González et al. (“Cotton Field”) v. Mexico*, para. 258, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, para. 180.

¹⁰² Cf. *Case of González et al. (“Cotton Field”) v. Mexico*, para. 258, and *Case of López Soto et al. v. Venezuela*, para. 131.

¹⁰³ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*, para. 194, and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, para. 42. The Court has stated that such “measures of protection” can “be interpreted bearing in mind other provisions” (*Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, para. 164 and, similarly, the *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs*. Judgment of March 9, 2018. Series C No. 351, para. 149). It is important to note that Ecuador ratified the Convention on the Rights of the Child on March 23, 1990, and that this treaty entered into force on September 2, 1990.

¹⁰⁴ Committee on the Rights of the Child, General Comment No. 13, *Right of the child to freedom from all forms of violence*, April 18, 2011, Doc. CRC/C/GC/13, para. 4.

that either results in or has a high likelihood of resulting in actual or potential harm to the child's health, survival, development or dignity."¹⁰⁵

116. In addition to the above, and as mentioned previously (*supra* para. 114), Article 19 of the American Convention requires States to adopt "measures of protection" for children.¹⁰⁶ Accordingly, the Court has indicated that States,

[...] are required to promote special measures of protection based on the principle of the best interests of the child, assuming their role as guarantor with greater diligence and responsibility in consideration of a child's special situation of vulnerability. The Court has established that children have special rights derived from their condition, and that these are accompanied by specific duties of the family, society, and the State. Also, their condition requires special protection that must be understood as a right that is additional and complementary to other rights recognized by the Convention to every individual. Likewise, the State has the duty to adopt positive measures to fully ensure the effective exercise of the rights of the child.¹⁰⁷

117. The Court has indicated that "the right to education, which contributes to the possibility of enjoying a dignified life and preventing unfavorable situations for the minor and for society itself, stands out among the special measures of protection for children and among the rights recognized for them in Article 19 of the American Convention."¹⁰⁸ It has also explained that this right, in respect of children, is derived from the aforementioned provision interpreted in accordance with the Convention on the Rights of the Child, Article 26 of the American Convention and the Protocol of San Salvador.¹⁰⁹ The latter recognizes the right to education in Article 13, a matter upon which the Court can exercise its jurisdiction;¹¹⁰ thus, in the instant case, the Court does not consider it necessary to rule on the alleged violation of the right to education based on Article 26 of the Convention. Moreover, the right to education is recognized in Article 28 of the Convention on the Rights of the Child.

¹⁰⁵ Report of the United Nations independent expert for the study of violence against children, August 29, 2006, Doc. A/61/299, para. 8.

¹⁰⁶ The measures of protection mandated "go well beyond the sphere of strictly civil and political rights. The measures that the State must undertake, particularly given the provisions of the Convention on the Rights of the Child, encompass economic, social and cultural aspects that pertain, first and foremost, to the children's right to life and right to humane treatment." (*Case of the "Juvenile Reeducation Institute" v. Paraguay*, para. 149).

¹⁰⁷ Cf. *Case of Carvajal Carvajal et al. v. Colombia. Merits, reparations and costs*. Judgment of March 13, 2018. Series C No. 352, para. 193. See also *Juridical Condition and Human Rights of the Child. Advisory Opinion OC 17/02* of August 28, 2002. Series A No. 17, paras. 53, 54, 60, 86, 91, and 93, and *Case of the "Juvenile Reeducation Institute" v. Paraguay*, para. 160.

¹⁰⁸ Cf. *Juridical Condition and Human Rights of the Child. Advisory Opinion OC 17/02*, para. 84.

¹⁰⁹ Cf. *Case of the Girls Yean and Bosico v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130, para. 185. Although in that case the Court referred to "primary" education, these comments also cover the right to different aspects of education. As to Article 26 of the American Convention, the Court has indicated that the provisions of Article 49 of the Charter of the Organization of American States, to which Article 26 refers, contemplate the right to education (Cf. *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 234 and footnote 264).

¹¹⁰ The Court has jurisdiction to rule on contentious cases related to the right to education under Article 19(6) of the Protocol of San Salvador. This allows for the application of the system of individual petitions regulated by Articles 44 to 51 and 61 to 69 of the American Convention on Human Rights in the event of a violation of Article 8, paragraph a) (Union Rights) and 13 (Right to Education) of the Protocol (Cf. *Case of Gonzales Lluy et al. v. Ecuador*, para. 234 and footnote 263).

118. That said, an education imparted in a manner that breaches human rights does not achieve the stated objectives, is wholly contrary to these and, consequently, violates the right to education. States must therefore take appropriate steps to prevent human rights violations in the course of a child's educational process.¹¹¹ To comply with these duties, States must take into consideration the serious nature and specific features of gender-based violence, sexual violence and violence against women, all which are a form of discrimination.¹¹² Thus, children have the right to a safe school environment and to an education free from sexual violence. Furthermore, as the ESCR Committee has indicated, education must be "accessible" to everyone, "especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds." The Committee has also emphasized that the prohibition against discrimination in education "applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds for discrimination."¹¹³

119. Consequently, States must "take the necessary measures to prevent and prohibit all forms of violence and abuse, including sexual abuse [...] by school personnel,"¹¹⁴ who are in a position of authority and trust in relation to students and even their parents. In this regard, it should be borne in mind that girls and adolescents are in a particular

¹¹¹ Aside from other more specific actions, States must adopt prevention measures that include those aimed at "[c]hallenging attitudes which perpetuate tolerance and acceptance of violence in all its forms, including gender-based [violence ...] and other power imbalances." Also important are "educational measures" that "address attitudes, traditions, customs and behavioral practices which condone and promote violence against children [and] should encourage open discussion about violence." Those measures "should support children's life skills, knowledge and participation and enhance the capacities of caregivers and professionals in contact with children." (Committee on the Rights of the Child, General Comment No. 13, paras. 47 and 44, respectively). The United Nations Organization for Education, Science and Culture (UNESCO) and UN Women have identified "strategic areas" that are essential to achieving a "robust response to school related gender-based violence," something that requires careful analysis of "each context." Among other aspects, they emphasized the key role played by education in "transforming the root causes of violence," and mentioned the importance of curricula to prevent violence and promote gender equality, as well as "training for education staff to give them the tools to prevent and respond to school-related gender-based violence." They also emphasized the need for "national policies and action plans" that facilitate efforts to prevent violence, the "quality of the school environment," which should be safe and welcoming, the availability of "clear, safe and accessible procedures and mechanisms for reporting incidents" and actions for "monitoring, evaluation and research on school related gender-based violence (UNESCO and UN Women, *Global Guidance: Addressing School Related Gender-Based Violence*, 2019, pages 14 and 15).

¹¹² These forms of violence often overlap, since they are closely related. In this regard, UNESCO and UN Women have stated that "gender-based violence in schools [...] may be defined as acts or threats of sexual, physical or psychological violence occurring in and around schools, perpetrated as a result of gender norms and stereotypes and enforced by unequal power dynamics. [...] it is complex and multifaceted [and] includes different manifestations of physical, sexual and/or psychological violence, such as verbal abuse, bullying, sexual abuse and harassment, coercion and assault, and rape. These different forms of violence often overlap and reinforce each other." (UNESCO and UN Women, *Global Guidance: Addressing School Related Gender-Based Violence*, page 20). Based on statements by UNESCO, the O'Neill Institute, in its *amicus curiae*, stressed that sexual violence particularly affects the "educational prospects, job opportunities and the development of the life project" of girl victims. The *amicus curiae* brief submitted by CLACAI emphasized that "comprehensive sexual education is a measure for the prevention of all forms of sexual violence," as long as it is implemented with a "gender perspective" and in an age-appropriate manner. It also explained that education encourages children to exercise their sexual and reproductive rights.

¹¹³ ESCR Committee, General Comment No. 13, *Right to education (Article 13 of the International Covenant on Economic, Social and Cultural Rights)*. December 1999, Doc. E/C.12/1999/108, paras. 6 and 31. The Committee emphasized that the obligation of non-discrimination "is subject to neither progressive realization nor the availability of resources."

¹¹⁴ Committee on the Rights of the Child, General Comment No. 4, *Health and development of adolescents in the context of the Convention on the Rights of the Child*, July 2003, Doc. CRC/GC/2003/4, para. 17.

situation of vulnerability,¹¹⁵ since they “are often vulnerable to sexual abuse by [...] older men.”¹¹⁶ In this regard, the Committee on the Rights of the Child has indicated that States have the “strict obligation” to take all appropriate measures to address violence against children. This obligation “refers to the broad range of measures cutting across all sectors of Government, which must be used and be effective in order to prevent and respond to all forms of violence,” including effective and appropriate sanctions against perpetrators.¹¹⁷

120. Based on all the foregoing considerations, it is clear that the duties to prevent, eradicate and punish violence against women and to adopt measures of protection for children, together with the right to education, imply the obligation to protect girls and adolescents against sexual violence at school and, of course, not to allow the exercise of such violence in that environment. In that regard, it should be borne in mind that adolescents, and girls in particular, are more likely to suffer acts of violence, coercion and discrimination.¹¹⁸ States must therefore take steps to detect or monitor the problem of sexual violence in educational institutions and develop policies to prevent it.¹¹⁹ Simple,

¹¹⁵ As indicated by the Committee on the Rights of the Child, “adolescence is not easily defined.” General Comment No. 20, concerning adolescence focuses on the period of childhood from 10 to 18 years of age, explaining that it does not seek to define adolescence (Cf. Committee on the Rights of the Child, *General Comment 20 on the implementation of the rights of the child during adolescence*, December 6, 2016, Doc. CRC/C/GC/20, paras. 1 and 5.) It should be recalled that Article 1 of the Convention on the Rights of the Child defines a child as “any human being below the age of 18, unless under the law applicable to the child majority is attained earlier.” Therefore, the Court makes clear that adolescents, as minors under 18 years of age are, in legal terms, children. The words “adolescent” and “girl” are used interchangeably in this judgment, particularly with reference to Paola Guzmán, and do not denote a differentiated legal regimen.

¹¹⁶ CEDAW Committee, General Recommendation No 24, *Women and Health*, 1999, Doc. A/54/38/Rev.1 chap. I, para. 12.

¹¹⁷ The Committee emphasized that the obligation refers to all forms of violence against children, and therefore “cannot be interpreted as accepting some forms of violence.” It called on the States to “establish the absolute prohibition of all forms of violence against children in all contexts, as well as effective and appropriate sanctions against those responsible.” It is also pertinent to point out that the obligation to protect children against all forms of violence encompasses legislative measures, including budget allocations, as well as administrative measures. Other relevant aspects of the obligation to prevent violence are those described by the Committee on the Rights of the Child such as the wide range of actions that include “policies, programs and monitoring and oversight systems required to protect the child from all forms of violence;” inclusive “intra- and inter-agency child protection policies;” and the establishment of “a comprehensive and reliable national data collection system in order to ensure systematic monitoring and evaluation of systems (impact analyses), services, programmes and outcomes based on indicators aligned with universal standards, and adjusted for and guided by locally established goals and objectives.” In addition, prevention must include legal actions. (Cf. Committee on the Rights of the Child, General Comment No. 13, paras. 37, 39, 40, 41, 42, 46 and 54.) With particular regard to adolescents, the Committee on the Rights of the Child stresses that “engaging adolescents in the identification of potential risks and the development and implementation of programmes to mitigate them will lead to more effective protection.” It added that, “by being guaranteed the right to be heard, to challenge rights violations and to seek redress, adolescents are enabled to exercise agency progressively in their own protection.” (Committee on the Rights of the Child, *General Comment 20 on the implementation of the rights of the child during adolescence*, para. 19.)

¹¹⁸ Cf. ESCR Committee, *General Comment No 22 on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, May 2, 2016, Doc. E/C.12/GC/22, para. 30.

¹¹⁹ The Committee on the Rights of the Child has indicated that the States have “special obligations” to act “with due diligence, and the obligation to prevent violence or violations of human rights, the obligation to protect child victims and witnesses from human rights violations, the obligation to investigate and to punish those responsible, and the obligation to provide access to redress human rights violations.” (Committee on the Rights of the Child, General Comment No. 13, para. 5). UNESCO and UN Women have indicated that national action on school related gender-based violence should be informed by research and data, emphasizing the importance of “monitoring, evaluation and research.” (UNESCO and UN Women, *Global Guidance: Addressing School Related Gender-Based Violence*, page 15). As indicated by the expert witness Gauché

accessible and safe mechanisms must also be provided so that incidents can be reported, investigated and punished.¹²⁰

121. The Court will now examine the facts of this case based on the aforementioned guidelines.

B.2 Sexual violence suffered by Paola Guzmán Albarracín

122. According to the facts of the case, for more than one year, Paola del Rosario Guzmán Albarracín had a sexual relationship with the vice principal of her school when she was between 14 and 16 years old.

123. In order to assess the elements that suggest that this relationship involved Paola's subjection to repeated and continued acts of sexual violence, it is essential to establish four important aspects that help to characterize the facts.

124. First, based on the guidelines outlined in the preceding section (*supra* paras. 110, 111 and 113 to 115), under international law, specifically the Belém do Pará Convention and the Convention on the Rights of the Child, sexual violence against women or girls should not be understood solely as acts of a sexual nature carried out through physical violence, but also those committed by other means, which are equally detrimental to their rights or cause them harm or suffering. Nevertheless, sexual violence against women or girls may involve different degrees of abuse, depending on the circumstances of each case and various factors, including the characteristics of the acts committed, their reiteration or continuity and the preexisting personal connection between the victim and her aggressor, or her subordination based on a relationship of power. Another relevant factor, depending on each case, is the victim's personal situation, i.e. being a girl; and, although children and adolescents have progressive autonomy in the exercise of their rights, that does not deprive them of their right to measures of protection.

125. In second place, there is evidence that in this case vaginal copulation occurred. Thus, based on the guidelines for the assessment evidence established in its case law,¹²¹

Marchetti, State policies should include "increasing the capacity" of those who work with children, through training efforts.

¹²⁰ UNESCO and UN Women indicated that "there should be clear, safe and accessible procedures and mechanisms for reporting incidents, assisting victims and referring cases to the appropriate authorities. Responses to school-related gender-based violence should ensure the availability of easily-accessible, child-sensitive and confidential reporting mechanisms, health care services, including counselling and support, and referral to law enforcement." (UNESCO and ONU Women, *Global Guidance: Addressing School Related Gender-Based Violence*, page 14).

¹²¹ Since its first decision on the merits of a contentious case, the Court has indicated that for an international court, whose role is to determine the State's responsibility, the criteria for assessing evidence are less rigid than in the domestic legal systems (*Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 127, 128, 130 and 132 to 136, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, reparations and costs. Judgment of November 28, 2018. Series C No. 370, para. 168*). Also, as indicated previously, it should be borne in mind that acts of sexual violence, particularly those involving penetration, constitute a "particular type of aggression that, in general, is characterized by occurring in the absence of people other than the victim and the aggressor or aggressors. Given the nature of this type of violence, the existence of graphic or documentary evidence cannot be expected." (*Case Fernández Ortega et al. v. Mexico*, para. 100, and *Case of Azul Rojas Marín et al. v. Peru*, para. 146). Consequently, as is evident from the aforementioned case law, in the majority of cases, when the victim of sexual aggression is alive, his or her statement "constitutes fundamental evidence of the fact." In this case, however, the victim is deceased and it is necessary to resort to other elements.

the Court understands that because of the nature of the acts involved, the existence of documentary evidence or direct testimonies cannot be expected. In the instant case it is not possible to obtain Paola's statement; however, this cannot prevent the Court from ruling appropriately. Therefore, the fact that clear evidence exists in this case¹²² should be considered sufficient to prove such acts in order to determine the State's responsibility, especially because the State's lack of diligence in investigating the case - which Ecuador has already acknowledged - has allowed this crime to go unpunished.

126. Third, it should be noted that under domestic law, the conduct of an adult person who engages in sexual acts with a minor under 18 years of age - as in Paola's case - is defined as a crime. In particular, Ecuadorian law at the time of the events contemplated the crime of "statutory rape" in cases involving different elements specified in the legal definition, and allowed for the criminal prosecution of anyone who, without physical violence, engages in such conduct. The definition of this crime, under the legislation in force at the time of the facts, was based on stereotyped gender guidelines that were discriminatory, an aspect that is examined in the section below (*infra* Chapter VII.2). However, it is important to stress that the characterization of the acts committed against Paola as 'unlawful acts of serious sexual violence' is based both on the provisions of domestic law in force in Ecuador at the time of the events, and on international law.

127. Fourth, as explained below, in this case the abuse occurred in the context of a relationship of power and trust, committed by someone who had a duty of care within a school,¹²³ toward a person in a vulnerable situation, which allowed the consummation of acts of sexual violence.¹²⁴

¹²² In this regard, reference has already been made to the letters left by Paola, together with various testimonies provided by her schoolmates, in which they claimed to have observed acts of a sexual nature between Paola and the vice principal, and stated that Paola mentioned that she had sexual relations with him, that she was pregnant and that she had taken a pregnancy test (*supra* paras. 49 a 51 and 56). These statements, regardless of Paola's supposed pregnancy, show that she had sexual intercourse involving vaginal penetration. There is no reason to consider the girl's statement false, or to conclude that her comments did not correspond to the facts. Furthermore, from the evidence it is clear that the relationship between the vice principal and Paola was public knowledge or widely known in her school community. This is also clear from statements made by various teachers and even from a survey of students and their comments to the media, included in a police report (*supra* para. 68 and footnote 38 ; Cf. statements of E.T. and J.M. of January 31, 2003, *supra* para. 65; statement of I.I. of March 14, 2003, *supra* para. 67; anonymous survey of January 31, 2003 carried out among students at the Martínez Serrano secondary school (evidence file, annex 64 to the Merits Report, folios 452 to 560); letter from Paola del Rosario Guzmán Albarracín to the vice principal (*supra* para. 56); Mrs. Albarracín's submissions to the Criminal Prosecutor of August 15, 2003 (*supra* footnote 39); brief of Petita Paulina Albarracín Albán of illegible date, in the context of Criminal Prosecution N-74-2003 (evidence file, annex 43 to the pleadings and motions brief, folios 5881 to 5886), and statement of the teacher G.B. of September 17, 2003, provided during the administrative procedure (evidence file, annex 89 to the pleadings and motions brief, folios 6034 and 6035).

¹²³ The Committee on the Rights of the Child has explained that "while respecting the evolving capacities and progressive autonomy of the child, all human beings below the age of 18 years are nonetheless "in the care of" someone, or should be, and indicated that the definition of "caregivers" in Article 19 of the Convention on the Rights of the Child includes, *inter alia*, "education, school and early childhood personnel." (Committee on the Rights of the Child, General Comment No. 13, para. 33).

¹²⁴ With regard to the exploitation of situations of vulnerability or power, the Court shares the view expressed by the Committee of Lanzarote, which calls for the protection of children - even when they reach the legal age to have sexual relations and the perpetrator does not use coercion, force or threats - when persons abuse of a relationship of trust or authority (Cf. Lanzarote Committee, *First Implementation Report: Protection of children against sexual abuse in the circle of trust*, December 4, 2015, para. 42). Similarly, in its *amicus curiae* brief, ECPAT refers to the text of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, known as the "Lanzarote Convention," particularly Article 18, and stresses that, regardless of whether a child has reached the age for sexual activity, children should be legally protected until the age of 18 from "sexual abuse in the circle of trust." The Lanzarote Convention was adopted on October 25, 2007, and entered into force on July 1, 2010. ECPAT emphasized that this treaty has

128. The Court will consider the foregoing points and will then refer to the discriminatory nature of the violence. Finally, it will present its conclusion.

B.2.1 Exploitation of a relationship of power and a situation of vulnerability

129. As a first element, it is important to stress that from the circumstances of this case it is clear that Paola's subjection to a sexual relationship with the vice principal occurred within the context of his position and role at the school. This implies that he acted as a public official, which compromises the State's responsibility.¹²⁵

130. The vice principal was not only an adult man who had sexual relations with a girl under 18, with whom he had an age difference of nearly 40 years; he also had a role of power and a duty of care in relation to her. Obviously, this aspect is central to the case because, as an academic authority at Paola's school, he was required not only to respect the girl's rights, but also, in his role as educator, he should have offered her guidance and education in a manner consistent with her rights and ensured that these were protected.¹²⁶ Their sexual liaison also took place in the context of a clearly unequal relationship, in which the vice principal, as an academic authority, enjoyed a situation of superiority *vis-à-vis* a female student.

131. Thus, the vice principle obtained a sexual relationship by taking advantage of his position of power and trust. This is obvious, in concrete terms, because the evidence indicates that the sexual acts between the vice principal and Paola began as a condition for him to help her so that she would pass the school year.¹²⁷ In that situation, and in the context of harmful gender stereotypes that tend to blame the victim, the vice

been ratified by 44 States and "is one of the most ambitious, comprehensive and advanced international legal instruments for the protection of children against sexual exploitation and sexual abuse. It may also be signed by countries that are not members of the European Council."

¹²⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, para. 170*, and *Case of Villamizar Durán et al. v. Colombia. Preliminary objection, merits, reparations and costs. Judgment of November 20, 2018. Series C No. 364, para. 139*.

¹²⁶ In that regard, the Court shares the view expressed by the Committee of Experts of MESECVI, in its *amicus curiae* brief, that those working in the area of education have the ineludible obligation to safeguard the personal integrity of the students and avoid, at all costs, situations that may create improper advantages or benefits as a consequence of their subordinate position. This duty is especially reinforced in relationships involving children and adolescents, as developing individuals. Ecuador's domestic laws also recognize the right of students to be protected against all forms of violence in educational institutions. As indicated by SURKUNA in its *amicus curiae* brief, this is stipulated in the Organic Law on Intercultural Education, of 2011.

¹²⁷ In its *amicus curiae* brief, the Committee of Experts of MESECVI "recognize[d] the progressive autonomy of adolescents in establishing their sexual and affective relationships," but added that "on many occasions, particularly where age differences and superior-subordinate relationships exist, [...] there are cases in which, according to the particular circumstances, consent is annulled or invalidated." It explained that any analysis must consider "the relationship of power between the parties from a gender perspective; whether there is a particular context that encourages violence; whether other cases exist with the same patterns; the particular conditions of the victim (age, gender, etc.); the actions of the perpetrators, and the visible and invisible consequences in the victims." It added that sexual harassment is not always identified as such by women victims when there is no explicit act of violence, owing to "accepted cultural and social patterns, which consider as 'normal' certain relations and interactions between men and women that are really a perverse abuse of power [, and regard] women and girls as exploitable sexual objects."

principal was able to exercise power and take advantage of a relationship of trust in order to normalize acts that were improper and injurious to the adolescent's rights.¹²⁸

132. In this regard, the expert witness Casas indicated that the promise to help Paola move up to the next grade or "pass the year"

operates as a form of "grooming," a certain preparation [...] to create conditions for an emotional and affective closeness, in which the public official – the teacher – has clear superiority not only because of his position, but also because of his age. Paola [was] his target, identified as such not only by her age and vulnerability as an adolescent girl but specifically because she had a poor (academic) performance. [...] these promises can turn into blackmail, "you give me something, I give you something," in a context of sexual harassment by deception.

133. In its *amicus curiae* brief, the Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI), explained that sexual harassment may involve a single act or several acts, the latter being more frequent. It added that "when sexual violence implies a series of acts," it is common to "make the violence invisible" and to blame the victims – the women or girls – for what happens ("because of the way they behave, dress, or act; because a superior-subordinate relationship exists from which they may obtain a personal benefit [,] or for any other subjective reason").

134. Indeed, the facts of this case and the concepts mentioned previously indicate that not only was there prior sexual harassment and abuse, but also sexual intercourse and that this behavior occurred over a period of time (*supra* para. 122), involving the continuity or reiteration of serious acts of sexual violence.¹²⁹

135. Furthermore, these acts occurred in a context in which Paola's vulnerability as an adolescent girl was heightened by a situation, which was not exceptional, of a lack of effective actions to prevent sexual violence in schools and address institutional tolerance.

136. It has already been noted that sexual harassment and abuse in schools was a "known problem" and yet, at the time of the facts, no effective measures were taken to prevent and punish this behavior (*supra* paras. 44 to 47). The State also admitted that, at that time, there were no adequate public policies for preventing such behavior or for

¹²⁸ This Court has already noted that negative or harmful gender stereotypes may have a negative impact on the exercise of rights (Cf. *Case of González et al. ("Cotton Field") v. Mexico*, para. 401; *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 329, para. 187, and *Case of Azul Rojas Marín et al. v. Peru*, para. 199). The Court has indicated that gender stereotypes involve pre-conceptions about roles attributed to men and women that are often related to the subordination of women. The concept is explained in greater detail below (*infra* para. 188). In this regard, the representatives have pointed out that in the instant case Paola was affected by the stereotype of "seductive adolescent girl," and was blamed for the sexual violence that she suffered. In relation to sexual harassment, the International Labour Organization (ILO) has noted that there is a false idea that "women are to blame for being harassed for being provocative," emphasizing that this is "[false, since men objectify women as sexual objects of their fantasies." (ILO. *Sexual harassment at work. Gender, health and safety at work*. Fact Sheet 4, page 3).

¹²⁹ The expert witness Gauché Marchetti considers that "a relationship between an adult in charge of a public school - and therefore in a position of authority as a State agent responsible for providing the right to education - and one of his underage students, may be considered sexual harassment, when grades or other academic benefits are offered in return for such a relationship. This, in turn, is considered one of the most serious forms of violence against girls and adolescents [...] since it also amounts to sexual abuse if it leads to a sexual relationship that can bring unwanted and unforeseen consequences for an adolescent."

reporting, investigating and punishing acts of sexual violence in educational institutions (*supra* paras. 16, 21, 23).¹³⁰

137. The Court notes that the expert witness Ximena Cortés Castillo considered that Paola belonged to a “vulnerable school community” because of her social situation and the conditions at her school.¹³¹ Moreover, this “school community” tolerated the behavior of the vice principal who victimized Paola. Consistent with the situation described above (*supra* paras. 135 and 136), the Court also notes that various witnesses indicated that the abuse suffered by Paola was not isolated, since other similar cases had occurred at the school, and that the school’s staff, including the principal, knew about Paola’s relationship with the vice principal, or of its possible existence (*supra* paras. 50 and 51). However, there is no evidence to suggest that any action was taken to report that situation or to prevent its continuation or the consummation of acts injurious to the girl’s rights. This, despite the fact that the vice principal’s conduct would constitute an unlawful act as defined by the State’s legislation (*supra* para. 126). To the contrary, there are indications of initial attempts by the school to conceal what was happening and even to blame and stigmatize Paola for it, saying that she was provoking the relationship with the vice principal. Also, after her death, there were even efforts to ensure his impunity.¹³² According to a statement by one of Paola’s classmates, the students at the school were “pressured by the president of the Teachers’ Association” to “support” the vice principal (*supra* paras. 63 and 65). This tolerance implied a failure to comply with the obligation to respect the human rights of Paola Guzmán Albarracín.

138. For their part, the representatives have affirmed that “the education received by Paola Guzmán did not include concepts related to her reproductive health or her right to autonomy and informed consent.” The State did not comment specifically on this point, but mentioned various policies it had implemented in this regard. For the most part, these were introduced after the facts of the case, and there is insufficient information on previous actions.¹³³ Therefore it cannot be ascertained that Paola received education or information on sexual or reproductive rights at school.

¹³⁰ Similarly, in their joint expert opinion the expert witnesses Cobos Velazco and Bustamante Torres, proposed by the State, noted that “in 2002 there was no public policy to enable victims of sexual violence in schools to report their abusers.”

¹³¹ According to the expert opinion presented before the Inter-American Commission by Ximena Cortés Castillo, Paola belonged to a “vulnerable educational community” because the school she attended had a “precarious administration,” “lacked potable water and hygiene services,” shared its facilities with another school and carried out its activities in “overcrowded conditions.” Also, its students came from “low-income families” and parents with “low levels of education,” who were “unemployed and/or in precarious jobs” (expert opinion of Ximena Cortés Castillo provided to the Commission). The Court notes that Ecuador challenged the validity of Ms. Cortés’ statements before the Commission and the Court, because they were based on the “psychological autopsy” technique which, according to the State, should have been carried out within a few months after the suicide, based on the relevant protocols. Ms. Cortés stated that her study was conducted nearly 12 years after the events. The expert witnesses Ayala Yépez and Aguirre explained that over time the “psyche” of the persons interviewed would have changed and that this “undermines the precision” of the “psychological autopsy.” Ms. Cortés argued that several authors consider that it is possible to conduct a “psychological autopsy” a long time after the events. She added that she had not only carried out interviews, but had also studied documents, which remain unaltered over time. The Court finds that the arguments made by the State and by the experts Ayala Yépez and Aguirre do not wholly invalidate Ms. Cortés’ study, but considers that its “accuracy” may have been weakened. Therefore, based on its authority to assess evidence, and taking into account the above considerations, the Court deems it pertinent to assess the expert opinion of Ximena Cortés Castillo.

¹³² The expert witness Gauché Marchetti indicated that “[a] school in which such acts are permitted on a regular basis and over a period of time, suggests a serious failing on the part of the State.”

¹³³ Evidence provided by the State indicates that, from 1994, it decreed “universal access, without cost, to a set of essential sexual and reproductive health services,” under the “Free Maternity and Child Care

139. In this regard, the expert Muñoz Villalobos has emphasized the importance of sexual education and has indicated that, under current international standards, this may be considered as a human right in itself and an essential means to strengthen education in general. He added that several United Nations bodies have recognized the human right to a comprehensive sexual education and consider that it should be a mandatory component of schooling.¹³⁴ Thus, the right to education encompasses education on sexual

Program.” According to the State’s comments on this matter, that provision is related to medical attention, not to education. Also, in 1998, the “Law on Sexual Education and Love” was approved to “promote sexual education in the country’s schools.” (Both laws are mentioned in evidence presented by the State (Cf. Ministry of Public Health, Official letter No. MSP-DNDHGI-033-0 of August 6, 2019, Technical Report DNDHGI-67; evidence file, annex 58 to the answering brief, folios 7218 to 7232).) The text of this last law states, in Article 4, that “the Ministry of Education shall be responsible for preparing open and flexible education plans and programs on sexuality and love” and that “each school shall adapt those plans and programs to its own cultural reality and submit them to the consideration and approval of the institution’s Parental Counseling Department” (Cf. Law on Sexual Education and Love, 1998, evidence included *ex officio*). No information was provided on the implementation of those plans and programs prior to 2003. In 1999 the State published “Standards and Procedures for Reproductive Health Care,” which contains a section on reproductive health for adolescents, including educational activities to promote adolescent health care.” (Cf. Ministry of Public Health, Official letter No. MSP-DNDHGI-033-0 of August 6, 2019, Technical Report DNDHGI-67). Although the documentary evidence forwarded by the State indicates that these norms establish “methodological recommendations” for the design of “contents,” there is no information as to whether these were applied, either in general terms or in specific aspects, in the area where Paola lived or at the school she attended. Also, the expert witnesses Cobos Velazco and Bustamante Torres explained that at the end of the 1990s “sexual orientation and individual counseling” were included among the activities for students, but that in 2000 the government approved the “National Plan for Education on Sexuality and Love ‘PLANSA,’” which was “implemented” in 2003, along with the “National Program for Education on Sexuality and Love ‘PRONESA.’” When both expert witnesses were questioned about the obligation of schools, in 2002, to include sex education in the school curriculum, they did not mention any regulations or policies other than those which were in force prior to 2003.

¹³⁴ It should be noted that a number of States subject to this Court’s jurisdiction adopted legislation that contemplates the right to sexual and reproductive health education: Argentina approved National Law 26.150, and provincial legislation such as the Comprehensive Sexual Education Law of Buenos Aires No. 2110. The first law establishes that all students have the right to receive comprehensive sexual education at school, while the second establishes the duty of care and responsibility in the exercise of sexuality. Bolivia approved Law No. 342 on Youth and Law No. 548, Code of Childhood and Adolescence. Article 39 of the first law provides for education on sexuality and reproductive health; the second establishes the right to differentiated services in sexual and reproductive health, the right to sexual education, information based on science and actions to prevent adolescent pregnancy. In Chile, Law 20.418 establishes the right to information and counseling on fertility, sexuality and relationships. It recognizes the right of everyone to receive education, information and counseling on the regulation of fertility in order to decide on contraceptive methods and seeks to prevent pregnancy in adolescents. Colombia has enacted the following laws: 115, General Law of Education of 1994; 1098, Code of Childhood and Adolescence of 2006, and 1620, Law of Coexistence in Schools of 2013. These establish, respectively, that: a) sex education is obligatory in all public or private institutions offering formal education at the preschool, elementary and secondary levels (Article 14.e); b) the administration and teachers of academic institutions and the education community in general must implement guidance mechanisms for teaching on sexual and reproductive health (Article 44), and c) education on human, sexual and reproductive rights seeks to train individuals to recognize themselves as active subjects of human, sexual and reproductive rights and to enable them to take assertive, informed and autonomous decisions to freely exercise their sexuality (Article 2.b). Costa Rica has implemented Decision N° 04-17-2012, Comprehensive Education Program on Affectivity and Sexuality; Law 7739, Code of Childhood and Adolescence; and Law N° 7735 on Comprehensive Protection for Adolescent Mothers, each of which includes: a) the Education Program on Integral Affectivity and Sexuality as part of science studies; b) the State’s obligation to include topics related to sexual education, reproduction and pregnancy for adolescents in national education policies (Article 58), and c) the obligation of public and private health services to “impart informative courses on sexual education for adolescent mothers, with the aim of preventing another unplanned pregnancy” (Article 9.d). Ecuador’s Organic Law on Intercultural Education, of 2011, supported by Articles 3, 6, 7, 11, 132, establishes the right to mandatory comprehensive sex education in public and private educational establishments. Guatemala approved the laws on Comprehensive Protection for Children and Adolescents and Universal and Equitable Access to Family Planning Services, 2012, which establish the State’s obligation to design and implement sexual education programs (Article 30) and require the Ministry of Education to promote integrated education on health care and sexuality for adolescents (Article 10), respectively. In Mexico, sexual education has been a constitutional right since 2019 (Article 3 of the Constitution). Mexico has also approved the General Law on the Rights of Children and Adolescents and the General Law of Education which require, respectively, the

and reproductive rights. According to the ESCR Committee, it “entails a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age appropriate.” Also, in relation to this right, States have an obligation to provide “comprehensive education and information,” taking into account “the evolving capacities of children and adolescents.”¹³⁵ This education must ensure that children have an adequate understanding of the implications of sexual and emotional relationships, particularly in terms of their consent to such relationships, so that they can freely exercise their sexual and reproductive rights.¹³⁶

140. In the instant case, Paola did not receive the education that would have enabled her to understand the sexual violence inherent in the acts to which she was subjected and did not have access to an institutional system that would have supported her in coping with or reporting that situation. To the contrary, this violence was validated, normalized and tolerated by the institution.

B.2.2 The discriminatory nature of the violence suffered by the victim

141. The violence to which Paola was subjected also entailed a form of discrimination. As mentioned previously, gender-based violence and violence against women are a form of discrimination (*supra* para. 113) prohibited by Article 1(1) of the American Convention. Sexual violence against girls not only reflects a prohibited form of discrimination based on gender, but can also be discriminatory based on age. Although that aspect is not explicitly contemplated in Article 1(1) of the American Convention, the provision prohibits discrimination based on “other social conditions” different from those listed which, in general, affect groups that are especially vulnerable. This applies to children,¹³⁷ who may be disproportionately and more severely affected by acts of

promotion of comprehensive sex education that is appropriate to the age, cognitive development and maturity of children and adolescents, so that they may exercise their rights in an informed and responsible manner (Article 58, viii), and that schools include comprehensive sexual education in their study plans and programs (Article 30.x). In Nicaragua, Law No. 287, Code of Childhood and Adolescence, establishes the right of children and adolescents to receive integral sexual education (Article 44). In Panama, Law No. 3, the Family Code, states that “public and private educational institutions shall implement mandatory sexual and family education programs for adolescent mothers and fathers.” In Paraguay, Law No. 1680, Code of Childhood and Adolescence, establishes that the State, with the participation of parents and relatives, shall provide children and adolescents with comprehensive health and sexual education services and programs and recognizes their right to be informed and educated according to their level of development, culture and family values (Article 14). In Uruguay, Law No. 17.823, Code of Childhood and Adolescence, and Law No. 18.426, Defense of the Right to Sexual and Reproductive Health, ensure the right of every child and adolescent to information on and access to health care services, including sexual and reproductive health services, and promote teacher training on sexual and reproductive rights for teachers in primary, secondary and tertiary education.

¹³⁵ ESCR Committee, *General Comment No 22, Right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, paras. 9 and 49.

¹³⁶ The expert witness Muñoz Villalobos, citing the Committee on the Rights of the Child, explained that “the levels of comprehension in boys and girls are not uniformly linked to their biological age. Studies have shown that information, experience, social environment, cultural expectations and the level of support received contribute the development of the child’s capacity to form an opinion.” He added that, based on guidelines from international law, when trying to ensure a proper balance between respect for the progressive autonomy and appropriate levels of protection, we must bear in mind a number of factors that influence the decision-making of children and adolescents. Similarly, in its *amicus curiae* brief, *Human Rights Watch* referred to investigations conducted in more than 40 countries which show that the absence of comprehensive sexual education deprives children and adolescents from accessing the necessary information about their sexuality and reproduction, which “may expose them to sexual exploitation and abuse.”

¹³⁷ The Court has explained that “the phrase ‘any other social consideration’ in Article 1(1) of the Convention [...] must be interpreted in the most favorable perspective for the individual and for the evolution of fundamental rights in contemporary international law” (*Gender Identity, equality and non-discrimination of same sex couples. State obligations in relation to the change of name, gender identity, and the rights derived*

discrimination and gender-based violence.¹³⁸In this regard, the Committee on the Rights of the Child considers that discrimination on the basis of any grounds, including “gender,” “whether overt or hidden, offends the human dignity of the child,” and is “capable of undermining or even destroying the capacity of the child to benefit from educational opportunities.”¹³⁹ For its part, the Court has indicated that “in the case of child victims of sexual violence, the impact can be exacerbated and they may suffer an emotional trauma that differs from that suffered by an adult, with extremely profound effects, in particular when the victim’s relationship with the perpetrator is based on trust and authority.”¹⁴⁰

142. That said, by virtue of the obligation of non-discrimination, States are “obliged [...] to adopt positive measures to revert or change discriminatory situations that exist in their societies which affect a specific group of persons.”¹⁴¹ Consequently, “States need to invest in proactive measures to promote the empowerment of girls, challenge patriarchal and other harmful gender norms and stereotyping and promote legal reforms to address direct and indirect discrimination against girls.”¹⁴² This duty is linked to Articles 19 of the American Convention and 7.c of the Belém do Pará Convention. Despite this obligation, prior to December 2002, there is no evidence that the State implemented policies aimed at having a positive impact on Paola’s school environment and preventing or reverting gender-based violence against girls in an educational setting. Therefore, in Paola’s case, the harassment and sexual abuse not only constituted acts of violence and discrimination in themselves, but also included many factors of vulnerability and risk of discrimination that intersected and were associated with her condition as a minor and a female. Moreover, these acts of violence and discrimination took place in a structural context¹⁴³ in which sexual violence was a known problem in schools, yet the State failed

from a link between same sex couples (interpretation and scope of Articles 1(1), 3, 7, 11.2, 13, 17, 18 and 24, in relation to Article 1 of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 70. Also see, Right to information on consular assistance in the framework of the guarantees of due legal process. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 115.) The ESCR Committee has explained that “the nature of the discrimination varies according to the context and evolves over time. Therefore, discrimination based on ‘other social condition’ requires a flexible approach that includes other forms of differentiated treatment that cannot be justified reasonably and objectively and are comparable to the specific reasons recognized in Article 2(2) [of ICESCR]. These additional motives are generally recognized when they reflect the experience of vulnerable social groups that have been marginalized in the past or that are at present.” It added that “age is a prohibited reason for discrimination in different contexts.” (ESCR Committee, General Comment. No. 20, *Non-discrimination in economic, social and cultural rights (Article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights)*, July 2, 2009, Doc. E/C.12/GC/20, paras. 27 and 29, respectively).

¹³⁸ The Court has already examined circumstances in which “numerous factors of vulnerability and risk of discrimination intersected that were associated with [the individual’s] condition as a minor [and] a female” and has noted that “certain groups of women suffer discrimination throughout their life based on more than one factor combined with their gender.” (Cf. *Case of Gonzales Lluy et al. v. Ecuador*, paras. 290 and 288, respectively, and *Case of I.V. v. Bolivia*, para. 247).

¹³⁹ Committee on the Rights of the Child, General Comment No 1, *The Aims of Education*, April 2001, Doc. CRC/GC/2001/1, para. 10.

¹⁴⁰ *Case of V.R.P., V.P.C. et al. v. Nicaragua*, para. 163.

¹⁴¹ *Case of Azul Rojas Marín et al. v. Peru*, para. 89.

¹⁴² Committee on the Rights of the Child, *General Comment 20 on the implementation of the rights of the child during adolescence*, para. 28.

¹⁴³ Regarding the concepts of intersectional and structural discrimination, see the Court’s judgments in the cases of *Gonzales Lluy et al. v. Ecuador* (para. 290); *Workers of Hacienda Brasil Verde v. Brazil. (Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016. Series C No. 318, paras. 334 to 343); *I.V. v. Bolivia* (para. 247); *Ramírez Escobar et al. v. Guatemala* (paras. 276 and 177), and *Cuscul*

to adopt effective measures to address it (*supra* para. 135). Therefore, as regards the human rights affected by the sexual violence suffered by Paola, the State failed to meet its obligations to respect and guarantee these without discrimination (*supra* paras. 109, 110, 111, and 117, and *infra* paras. 157 and 165).

B.2.3 Conclusion on sexual violence

143. Based on the facts examined so far, the Court concludes that Paola del Rosario Guzmán Albarracín was subjected, for more than one year, to sexual harassment, abuse and sexual intercourse by the vice principal of her school. This was a situation in which serious acts of sexual violence were committed against her in an educational establishment, by a public official who took advantage of his position of power and authority and of the victim's vulnerability, violating her right, as an adolescent woman, to live a life free from violence as well as her right to education. The violence Paola suffered was not an isolated incident; rather, it occurred within a structural context in which various factors of discrimination intersected, namely, the gender and age of the victim. Furthermore, this situation was tolerated by the State authorities, who failed to take adequate measures to address sexual violence in schools and to provide her with education on her sexual and reproductive rights, thereby increasing her situation of vulnerability.

144. The above situation implies, on the one hand, a direct violation of Paola's rights owing to the sexual violence committed against her and, on other, the tolerance of such violence by the State authorities. In both cases, this conduct shows that the State failed in its obligation to respect Paola's rights. Furthermore, as the State partially admitted, it did not fulfill its duty to ensure those rights because it failed to adopt measures to prevent and address sexual violence.

145. Finally, it should be noted that the representatives and the Commission have presented arguments related to Paola's supposed pregnancy and the alleged coercion to force her to have an abortion. While the medical evidence rejects the notion that she was pregnant, certain facts and expert opinions suggest that there was negligence in performing those tests. Consequently, there is not sufficient evidence to prove that she was pregnant.¹⁴⁴ In conclusion, the Court finds that evidence of the alleged pregnancy is insufficient, and therefore does not consider it proven.

Pivara et al. v. Guatemala (Preliminary objection, merits, reparations and costs. Judgment of August 23, 2018. Series C No. 359, paras.128 and 138). Similarly, the *amicus curiae* brief of the Human Rights Club of the Private Technical University of Loja and the Center for Social Action and Legal Policy considered that the situation of a girl in the school environment is one of "aggravated vulnerability," given her gender and age.

¹⁴⁴ The expert witness Herrera Almagro explained that during an autopsy it is essential to consider the circumstances prior to a person's death so as to guide the examination of the body, and that this information is usually included in the police record of the official removal of the body. In this case, the police report on the official removal of the body included Mrs. Albarracín's comments about Paola's letters in which she professed her "love" for the vice principal. In his testimony before the Commission, the expert witness Dr. Nájera pointed out that the autopsy was conducted without considering "the background to her death." In his expert report he noted that the autopsy did not investigate certain aspects related to sexual activity: no "vaginal swab" was taken to establish "the presence of spermatozoids and/or semen" and no general information was recorded, such as the description of the hymen. Dr. Nájera also noted various failings in the labeling, identification and chain of custody of the samples taken from Paola's body. (*Cf.* Statement of José Mario Nájera Ochoa before the Commission; evidence file, annex 10 to the Merits Report, folios 159 to 164.) Furthermore, after the prosecutor ordered blood tests to be taken from Paola's body on January 28 and February 10, 2003 (*supra* para. 64), a report on the "toxicology and pathology tests" was issued on February 12, 2003, indicating that the "quantitative beta chorionic gonadotropin test was negative," but that "the sample is old and not adequately conserved," and that "even if beta chorionic gonadotropin had been present, it would be totally destroyed within one week" (Toxicology and pathology tests, February 2003; evidence file, annex 27 to the answering brief, folio 7063). The test forwarded to the prosecutor on March 31, 2003 (*supra* para. 69) indicated

146. Consequently, since it is not possible to ascertain whether or not Paola was pregnant, the Court cannot consider any circumstance or argument related to the termination of the pregnancy. Therefore, it will not examine arguments on alleged human rights violations related to that aspect.

B.3 Regarding the alleged torture

147. The Court will now examine arguments concerning Articles 5(2) of the American Convention and 1 of the Inter-American Convention to Prevent and Punish Torture, presented by the representatives, who affirmed that the sexual violence committed against Paola Guzmán violated those provisions since it entailed acts of torture.

148. While Article 5(1) of the American Convention establishes, in general terms, the right to personal integrity - physical, psychological and moral - Article 5(2) specifically prohibits torture or other cruel, inhuman or degrading treatment or punishment. Any violation of Article 5(2) entails a violation of Article 5(1).¹⁴⁵ According to the Court's case law,

the violation of a person's right to physical and psychological integrity is a category of violation that has different connotations of degree and ranges from torture to other types of humiliation or cruel, inhuman or degrading treatment, the physical and psychological aftereffects of which vary in intensity based on factors that are endogenous and exogenous to the individual (such as duration of the treatment, age, sex, health, context and vulnerability) that must be analyzed in each specific situation.¹⁴⁶

Based on Article 5(2) of the American Convention, "torture" should be understood as any act of abuse that: i) is intentional; ii) causes severe physical or mental suffering, and iii) is committed with any objective or purpose.¹⁴⁷ Furthermore, Article 1 of the Inter-American Convention to Prevent and Punish Torture reinforces the absolute prohibition of torture and the obligation of States to prevent and punish any act of torture or any attempt to commit torture or other cruel, inhuman and degrading treatment within their jurisdiction.¹⁴⁸

that the studies of the organ samples taken in the autopsy "rule out a pregnancy." The report also "emphasize[d] that upon receiving the containers with samples of the viscera, the uterus and its right and left attachments (ovaries), these were completely open." Also, on September 30, 2003, a medical examiner who was the Head of the Police Forensic Medicine Service, made a statement to the Prosecutor denying previous statements (Cf. brief of Petita Paulina Albarracín Albán with illegible date, in the context of the criminal investigation N-74-2003, evidence file, annex 43 to the pleadings and motions brief, folios 5881 to 5886), that he had not told the news media that Paola had been pregnant, and also that "the results of the macroscopic autopsy [,] the histopathological report and the test of human chorionic gonadotropin in the blood, determined that there was no pregnancy" (statement of the medical examiner J.M. of September 30, 2003, evidence file, annex 32 to the answering brief, folio 7090). The Court also notes that the testimonies regarding Paola's pregnancy mention that she believed that she was pregnant because she had used a "test" and there were no elements to suggest this was based on any obvious bodily signs. The expert witness Jacome Artieda also indicated that "it is possible to have a positive test prior to the expected date of menstruation and then not have clinical pregnancy."

¹⁴⁵ Cf. *Case of Yvon Neptune v. Haiti. Merits, reparations and costs*. Judgment of May 6, 2008. Series C No. 180, para. 129, and *Case of Azul Rojas Marín et al. v. Peru*, para. 139.

¹⁴⁶ Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, paras. 57 and 58, and *Case of Azul Rojas Marín et al. v. Peru*, para. 159.

¹⁴⁷ Cf. *Case of Bueno Alves v. Argentina. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 164, para. 79, and *Case of Azul Rojas Marín et al. v. Peru*, para. 160.

¹⁴⁸ Cf. *Case of the Women Victims of Sexual Torture in Atenco v. Mexico*, para. 180, and *Case of Azul Rojas Marín et al. v. Peru*, para. 143. Also see, *Case of the Gómez Paquiyauri Brothers v. Peru*, paras. 106,

149. The Court has indicated that, in certain cases, some forms of sexual violence may constitute torture. However, to make this determination, it is first necessary to examine the specific circumstances of the case, such as the intentionality, the severity of the suffering and the purpose of the act.¹⁴⁹

150. The Court also considers that any analysis of ill-treatment¹⁵⁰ should include a gender perspective, as this helps to analyze more precisely its nature, gravity and implications and, depending on the case, to determine whether it is based on discriminatory stereotypes.¹⁵¹ In that regard, acts of sexual violence may be gender-specific, committed against women and girls.¹⁵² When determining the suffering inflicted by ill-treatment, "gender is a fundamental factor," along with the age of the victim. The Committee against Torture has stated that "the female condition, combined with other distinctive characteristics or conditions of the person, such as [, *inter alia*,] age [...], determine the ways in which women and girls suffer or risk suffering torture or mistreatment, and its consequences."¹⁵³ For its part, the Committee on the Rights of the Child considers that the concepts of "torture and cruel, inhuman or degrading treatment" include serious acts of violence against children committed by "persons who have authority over the child [...] the brutality of such acts often results in life-long physical and psychological harm and social stress."¹⁵⁴ Thus, States have an obligation to take

114 and 117. Regarding sexual violence, in their final written arguments the representatives alleged violations of the provisions of the Inter-American Convention to Prevent and Punish Torture other than Article 1. Those allegations are time-barred and will not be examined. Nor will the Court consider other extemporaneous arguments presented by the representatives concerning the definition of facts that are addressed below (*infra* Chapters VII.2 and VII.3), different to the sexual violence suffered by Paola. On several previous occasions, the Court has excluded time-barred arguments from its considerations (see, for example, *Case of Lori Berenson Mejía v. Peru. Merits, reparations and costs*. Judgment of November 25, 2004. Series C No. 119, para. 214 and *Case of Arrom Suhurt et al. v. Paraguay. Merits*. Judgment of May 13, 2019. Series C No. 377, footnote 123).

¹⁴⁹ Cf. *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, Merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, paras. 110 and 112, and *Case of Azul Rojas Marín et al. v. Peru*, para. 160.

¹⁵⁰ In this section the expression "ill-treatment" is used as a general and comprehensive term for torture and other cruel, inhuman or degrading treatment or punishment. Nevertheless, the Court's examination of this point refers to the arguments presented by the representatives regarding their definition of sexual violence in this case as torture (*supra* para. 147).

¹⁵¹ The Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has expressed similar views, referencing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and stating: "Full integration of a gender perspective into any analysis of torture and ill-treatment is critical to ensuring that violations rooted in discriminatory social norms around gender and sexuality are fully recognized, addressed and remedied." (Human Rights Council, Thirty-first Session, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, January 5, 2016. Doc. A/HRC/31/57, para. 6).

¹⁵² According to the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment "women are subjected to gender-specific forms of torture, including rape, sexual abuse and harassment, virginity testing, forced abortion or forced miscarriage." He has also stated that "forms of sexual abuse" may constitute acts of torture against children. (*Provisional report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, to the Human Rights Council*, August 11, 2000, Doc. A/55/290, paras. 5 and 10.)

¹⁵³ Committee against Torture, General Comment No. 2, *Application of Article 2 by the States Parties*, January 24, 2008, Doc. CAT/C/GC/2, para. 22.

¹⁵⁴ Committee on the Rights of the Child, General Comment 13, para. 26. Article 37 of the Convention on the Rights of the Child requires States to ensure that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment." The Committee adds that "this is complemented and

steps to prevent ill-treatment in schools and "institutions engaged in the care of children."¹⁵⁵

151. In this case, it is clear that the sexual violence caused Paola severe suffering. In that regard, sexual violence has very serious implications for children. As mentioned below (*infra* para. 157), Paola's suffering became more evident after her suicide, showing the extent to which her psychological suffering had become unsustainable. The link between her suicide and the sexual violence inflicted on her is inferred from the letters Paola left, in which she clearly referred to her relationship with the vice principal, saying that she could no longer bear her suffering and for that reason swallowed poison. This is supported by the statements of the expert witness Ximena Cortés Castillo, who affirmed that the suicide in this case was linked to sexual violence and should be understood as "an impact [thereof]: Paola took her life under the pressure of guilt," since what she was experiencing was "unbearable and unprecedented for her psychological capacity."¹⁵⁶

152. Despite the foregoing, in order to classify an act as "torture" it is necessary to use the utmost rigor in determining its nature. Torture constitutes a particularly heinous attack on the dignity of a human being because the perpetrator intentionally inflicts severe pain or suffering on a powerless victim for a specific purpose, or uses methods designed to annul their personality or diminish their physical or mental capacity to achieve a specific purpose.¹⁵⁷ In the Court's view, the proven facts in this case are not sufficient to allow it to conclude that torture was committed in this case.

B.4 The State's responsibility for the violation of the right to life of Paola del Rosario Guzmán Albarracín

153. The Court will now consider whether the State may be held internationally responsible for violating the right to life of Paola del Rosario Guzmán Albarracín.

154. As the Court has already stated,

[...] the right to life plays a fundamental role in the American Convention, because it is essential for the exercise of the other rights. Compliance with Article 4, related to Article 1(1) of the American Convention, supposes not only that no one may be arbitrarily deprived of their life (negative obligation), but also requires States to take all appropriate steps to protect and preserve the right to life (positive obligation), in keeping with the obligation to ensure the full and free exercise of the rights of all persons subject to their jurisdiction. Consequently, States have the obligation to create the

extended by Article 19, which requires States to 'take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.'" (Committee on the Rights of the Child, General Comment 8, *The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment* (Arts. 19; 28, para. 2; and 37, *inter alia*) August 21, 2006, Doc. CRC/C/GC/8, para. 18).

¹⁵⁵ Cf. Committee Against Torture, General Comment No. 2, para. 15.

¹⁵⁶ According to the expert witness, Paola did not really wish to stop living; however, from a psychological perspective, her suicide was "enunciative." In other words, this act sought to "convey a message associated with psychological suffering." This supports the view that she had experienced a high level of suffering.

¹⁵⁷ Cf. *See also*, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention*, February 5, 2010, Doc. A/HRC/13/39/Add.5, paras. 33 and 188.

required conditions to ensure that no violations of this inalienable right occur and, in particular, the duty to prevent their agents from violating it.¹⁵⁸

155. Accordingly, it should be noted that owing to the essential nature of the right to life, restrictive approaches to it are inadmissible. This Court has indicated on several occasions¹⁵⁹ that the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence."¹⁶⁰ For its part, the Human rights Committee has stated that "[t]he right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions that are intended, or may be expected, to cause their unnatural or premature death, as well as to enjoy a life with dignity."¹⁶¹

156. The effects of violence on children may be extremely serious. Violence against a child has numerous effects including, "psychological and emotional consequences (such as feelings of rejection and abandonment, impaired attachment, trauma, fear, anxiety, insecurity and shattered self-esteem),"¹⁶² which can even lead to suicide or attempts at suicide. In that regard, the Committee on the Rights of the Child has stated that it is "very concerned about the high rate of suicide among [adolescents]", and that "these may be related to, *inter alia*, violence, ill-treatment, abuse and neglect, including sexual abuse."¹⁶³ The relationships between adolescents with significant adults in their life are crucial for if these are improper, depending on the seriousness of the case, they may lead, directly or indirectly, to suicide.¹⁶⁴ The Human Rights Committee has stated that the "duty to protect life requires the States parties to take special measures of protection toward persons in situations of vulnerability" who are at "particular risk" because of

¹⁵⁸ Cf. *Case of Cuscul Pivaral et al. v. Guatemala*, para. 155, and *Case of Noguera et al. v. Paraguay*, para. 65. Also see, *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 144, and *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 153.

¹⁵⁹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 144; *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of June 17, 2005. Series C No. 125, paras. 162 and 163, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*, para. 186.

¹⁶⁰ *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 144. Similarly, see *Case of the Yakye Axa Indigenous Community v. Paraguay*, paras. 162, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*, para. 186.

¹⁶¹ Human Rights Committee, General Comment No. 36, *Article 6. Right to Life*, September 3, 2019, Doc. CCPR/C/GC/36, para. 3.

¹⁶² Committee on the Rights of the Child, General Comment No. 13, para.15.

¹⁶³ Committee on the Rights of the Child, General Comment No. 4, para. 22.

¹⁶⁴ The Committee on the Rights of the Child has identified suicide as one of the "primary causes" of "mortality among adolescents" and, like other "mental and psychosocial health problems," it is influenced by a "complex interplay" of causes that are "compounded" by experiences of conflict and bullying. The Committee has also indicated that "the factors known to promote resilience and healthy development and to protect against mental ill health include strong relationships with and support from key adults," as well as "access to quality secondary education [and] freedom from violence and discrimination." (Committee on the Rights of the Child, *General Comment No. 20 on the implementation of the rights of the child during adolescence*, para. 58). The Committee has also expressed "concern [at] the increase in mental ill-health among adolescents, including [...] depression, [...] psychological trauma resulting from abuse, [...] and [...] self-harm and suicide." (Committee on the Rights of the Child, *General Comment No. 15 on the Right of the child to enjoy the highest attainable level of health (Article 24)*, para. 38).

"preexisting patterns of violence," such as persons who are victims of "gender-based violence" which may "also include children."¹⁶⁵ In relation to the right to life, the States must take "adequate measures" to "prevent suicide, especially among individuals in particularly vulnerable situations."¹⁶⁶ The obligation to protect children against violence encompasses "self-harm," which includes "self-inflicted injuries, suicidal thoughts, suicide attempts and suicide."¹⁶⁷

157. In the instant case, it is clear that the State not only failed to take action to protect Paola, but also failed to respect her rights, both directly through acts of sexual violence, but also through tolerance of this conduct by the school she attended. As a girl in a particularly vulnerable situation, Paola was subjected for more than one year of continued institutional abuse and violence of a discriminatory nature. It is clear that the sexual abuse inflicted great suffering on Paola which, as indicated previously (*supra* para. 151), became evident after her suicide. This took place on the very same day that her mother was summoned to a meeting at the school. Her suicidal behavior reflected the severity of her psychological suffering. The direct violation of the girl's rights and the institutional tolerance thereof clearly produced harmful consequences in her. Thus, the situation of violence, which was closely linked to her suicide, violated the right of Paola Guzmán Albarracín to a life with dignity.

158. Furthermore, when the school authorities became aware of the imminent risk to Paola's life after she had swallowed poison, the State failed to act diligently to try to save her life.

159. From the facts of this case it is clear that when Paola was at the school and the authorities found out that she had swallowed "diablillos," they did not act with the required swiftness. Although Paola was taken to the infirmary, she did not receive any treatment and the school's Inspector General only urged her to ask God for forgiveness. Paola's schoolmates were the ones who called her mother, who arrived at the school nearly 30 minutes later and took her daughter to a hospital and then to the Clínica Kennedy, where she died the following day (*supra* paras. 53 and 54).

160. The aforementioned conduct by the State was not diligent, a conclusion that is distinct from the lack of medical care provided at the school. As the State has indicated, the "duty of care" demanded of a school in terms of health care cannot be compared to that expected of a hospital. However, the fact that the school authorities did not immediately transfer Paola to a health facility that could provide her with treatment, implies that they failed in their duty to assist someone whose rights they had an obligation to protect. Not only was Paola not provided with any medical care or treatment for almost 30 minutes, but no steps were taken to do so, despite her being in the State's custody and the authorities being aware that her physical integrity and her life were at

¹⁶⁵ Human Rights Committee, General Comment No. 36, para. 23.

¹⁶⁶ The Human Rights Committee has advised that this must be done acknowledging "the central importance to human dignity of personal autonomy" and "without violating their [the States'] other Covenant obligations to prevent suicides [International Covenant on Civil and Political Rights]" (Human Rights Committee, General Comment No. 36, para. 9).

¹⁶⁷ Committee on the Rights of the Child, General Comment No. 13, para. 28. The *amicus curiae* brief presented by the Human Rights Club of the Private Technical University of Loja and the Center for Social Action and Legal Policy referred to the link between failure to satisfy a child's need for a dignified life in the area of education, and acts of suicide.

risk. In this case, it is the latter situation, and not the lack of medical treatment at the school, which results in the State's responsibility in this case.¹⁶⁸

161. The State has claimed that, even if prompt action had been taken, Paola would probably have died because of the amount of poison she had swallowed. However, since this cannot be confirmed, the Court cannot consider that argument. The medical experts proposed by the State, doctors Barragán and Moya, explained that given the circumstances of this case, the most appropriate course of action would have been to immediately transfer the poisoned patient to a hospital. They added that if prompt and adequate care had been provided, there was a possibility that the patient's life could have been saved.

162. Based on the foregoing, it is clear that the State did not act with due diligence to ensure Paola's right to life. Also, the Court considers that although Paola experienced suffering while she remained at the school without proper medical care, the State's conduct in this regard was no different from that required to try to save her life. Therefore, it is not necessary to examine this point separately in relation to the right to personal integrity.

163. The Court notes that lack of due diligence in providing medical care to Paola when she arrived at the clinic has not been alleged or proven. Therefore, the lack of prompt treatment was related to the delay in transferring her to the health facility. Thus, the Court understands that this situation is directly connected with the duty to guarantee the adolescent's right to life. Although the unlawful conduct occurred in a State or public school, the respective actions were directly related to the protection of her right to life, and do not need to be examined in relation to other rights, such as the right to education.

164. Based on the foregoing considerations, the Court concludes that the State did not respect Paola's right to a dignified life and did not guarantee her right to life upon learning that she risked death, which was finally consummated with her suicide.

165. Accordingly, the Court concludes that Ecuador violated the right to life enshrined in Article 4(1) of the American Convention on Human Rights, in relation to the obligations established in Article 1(1) thereof, to the detriment of Paola del Rosario Guzmán Albarracín.

B.5 Conclusion

166. The sexual violence committed against Paola del Rosario Guzmán Albarracín, an adolescent girl, affected her right to a life free from violence, was discriminatory and deprived her of the possibility of independently deciding on her relationship with other persons and exercising her sexuality. It also violated her right to education which, as indicated, includes the observance of human rights in the context of the educational process. Likewise, it caused her severe suffering and influenced her decision to take her

¹⁶⁸ The expert witness Dr. Barragán explained that it would be dangerous for a person to treat someone with the type of poisoning suffered by Paola, if that person did not have specialized knowledge, or the treatment was not provided at a suitable hospital. It is reasonable to assume that this was the case at the school; thus, it would not have been feasible to provide direct medical treatment to Paola at the school. Consequently, it would have been even more important to transfer her to a hospital as soon as possible. Dr. Barragán added that since medical assistance protocols could not be implemented without medical knowledge, the recommended course of action by the school would have been "to make the necessary arrangements to immediately transfer the patient into the care of health professionals." He added that "this should be done in all emergencies: if [there is] an emergency, [...] you have to [act] as quickly as possible."

own life. Furthermore, the State failed to provide the necessary assistance to try to prevent her death.

167. Consequently, Paola's rights to life, personal integrity, private life and to education were impaired. The State failed in its duty to respect and guarantee these rights as a result of the sexual violence committed against her. Likewise, Ecuador failed in its duty to provide Paola, a young girl, with measures of protection, to prevent any violent act or practice against women and to ensure that its authorities, officials, employees, agents and institutions acted in accordance with this obligation. The State also failed to act with due diligence to prevent such violence and did not take the necessary measures to do so. The State's failure to fulfil its obligations to respect and guarantee rights implied a failure to fulfill its duty of non-discrimination.

168. Therefore, Ecuador violated Articles 4(1), 5(1) and 11 of the American Convention; Article 13 of the Protocol of San Salvador, in relation to Articles 1(1) and 19 thereof; and Articles 7.a, 7.b and 7.c of the Belém do Pará Convention, to the detriment of Paola del Rosario Guzmán Albarracín.

169. It has not been proven that Paola Guzmán Albarracín was subjected to torture; therefore, the State is not responsible for the violations alleged by the representatives of Article 5(2) of the American Convention on Human Rights and Article 1 of the Inter-American Convention to Prevent and Punish Torture. As to Paola's rights to health and personal liberty, the representatives alleged that these were impaired in relation to her supposed pregnancy, which has not been proven. Other arguments regarding those rights are included in the examination of the human rights violations declared. Consequently, the Court will not examine the arguments concerning possible violations of the rights to health and personal liberty. Furthermore, the arguments related to the violation of the right to equality before the law are included in the discrimination that has been determined, based on Article 1(1) of the American Convention.

170. Finally, the Court notes that the representatives have alleged the violation of the right to freedom of expression, established in Article 13 of the Convention, arguing, essentially, that Paola Guzmán lacked access to information on her sexual and reproductive rights. The representatives themselves made this point, linking it to her right to education, not to an autonomous or independent request for information. Thus, in the circumstances of this case, the Court considers that this matter is included in the arguments on the right to education, and does not need to be addressed separately. The representatives also alleged the violation of Article 13 related to the actions of some journalists. This argument was presented in the final written arguments, and is therefore time-barred and cannot be examined. Ecuador, therefore, is not responsible for the violation of Article 13 of the American Convention on Human Rights

VII.2 RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION¹⁶⁹

171. In this chapter, the Court will refer to the alleged violations of the rights to judicial guarantees and judicial protection to the detriment of the relatives of Paola del Rosario Guzmán Albarracín. In Chapter IV, the Court indicated the scope of the State's acknowledgement of responsibility regarding the lack of due diligence of its judicial and administrative authorities. The Court understands that this acquiescence includes an acknowledgement of the violation of the rights to judicial guarantees and judicial

¹⁶⁹ Articles 8 and 25 of the American Convention, 7 of the Belém do Pará Convention and 8 of the Inter-American Convention to Prevent and Punish Torture.

protection though lack of diligent action. The Court will analyze other arguments related to those rights.

A. Arguments of the Commission and the parties

172. With regard to the judicial and administrative actions, the **Commission** argued that the State violated, to the detriment of Paola Guzmán's relatives, the rights to judicial guarantees and judicial protection, as well as the right to equality, in relation to the duty to investigate acts of violence against a woman, in breach of Articles 8(1) and 25(1) of the Convention and Article 24, as well as Article 1(1) thereof, and of Article 7.b of the Belem do Pará Convention. It argued that the authorities issued "several stigmatizing and stereotypical rulings" during the criminal proceedings, underscoring a failure in their "duty to investigate from a gender perspective and free from stereotypes and discriminatory prejudices." It further indicated that the administrative and civil proceedings were not conducted with a gender perspective, in violation of the principle of equality and non-discrimination in access to justice.

173. The **representatives** agreed with the Commission's observations and argued that the State had also violated the principle of reasonable time, given the duration of the investigations and judicial proceedings related to the sexual abuse and death of Paola Guzmán. In addition, they considered that it violated Article 8 of the Inter-American Convention to Prevent and Punish Torture. They added that the compensation ordered in the context of the civil lawsuit was not implemented because "the judgment did not acquire the authority of *res judicata*, given that [...] owing to irregularities by the court [,] in failing to settle the appeal lodged by the defendant [,] the proceeding was annulled. The representatives' arguments regarding the civil proceedings are presented below (*infra* para. 197).

174. The **State** acknowledged its partial responsibility for the judicial and administrative actions, in the terms indicated previously (*supra* paras. 16, 21 and 23). As to the civil lawsuit for damages, it explained that the case was declared "abandoned" owing to the parties' procedural inactivity after the annulment of the case, following the appeal against a judgment requiring the vice principal to pay USD\$ 25,000.00 (twenty-five thousand United States dollars) in damages to Mrs. Albarracín. According to Ecuador, after the declaration of annulment, the case was returned to the judge of first instance to "consider the appeal filed by the accused." It was at this point that the inactivity occurred; thus, it should be understood that the abandonment of the case implied the "withdrawal of the appeal filed" and that "the appealed ruling was final". This meant that it was up to Mrs. Albarracín "to engage in procedural activity to secure execution of the judgment," but that she did not do so, a situation that cannot be attributed to the State. It added that Mrs. Albarracín could have appealed the judicial decision that declared the case "abandoned." The State also explained that under domestic law, the civil suit for moral damages is separate from any criminal action, and is not subject to any ruling in the latter case.

175. Ecuador also denied discrimination or the violation of the principle of equality before the law in the context of the judicial or administrative proceedings. It affirmed that there was "no discriminatory treatment based on a gender bias"¹⁷⁰ [and that] the

¹⁷⁰ The State considered that the decisions of the domestic authorities were not motivated by gender stereotypes. In particular, it referred to the administrative proceedings which, according to the representatives, had sought to transfer responsibility for the events onto Paola, by pointing out that she was "in love" with the vice principal. The State argued that "in no way is responsibility for what happened being

applicable legislation [...] did not contain discriminatory provisions [and that] even the Constitution in force at the time took into account the need to apply a gender perspective and [considerations] in favor of adolescents.” It added that “there were no obstacles to prevent [Paola’s] relatives from initiating domestic proceedings in the criminal, civil and administrative courts.” It therefore rejected allegations that it had violated Articles 24 and 1(1) of the Convention.

B. Considerations of the Court

176. This Court has established that, pursuant to the American Convention, the States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25). Such remedies must be substantiated in accordance with the rules of due process of law (Article 8(1)), all in keeping with the general obligation of the States to ensure the free and full exercise of the rights recognized by the Convention to every person subject to their jurisdiction (Article 1.1).¹⁷¹ The Court has also indicated that the right of access to justice must ensure, within a reasonable time, the right of the alleged victims or their next of kin to do everything necessary to know the truth of what happened and to investigate, prosecute and punish, as appropriate, those eventually found responsible.¹⁷²

177. In cases of violence against women, the general obligations established in Articles 8 and 25 of the American Convention are supplemented and enhanced for those States that are party to the Convention of Belém do Pará by the obligations derived from this specific inter-American treaty. Article 7.b of this Convention specifically requires the States parties to apply due diligence to prevent, punish and eradicate violence against women.¹⁷³ Thus, when an act of violence is committed against a woman, it is particularly important that the authorities in charge of the investigation conduct it with determination and efficacy, taking into account their duty to society to reject violence against women and the State’s obligation to eradicate it and ensure that victims have confidence in the institutions established by the State for their protection.¹⁷⁴

178. The Court has indicated that the obligation to investigate and the corresponding right of the alleged victim or of his relatives does not derive solely from the conventional norms of international law that must be observed by the States Parties, but also from their domestic legislation that makes reference to the duty to investigate certain unlawful acts, and from the norms that allow the victims or their family members to report or file

placed on [Paola], nor does [it] deny that the facts denounced by her relatives [...] occurred; [it] simply states that ‘there is no evidence to demonstrate [it] conclusively.’” (The State indicated that the latter is a quote from the Report of the Provincial Supervisor of Education to the Provincial Superintendent of Education of Guayas, dated January 23, 2003)

¹⁷¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico*, para. 267.

¹⁷² Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico*, para. 267.

¹⁷³ Cf. *Case of Fernández Ortega et al. v. Mexico*, para. 193, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico*, para. 270.

¹⁷⁴ Cf. *Case of Fernández Ortega et al. v. Mexico*, para. 193, and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, para. 152.

complaints, evidence or petitions or undertake any other action for the purpose of participating in criminal proceedings in order to establish the truth of the events.¹⁷⁵

179. The Court will analyze the arguments of the parties and of the Commission in the following order: a) reasonable time of the investigation, b) the use of gender stereotypes, c) the civil lawsuit for damages; and d) conclusions.

B.1 Reasonable time of the investigation

180. The Court has indicated that the right of access to justice entails an effective investigation of the facts and the determination of the corresponding criminal responsibilities, as appropriate, within a reasonable time, since a prolonged delay may, in itself, constitute a violation of judicial guarantees.¹⁷⁶

181. Although it is true that, in order to assess the reasonable time of an investigation and a trial, the Court must generally consider the overall duration of the proceedings until the final judgment is handed down,¹⁷⁷ in certain special situations it may be pertinent to make a specific assessment of the different stages.¹⁷⁸ This Court has established that four elements must be taken into account in determining whether the guarantee of reasonable time is met, namely: a) the complexity of the matter, b) the procedural activity of the interested party, c) the conduct of the judicial authorities, and d) the adverse effect of the duration of the proceedings on the legal situation of the person involved.¹⁷⁹

182. First, regarding the *complexity* of the case, it should be noted that an investigation into sexual violence has elements of complexity when the victim cannot provide a statement. The Court also notes that this case concerns a single victim and that the State learned of the facts soon after they occurred, which facilitated the gathering of useful medical evidence and of various relevant testimonies. Therefore, the Court finds that a moderate level of complexity exists in this case given that, despite the difficulty indicated, there were no major obstacles to an effective investigation of the facts.

183. Regarding the *procedural activity of the interested parties*, the Court finds no evidence that Paola's relatives acted in a manner that would have complicated the progress of the investigations. To the contrary, as is evident from the proven facts, they filed the complaint and actively promoted the proceedings, pointing out various possible

¹⁷⁵ Cf. *Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2007. Series C No. 168, para. 104, and *Case of Véliz Franco et al. v. Guatemala*, para. 184.

¹⁷⁶ Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs.* Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Noguera et al. v. Paraguay*, para. 83.

¹⁷⁷ Cf. *Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case Noguera et al. v. Paraguay*, para. 83.

¹⁷⁸ Cf. *Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2013. Series C No. 270, para. 403, and *Case of Carvajal Carvajal et al. v. Colombia*, para. 106.

¹⁷⁹ Cf. *Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs.* Judgment of January 29, 1997. Series C No. 30, para. 77; *Case Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of Noguera et al. v. Paraguay*, para. 83.

elements of evidence. Even the motion of recusal filed by Paola's mother on November 10, 2003 (*supra* para. 72) cannot be construed as an act that could delay the proceedings; to the contrary, it was filed precisely because Mrs. Petita Albarracín considered that unjustified delays were occurring.

184. As to the *conduct of the judicial authorities*, based on the State's acknowledgement, it has been determined that the State did not follow the principles of due diligence in several respects. The Court also notes that there were delays in the investigations owing to the inactivity of the authorities. The investigation began in December 2002, and the statute of limitations of the criminal action was declared on September 18, 2008 (*supra* para. 78). Of the nearly five years and nine months that the criminal proceedings lasted, there was no activity between October 5, 2005, when the proceedings were suspended (*supra* para. 77), and September 18, 2008, when the statute of limitations was declared in this case. Although the suspension of the proceedings implies, precisely, the cessation of actions, in this case the State has recognized that the defendant was a fugitive from justice and that the authorities took no steps to find him, which prompted the prescription of the criminal action (*supra* paras. 16, 21 and 23). In this respect, the Court finds that the State did not act with due diligence to locate the vice principal and bring him to trial, and therefore finds it pertinent to consider the time elapsed since the suspension of the proceedings. Moreover, prior to that, the final act carried out by the State authorities was on September 22, 2004, when they ordered an increase in the amount of the surety for the defendant (*supra* footnote 69).¹⁸⁰

185. Regarding the *effect of the duration of the proceedings on the legal situation of the person involved*, this Court has established that if the passage of time has a significant impact on the judicial situation of the individual, the proceedings must be carried out more promptly so that the case is decided as soon as possible.¹⁸¹

186. In this case, which involved a girl who was the victim of sexual violence, the judicial authorities should have acted with the utmost diligence during the investigations and legal proceedings. The speed of their actions was essential to achieve the primary objective of the judicial proceedings: to investigate and punish the person responsible – a public official - for the sexual violence suffered by Paola, and enable her family to learn the truth of what happened to her and put an end to the humiliation, stigma and prejudice they continued to suffer as a result of the case¹⁸² (*infra* para. 189). This objective was not achieved and, with the passage of time, resulted in the prescription of the criminal action and the consequent impunity of the acts. Bearing this in mind, the Court finds that there is sufficient evidence that the prolongation of the investigations and the proceedings in this case significantly affected the legal situation of Paola Guzmán's relatives, since the delay in settling the case affected their daily lives and their possibilities of knowing the truth of what happened.

187. Accordingly, and considering the State's acknowledgement of its lack of diligence in arresting the vice principal and admitting that no substantive investigations were

¹⁸⁰ Subsequent actions were related to the ruling on the appeals filed by the defendant, through his lawyer.

¹⁸¹ Cf. *Case of Valle Jaramillo et al. v. Colombia*, para. 155, and *Case of Montesinos Mejía v. Ecuador*, para. 187.

¹⁸² See the statements of the expert witness Ximena Cortés Castillo during the public hearing held on January 28, 2020 (*supra* para. 10).

conducted after September 22, 2004 (*supra* para. 184), it is clear that the State authorities are responsible for the procedural inactivity during at least four of the nearly six years that the proceedings lasted. This is sufficient for the Court to consider that the proceedings exceeded a reasonable time.

B.2 Use of gender stereotypes

188. The Court reiterates that gender stereotyping refers to:

“a preconception of attributes, behaviors or characteristics possessed by, or roles that are or should be played by, men and women, respectively, and it is possible to associate the subordination of women to practices based on socially dominant and persistent gender-based stereotypes. In this regard, their creation and use becomes one of the causes and consequences of gender-based violence against women, a situation that is exacerbated when they are reflected, implicitly and explicitly, in policies and practices, particularly in the thinking and language of the State authorities.”¹⁸³

189. Based on these considerations, it is clear that Ecuador’s criminal justice system assessed Paola’s death and the sexual violence committed against her in the context of a legal system that was discriminatory with regard to gender, and did not consider her special situation of vulnerability as a girl subjected to violence by a teacher. These stereotypes and prejudices influenced the outcome of the process, inasmuch as the decisions did not take into account a gender perspective, based on the principles of the Belém do Pará Convention. Stereotyping “compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice,” and may result in the denial of justice, including the revictimization of complainants.¹⁸⁴

190. In this case, the Superior Court of Justice of Guayaquil (*supra* para. 76), in its ruling of September 2, 2005, found that no crime of sexual harassment was committed because the vice principal “did not pursue Paola Guzmán. Rather, she was the one who sought favors from him as an educator,” this being the “reason for the seduction.” In this same ruling, the court understood that the vice principal’s conduct amounted to “rape,” explaining that in this crime the seduction is aimed at “achieving consent and carnal intercourse with an honest woman.” It based its affirmations citing specialized doctrine, which explains that “[a]n essential element [of the crime] is the ‘maidenhood’ of the rape victim, a ‘maiden’ being understood as [...] a young woman of virtuous life prior to the fact, regardless of whether she has conserved her virginity.” The judicial ruling made reference to the criminal definition of “rape” which, under the laws in force at the time of the facts, required the victim to be an “honest woman” in order to configure that crime (*supra* footnote 70).

191. The Court considers that this decision clearly reflects a biased analysis based on gender preconceptions. First, because it dismisses a crime based on a judgment of the victim’s alleged conduct, making her responsible under the notion of “seduction.” This shows that the ruling understood that the fact of seeking “academic favors” implied, *per se*, that the victim engaged in acts of “seduction,” implicitly attributing to her, at least partially, responsibility for what finally occurred. This view of women – or, in this case, a girl – as “provocative” permits sexual violence and discrimination exercised through harassment, absolving the perpetrator of responsibility for it. Regarding the latter, it should be noted that, although the ruling attributes a crime to the vice principal, it

¹⁸³ *Case of González et al. (“Cotton Field”) v. Mexico*, para. 401, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico*, para. 213.

¹⁸⁴ Cf. CEDAW Committee, General Recommendation No. 33, *Women’s access to Justice*, August 3, 2015, Doc. CEDAW/C/GC/33, para. 26.

dismisses the crime of sexual harassment. Thus, the decision implicitly validated sexual harassment against a girl, since it did not consider that this conduct includes “grooming” for subsequent abuse, in which the perpetrator takes advantage of a relationship of power, as noted previously (*supra* paras. 130 to 132).

192. Furthermore, in defining the perpetrator’s conduct as “rape,” the Superior Court of Justice of Guayaquil referred to the requirements of “honesty” and “maidenhood,” which imply an assessment of the victim’s previous conduct. In other words, it amounts to a conceptual judgment of the victim prior to the evaluation of the aggressor’s actions. Thus, the crime is configured in the measure that the affected woman meets certain standards of behavior based on gender preconceptions or biases regarding the conduct supposedly expected of a woman merely because she is a woman.

193. In this regard, the Court recalls that a difference in treatment is discriminatory when it has no objective or reasonable justification; in other words, when it does not pursue a legitimate purpose and there is no proportionality between the means used and the objective pursued. Thus, the burden of proof falls on the State, which must demonstrate that the difference in treatment between the victim of a crime who meets the requirement of “honesty” and “maidenhood,” and another who does not, is justified, without basing its decision on stereotypes.¹⁸⁵

194. Notwithstanding the foregoing, and recognizing that Ecuador’s current legislation has suppressed discriminatory concepts regarding rape, the Inter-American Court considers that the decision of the domestic court had a negative impact on the proceedings by preventing a proper assessment of the harassment attributable to the vice principal. It did so, also, based on domestic legislation that was contrary to the Convention, as reflected in the concepts of gender described (*supra* paras. 188 to 193). Therefore, the harm caused by the domestic proceedings was related to a failure to observe the duty to adapt domestic law to the American Convention, pursuant to Article 2 thereof, and to ensure equal protection before the law, as established in Article 24 of the treaty, which “also prohibits discrimination derived from any inequality resulting from domestic laws or their application.”¹⁸⁶

195. The Court considers that the above conclusion is sufficient to demonstrate that certain decisions taken in the criminal proceedings influenced the outcome, skewed by the aforementioned gender biases (*supra* footnote 128 and paras. 188 to 190). Consequently, it concludes that those actions were not executed with a gender perspective, and therefore failed to comply with the duties mandated by the Belem do Pará Convention. The Court does not consider it necessary to examine further arguments by the Commission and the representatives in this regard.

B.3 Civil lawsuit for damages

¹⁸⁵ Cf. *Case of Atala Riffo and girls v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, para. 125, and *Case of López Soto et al. v. Venezuela*, para. 231.

¹⁸⁶ Cf. *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 218. The determination regarding Article 2 is based on the *iura novit curia* principle, under which a court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them (Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, para. 163*, and *Case of the Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) v. Argentina. Merits, reparations and costs*. Judgment of February 6, 2020. Series C No. 400, para. 200).

196. The Court notes that on June 7, 2005, following the civil lawsuit filed by Mrs. Petita Albarracín against the vice principal, the latter was ordered to pay compensation to the plaintiff. After numerous legal actions and appeals, the case was declared abandoned on July 16, 2012. (*supra* para. 81).

197. The representatives have argued that the Twenty-third Court's declaration of abandonment of the case created an obstacle to providing reparation to Paola's mother. They alleged that the ruling ordering compensation was not executed because it did "not acquire the authority of *res judicata*" and, in turn, emphasized that institutional obstacles brought Mrs. Albarracín to "breaking point," which prevented her from continuing with the "eternal litigation." The State affirmed that, despite the court's declaration of abandonment, the ruling granting Mrs. Albarracín compensation was final and did not prevent her from pursuing the relevant legal actions to secure its implementation.

198. The Court notes, in the first place, that the representatives' arguments are not clear because, on the one hand, they seem to argue that it was legally impossible to execute the judgment (since it did not acquire authority of *res judicata*) and, on the other, they state that this was due to circumstantial reasons.¹⁸⁷

199. In addition to the lack of clarity in the arguments of the representatives, the Court notes the State's argument that the "declaration of abandonment" of the case *did* allow for the execution of the judgment. Thus, there appears to be a dispute between the parties as to whether or not it was legally possible to execute the judgment, a dispute that concerns aspects of domestic law. No evidentiary elements or arguments have been presented to this Court to suggest that such aspects violated the right of access to justice.

200. In conclusion, the Court does not have sufficient elements to determine that the civil lawsuit filed to seek compensation for moral damages implied the violation of rights recognized by the applicable provisions of international law.

B.4 Conclusion

201. Bearing in mind the aspects acknowledged by the State, this Court finds that in this case the right of access to justice of the relatives of Paola Guzmán Albarracín was impaired, resulting in impunity. This was due to the prescription of the criminal proceedings, which was attributable to the State's inaction, especially its lack of diligence in arresting the fugitive defendant. Moreover, the unpunished acts were committed by a public official, directly implicating the State's international responsibility for human rights violations, including the right to live a life free from violence. For those reasons, the State should have acted with strict diligence in the investigation in order to remedy the internationally unlawful act through the application of legally established consequences.

202. Therefore, based on the foregoing reasons, the Court concludes that the State violated the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in connection with the right to equal protection under the law, pursuant to Article 24, and with the duty to fulfil the obligations established in Article 1(1) thereof without discrimination, as well as the obligation to adopt provisions of domestic law established in Article 2 of the Convention;

¹⁸⁷ They appear to argue, at least from a legal perspective, that Mrs. Albarracín could have continued taking action, but was prevented from doing so because she had reached "breaking point."

in addition, the State violated Article 7.b of the Convention of Belém do Pará, all to the detriment of Petita Paulina Albarracín Albán and Denisse Selena Guzmán Albarracín.¹⁸⁸

203. The Court does not find that Paola Guzmán Albarracín was subjected to torture, and therefore will not analyze the State's duty to investigate this matter based on the Inter-American Convention to Prevent and Punish Torture. Therefore, Ecuador is not responsible for the violation of Article 8 of this treaty.

VII.3 RIGHT TO PERSONAL INTEGRITY OF THE RELATIVES OF PAOLA GUZMÁN ALBARRACIN

A. Arguments of the Commission and of the parties

204. The **Commission** established that "Paola's death constitutes, in itself, a source of suffering for her relatives, as does the fact that Mrs. Petita was shown her daughter's opened body, during the autopsy." It added that her suffering as a mother was aggravated by the lack of diligence in the judicial actions. Consequently, it considered that her right to personal integrity was impaired, specifically her "mental and moral integrity." Thus, it considered that the State violated Article 5(1) of the Convention in relation to Article 1(1) of that instrument.

205. The **representatives** emphasized that, "both [Mrs.] Petita and Denisse have endured psychological and moral suffering [after] the loss of a daughter and a sister, respectively, resulting from the constant harassment that Paola suffered at school." They added that Mrs. Petita's physical and mental health was seriously affected, along with her life project and her relationship with her daughter Denisse. In the case of Denisse, they indicated "that Paola's death affected [her] very much" and that "her childhood was changed, it was not normal."

206. The **State** denied its responsibility for affecting the right to personal integrity of Paola's family members and, therefore, for the alleged violation of Article 5(1) of the Convention. It considered "understandable the suffering caused by the death of a loved one;" however, based on its previous arguments (*supra* para. 102), it denied responsibility for her death. It also denied that "the State's lack of action [had] aggravated" their situation, arguing that it had provided an "immediate response" and that Paola's family "had all available remedies to resolve their specific legal situation." It emphasized that "a reasonable and effective official investigation" was carried out and that her relatives had participated "not only in the criminal and administrative proceedings, but also in civil court by filing an ordinary lawsuit for moral damages."

B. Considerations of the Court

¹⁸⁸ The Court notes that there is no record that Denisse Albarracín, Paola's sister, participated directly in the judicial or administrative proceedings. However, it is clear that the actions taken by her mother were aimed at protecting the legal interests of both of them as family members of Paola. (*Cf. Case of Coc Max et al. (Massacre of Xamán) v. Guatemala. Merits, reparations and costs.* Judgment of August 22, 2018. Series C No. 356, footnote 144, and *Case of the Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) v. Argentina*, footnote 312).

207. The Court has repeatedly affirmed that the family members of victims of human rights violations may, in turn, be victims.¹⁸⁹ In this regard, the Court has indicated that it can declare a violation of the right to physical and moral integrity of the direct next of kin of victims of certain human rights violations by applying a *iuris tantum* presumption with regard to mothers and fathers, sons and daughters, husbands and wives, and permanent domestic partners, as well as brothers and sisters,¹⁹⁰ provided that this corresponds to the particular circumstances of the case. Regarding those direct relatives, it is for the State to rebut that presumption.¹⁹¹ On this matter, the Court has considered that the right to mental and moral integrity of the victims' next of kin has been violated because of the additional anguish they have suffered as a result of the particular circumstances of the violations perpetrated against their loved ones and because of the subsequent acts or omissions of State authorities with regard to the facts.¹⁹²

208. The Court also points out that the State accepted that the rights of Paola Guzmán's family members may have been impaired (*supra* para. 17). Although the State denied responsibility in this regard, it did so assuming that its conduct was appropriate; however, in the preceding chapters it has been demonstrated that the State violated Paola's rights, as well as those of her relatives, through its judicial and administrative actions.

209. The Court finds that, according to the evidence in the case file and information presented at the public hearing, Paola's relatives not only suffered as a result of her death and because of the human rights violations she endured previously, but also because their personal integrity was harmed by one or several of the following circumstances: i) the lack of assistance provided by the school after Paola swallowed white phosphorus, which forced Mrs. Petita to transfer her daughter, by her own means, to the nearest health center (*supra* paras. 158 to 160); and ii) the duration of the legal proceedings (*supra* para. 187) and the continued impunity of those responsible for the facts after nearly 18 years.¹⁹³

210. Also noteworthy is the inappropriate action of the forensic examiner in presenting Paola's opened body to her mother during the autopsy (*supra* para. 55). Such conduct must have been highly shocking to Mrs. Albarracín and caused her intense suffering. During the public hearing, she recalled that the doctor, "with no concern for the pain I felt, made me go into [the place] where I saw my daughter lying naked on a table with

¹⁸⁹ Cf. *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, Fourth operative paragraph, and *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2019. Series C No. 395, para. 148.

¹⁹⁰ Cf. *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012 Series C No. 253, para. 286; *Case of Osorio Rivera and Family v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 227, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico*, para. 320.

¹⁹¹ Cf. *Case of Valle Jaramillo et al. v. Colombia*, para. 119, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico*, para. 320.

¹⁹² Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case Hernández v. Argentina*, para. 148.

¹⁹³ At the public hearing held on January 28, 2020, the expert witness Ximena Cortés Castillo stated that because Mrs. Petita Albarracín had to "shoulder the enormity of the legal proceedings [...] and had to dedicate herself to the case of her [...] deceased daughter, she was co-opted away from her other daughter, damaging the mother-daughter bond with Denisse; thus, she lost not just one daughter, but two."

her body opened up, with all her organs there and he showed me a small fleshy area and said: 'ma'am, here's your daughter's uterus, there's no pregnancy.'"

211. Consequently, the Court confirms that: i) Mrs. Petita Albarracín suffered psychological anguish as a result of her revictimization after her daughter's medical autopsy;¹⁹⁴ ii) Mrs. Petita Albarracín suffered deep emotional effects from her daughter's death, as did Denisse Guzmán from the death of her sister;¹⁹⁵ and, iii) both suffered from the "social misrepresentation of Paola's image and because her memory became the target of a wide variety of offensive and derogatory stigmas and prejudices."

212. Specifically, Mrs. Petita Albarracín said that the vice principal's actions "destroy[ed] the life of [her] daughter, [her own life] and that of [her] family." She added that, after those events, her "life fell apart" and that she suffered "so much humiliation"¹⁹⁶ during the judicial and administrative proceedings. Finally, she indicated that "it was terrible [...] because it was such a tough fight, so great that [...]she] no longer wish[ed] to continue." It should also be noted that, according to Ximena Cortés Castillo's expert opinion, Paola's mother and sister both "suffer from chronic unresolved grief," a process of loss that has not ended, despite the time elapsed.¹⁹⁷

213. For her part, Denisse Guzmán Albarracín said she noticed that her mother was "different, sad and despondent." She added that Mrs. Petita Albarracín "became ill, she changed completely, she became a cold person, less expressive in her affection," which affected Denisse Guzmán's childhood and adolescence. After her sister's death and without the comfort of her mother, Denisse said she endured the pain "practically alone and in silence."¹⁹⁸ Denisse said she felt "very lonely" after Paola's death, which "affected [her] a lot." She added that she felt "very distressed" when she saw her sister in the coffin with her face still "opened [...] sewn up" after the autopsy. She said that her mother became "over-protective because she [was] afraid that the same would happen to [her] as happened to [her] sister." Denisse added that she had difficulties in trusting people, especially men. "I had a lot of mistrust and fear of the teachers [and] school friends." Finally, she emphasized that her pain "is very deep."

214. Based on the foregoing, this Court concludes that the State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the Convention,

¹⁹⁴ In her expert opinion, Patricia Viseur Sellers held that "the inappropriate conduct of an autopsy may result in the violation of the right to psychological and mental health because the family may be left without answers or may see the mutilated body of a loved one."

¹⁹⁵ Cf. Affidavit of Denisse Selena Guzmán Albarracín of January 17, 2020.

¹⁹⁶ In an interview with the expert witness Ximena Cortés, presented before the Commission, Mrs. Albarracín stated: "After my daughter's death, life became worse because I had to deal with all the legal proceedings, so other people had to take care of Denisse. There was no one to help us." She added "I still keep [Paola's] uniform, her shoes, I kept her little school blouse with the smell of her scent [...] I don't want to throw it away because I want it here ... it would be so wonderful if my daughter could be with me!"

¹⁹⁷ The expert witness Ximena Cortés Castillo explained that "unresolved grief refers to [...] a process of loss that has not ended, has not concluded and has not been elaborated; pathological grief, or ongoing or unresolved grief persists in a person's mind, so the departed loved one does not fully leave and [the person who mourns] cannot rearrange the roles or move beyond the memory of the being who has gone. It's as if that person appears to live in their mind all the time and the person who suffers that grief, that is, the mother has to use mental energy to keep her alive."

¹⁹⁸ Cf. Statement of Denisse Selena Guzmán Albarracín before affidavit of January 17, 2020.

in relation to Article 1(1) of that instrument, to the detriment of Petita Paulina Albarracín Albán and Denisse Selena Guzmán Albarracín.

VIII REPARATIONS

215. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to provide adequate reparation, and that this provision reflects a customary rule that constitutes one of the fundamental principles of contemporary international law on State responsibility.¹⁹⁹ This Court has also established that reparations should have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Therefore, the Court must observe the concurrence of these factors to rule appropriately and according to the law.²⁰⁰ In the instant case the Court considers that the reparations must include an analysis that considers not only the right of victims to obtain redress, but also one that incorporates a gender perspective and a child-oriented approach, both in its formulation and in its implementation.

216. Consequently, based on its considerations on the merits and the violations of the Convention declared in this judgment, the Court will proceed to examine the claims presented by the Commission and the victims' representatives, together with the corresponding observations of the State, in light of the criteria established in its case law on the nature and scope of the obligation to make reparation, in order to establish measures to redress the harm caused to the victims.²⁰¹

A. Injured party

217. Under the terms of Article 63(1) of the Convention, this Court considers as injured party anyone who has been declared a victim of the violation of any right recognized therein. Therefore, the Court considers Paola del Rosario Guzmán Albarracín, her mother Petita Paulina Albarracín Albán and her sister, Denisse Selena Guzmán Albarracín, as the "injured parties."

B. Request for an investigation of the facts

218. The **Commission** asked the Court to order the State to conduct the pertinent investigations and criminal proceedings, with due diligence and within a reasonable time, in order to individualize, identify, prosecute and, as appropriate, punish those responsible for the facts. It also considered that the State should not cite the guarantee of *ne bis in idem* to justify a failure to comply with the recommendation to investigate, given that the statute of limitations declared in the criminal proceedings resulted from a

¹⁹⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 26, and *Case of Azul Rojas Marín et al. v. Peru*, para. 224.

²⁰⁰ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Azul Rojas Marín et al. v. Peru*, para. 224.

²⁰¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, paras. 25 and 26, and *Case of Azul Rojas Marín et al. v. Peru*, para. 225.

criminal investigation and proceedings that were incompatible with the American Convention. It also asked that the corresponding administrative, disciplinary or criminal sanctions be applied for the actions or omissions of the State officials who contributed to the denial of justice and to the impunity of the actions in this case.

219. The **representatives** requested an investigation to determine criminal, administrative and any other responsibilities arising from the acts of harassment and sexual abuse committed against Paola, the arbitrary interference in her private life and the "torture" that they alleged had occurred, as well as her death, all within a reasonable time. They asked that the investigation be carried out by officials trained in assisting victims of gender-based discrimination and violence. In agreement with the Commission, the representatives requested that, given "the prevailing impunity" and that Paola was a "victim of acts of torture, sexual harassment, abuse and rape," the Court decide in this case that "the prescription of the criminal action should not apply." Consequently, they asked the Court to order the State to take the necessary steps to ensure that Paola's death and the sexual violence she suffered "does not remain unpunished [...] and to fully restore the victims' rights of access to justice and to the truth."

220. Alternatively, if the Court should decide not to admit their petition, the representatives requested, in their final written arguments, that the Court order the State of Ecuador, as a measure of satisfaction, to create an independent interdisciplinary commission to analyze the facts of this case and, through a public report, make an official assessment of the events from a gender perspective, considering Paola Guzmán Albarracín as a child victim of sexual harassment, abuse and rape in the school context, and ensuring that "her image and memory be cleansed of all those gender stereotypes that blamed her for the facts, accusing her of 'seducing' the vice principal, and describing her as being 'in love with him.'" Likewise, they requested that this report take into account the context of sexual abuse, harassment and rape that prevailed at the Martínez Serrano High School, in which there were additional victims.

221. The **State** objected to the measure requested. It argued that it is not appropriate to alter domestic legal rulings since the Inter-American Court, as an international body, is not competent to reverse legal decisions issued by the domestic courts because it does not operate as a fourth instance. Therefore, it considered that that request to change legal decisions taken in "strict adherence to the domestic legal system is not appropriate."

222. The Court considers that a future reopening of the criminal proceedings or of other proceedings of an administrative nature is not appropriate, despite the suffering caused by the impunity resulting from the violation of judicial guarantees and judicial protection declared in this case. In particular, the Court notes the absence of the most elemental rules of due diligence in the search, localization and prosecution of the accused, an aspect that is duly considered in the section on compensation.

223. The Court also notes that the representatives requested that Ecuador prepare a public report concerning events that occurred in the case of Paola Guzmán Albarracín, as a way of "cleansing her image and memory" (*supra* para. 220). The Court does not consider it appropriate to admit this request, since it was submitted extemporaneously. Nevertheless, it urges the State to consider this proposal, in common agreement with the victims and/or their representatives. The Court will not monitor implementation of this action.

C. Measures of rehabilitation

224. The **Commission** requested that the State provide, immediately and free of charge, psychological, psychosocial or psychiatric treatment, as appropriate, to the relatives of Paola del Rosario Guzmán Albarracín, if they so wish and in consultation with them. The **representatives** requested that this treatment include any medications required by Paola's relatives, taking into consideration the suffering of each one after an individual evaluation, and that it also include a comprehensive assessment of their physical health. The representatives also requested that the psychological therapy be provided by a psychologist specializing in gender issues and belonging to civil society, whom they named specifically.

225. The **State** pointed out that Mrs. Albarracín's rights to social security and medical treatment are adequately guaranteed and protected under the Constitution; therefore, there is no need for the Court to order measures of medical care. It added that "Mrs. Albarracín has access to social security" without discrimination.

226. The **Court** considers that the facts of this case affected the personal integrity of Mrs. Petita Albarracín and Denisse Guzmán Albarracín, causing them emotional and psychological distress (*supra* para. 214). Therefore, this Court orders the State to provide Petita Paulina Albarracín Albán and Denisse Selena Guzmán Albarracín with psychological and/or psychiatric treatment, free of charge, in a differentiated manner and for as long as necessary. This must include the provision of any required medication free of charge, and, if applicable, transportation and any other related and necessary expenses. The psychological and/or psychiatric treatment should also take into account the victims' particular circumstances and needs, as agreed with them and following an individual evaluation.²⁰²

227. The beneficiaries of this measure have six months from notification of this judgment to confirm to the State their willingness to receive psychiatric and/or psychological care. The State, in turn, has three months from the receipt of that request to provide the psychological and/or psychiatric care requested.²⁰³

228. Finally, the Court notes that the State indicated that Mrs. Petita Albarracín has access to social security. In this regard, this Court points out that the State may provide the treatment required by the victims through the social security system, or through any type of State health service, provided that this complies with the measures ordered.

D. Measures of satisfaction

229. The **Commission** requested comprehensive reparation for the human rights violations declared, both in the material and moral aspects, including measures of satisfaction. The **representatives** requested various measures of satisfaction (*infra* para. 248), including the following: a) that the State publish "within six months of notification of this judgment, in an appropriate and legible font, the official summary of this judgment prepared by the Court in the Official Gazette, in a newspaper with wide

²⁰² Cf. *Case of Barrios Altos v. Peru. Reparations and Costs*. Judgment of November 30, 2001. Series C No. 87, para. 42 and 45, and *Case of Azul Rojas Marín et al. v. Peru*, para. 236.

²⁰³ Cf. Also, the *Case of Rosendo Cantú et al. v. Mexico*, para. 253, and *Case of Azul Rojas Marín et al. v. Peru*, para. 237.

national circulation, and on the web sites of the Attorney General's Office, the Ministry of Education, the National Secretariat of Justice and Human Rights [and] the Ministry of Public Health;" and b) hold a public act of acknowledgement of international responsibility and apology.

230. The **State** did not refer to these requests. However, as measures of reparation it offered to declare an official "National Day Against Sexual Violence in Schools" and to award a posthumous high school diploma to Paola Guzmán in the context of a public event (*supra* para. 17).

231. As it has done in other cases,²⁰⁴ the **Court** decides that the State must publish, within six months of notification of this judgment, in an appropriate and legible font: a) the official summary of this judgment prepared by the Court, once, in the Official Gazette; b) the official summary of this judgment prepared by the Court, once, in a newspaper with widespread national circulation, and c) this judgment in its entirety, available for one year, on an official website of the Ministry of Education. The State must advise this Court immediately when it has issued each of the publications ordered, regardless of the one-year time frame for presentation of its first report, as established in the thirteenth operative paragraph of this judgment.

232. Also, as reparation for the harm caused to the victims and to prevent a repetition of the facts of this case, the Court considers it necessary to order the State to carry out, within a reasonable time, a public act of acknowledgement of international responsibility for the facts of this case, making reference to the human rights violations declared in this judgment. This public ceremony should take place in the presence of high-ranking State officials and with Mrs. Petita Paulina Albarracín Albán and her daughter Denisse Selena Guzmán Albarracín and/or their representatives. Furthermore, having regard to the State's proposal, during that public act or in another ceremony, the State shall award a posthumous high school diploma to Paola del Rosario Guzmán Albarracín, subject to a previous agreement with Mrs. Petita Paulina Albarracín Albán and/or her representatives. This event must take place within six months of notification of this judgment.

233. The State and the victims, and/or their representatives, must reach agreement on the manner in which this public act is to be executed, as well as details such as the time and place.²⁰⁵ Also, as it has done in other cases,²⁰⁶ the Court orders the State to publicize this event as widely as possible in the media, including by radio, television and in the social networks.

234. Regarding Ecuador's proposal to declare an official "National Day Against Sexual Violence in Schools," the Court orders the State to implement that measure within a reasonable time, using a title that explicitly mentions the phenomenon of sexual violence against children in the educational context.

E. Guarantees of non-repetition

²⁰⁴ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*, para. 79, and *Case of Azul Rojas Marín et al. v. Peru*, para. 231.

²⁰⁵ Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 353, and *Case of Azul Rojas Marín et al. v. Peru*, para. 234.

²⁰⁶ Cf. for example, *Case of the Miguel Castro-Castro Prison v. Peru*, para. 445, and *Case of Azul Rojas Marín et al. v. Peru*, para. 234.

235. The **Commission** requested the following measures as guarantees of non-repetition:

- a) "Establish regulations and appropriate mechanisms for training, early detection, inspection, supervision and accountability in public and private educational institutions, in order to effectively prevent and respond to acts of sexual harassment in those institutions, including violence exercised through their health care services;
- b) Design protocols for the education and health sectors to facilitate "whistleblowing," confidentiality and support for students who are victims or witnesses of acts of sexual violence;
- c) Include appropriate and timely information in mandatory teaching materials, suited to children's level of maturity and designed to provide them with tools for preventing and reporting cases of sexual violence;
- d) Implement educational and awareness-raising campaigns in public and private schools to address social and cultural patterns that normalize or trivialize sexual violence in schools.

236. The **representatives** requested that the State adopt the following measures of non-repetition:

- a) *Training for public officials.* i. Implementation, within one year, of permanent education and training programs for all professionals working in preschool, primary and secondary educational institutions, on topics of sexual violence, pregnancy, gender, human rights and prevention of acts of sexual harassment, particularly those based on relationships of power. This training should include references to this judgment. ii. Implementation of training based on a gender perspective for the detection, reporting and investigation of acts of sexual harassment. The representatives also requested that any standards established in this judgment be included in the continuous education and training programs or courses directed at individuals in charge of their criminal prosecution and judicialization.
- b) *Design of a care strategy for victims of sexual violence in schools.* Development of appropriate regulations and mechanisms for training, early detection, inspection, supervision and accountability in public and private schools, in order to effectively prevent and respond to situations of sexual harassment within those institutions.²⁰⁷
- c) *Inclusion of courses on sexual and reproductive rights* in the curricula of all schools in Ecuador, in order to inform and educate children on their rights.
- d) Actions to ensure the *availability of information on sexual violence in Ecuadorian schools.* The representatives requested that the State take the necessary steps to produce annual official statistics to monitor the implementation of existing public policies on gender-based violence and on criminal, administrative and disciplinary complaints filed for sexual crimes committed against children and adolescents.

²⁰⁷ They considered that these measures should ensure that health care provision for adolescent victims of sexual violence: i) is differentiated for adolescents with an emphasis on their sexual and reproductive health; ii) respects doctor-patient confidentiality during medical consultations; iii) includes counseling services on sexual and reproductive health, iv) guarantees immediate provision of emergency and prophylactic oral contraception for the prevention of human immunodeficiency virus (HIV), as part of care for victims of sexual violence.

237. In its answering brief, the **State** considered that the measures requested by the representatives were unnecessary, given that the Ecuadorian authorities have already implemented domestic regulations and protocols in the area of sexual and reproductive rights. During the public hearing (*supra* para. 10), the State indicated that it has already developed tools to eradicate violence, based on preventive, reactive and corrective approaches. In its final written arguments it also described the actions taken to prevent and eradicate sexual violence within the Ecuadorian education system.

238. In its arguments, the **State** specified the actions it has carried out, grouping these as follows:

a) *Comprehensive care*: i. Through Executive Decree N° 620 of November 2007, the eradication of gender-based violence was declared a State policy, and an interinstitutional Technical Committee was formed to draft the National Plan for the Eradication of Gender-based and Domestic Violence. ii. The Ecuadorian authorities have issued the following policies and ministerial agreements to guarantee the right to sexual and reproductive health: 1) Interinstitutional Cooperation Agreement 2017-2018 on comprehensive health care for child and adolescent victims of gender-based violence, prioritizing cases detected or committed within the national education system; 2) Sexual and Reproductive Health Plan 2017-2021, ensuring comprehensive and quality health care;²⁰⁸ and 3) Intersectoral Policy for the Prevention of Pregnancy in Girls and Adolescents 2018-2025, implemented jointly by the Ministries of Public Health (MSP), Education, Economic and Social Inclusion and the Secretariat of Human Rights, aimed at ensuring universal access to information, comprehensive sex education and sexual and reproductive health services in order to promote free, responsible and health-based decision-making.²⁰⁹

b) *Assistance for victims of sexual violence, Ministry of Public Health*: I. In 2015, the Ministry of Public Health issued the Technical Standards on Comprehensive Care for Gender-based Violence (NTAIVG, for its Spanish acronym)²¹⁰ ii. In 2018 it issued regulations for the implementation of the Primary Assistance Service to strengthen the care provided to victims of violence based on the parameters of quality, warmth and particularly confidentiality. These regulations included the Mandatory Notification Form for Alleged Cases of Gender-based Violence and Serious Human Rights Violations which facilitates victims' access to the National Justice System; iii. Two manuals have been produced since 2017 to ensure comprehensive assistance and sexual and reproductive health counselling.²¹¹

c) *Protocol to address situations of violence detected or committed in the education system*: i. In 2013 the State issued the Action Protocol to Address Situations of

²⁰⁸ Cf. Ministry of Public Health, Undersecretary for the Promotion of Health and Equality, National Office of Human Rights, Gender and Inclusion, Official letter MSP-DNDHGI-2019-0033-0 of August 6, 2019.

²⁰⁹ Cf. Ministry of Education, Undersecretary for Innovation in Education and Well-being. National Office of Education for Democracy and Well-being. Report on measures to prevent and eradicate sexual violence in schools, March 29, 2019 (evidence file, annex 59 to the answering brief, folios 7233 to 7298).

²¹⁰ Cf. Ministry of Public Health, Undersecretary for the Promotion of Health and Equality, National Office of Human Rights, Gender and Inclusion, Official letter MSP-DNDHGI-2019-0033-0 of August 6, 2019.

²¹¹ Manual on Comprehensive Sexual and Reproductive Health Care for disabled persons, for the National Health System, and Manual on Sexual and Reproductive Health Counseling, directed at "health professionals" (Cf. Ministry of Public Health, Undersecretary for the Promotion of Health and Equality, National Office of Human Rights, Gender and Inclusion, Official letter MSP-DNDHGI-2019-0033-0 of August 6, 2019).

Violence Detected or Committed in the Education System, to be implemented by all personnel within the education system.²¹² In 2017, the second version of the protocol was disseminated, which included conflict resolution strategies to tackle violence in schools, but excluded cases of sexual violence.²¹³ ii. In 2017, efforts to prevent sexual violence were coordinated through the Plan for Harmonious Coexistence and Culture of Peace.²¹⁴ iii. An Intervention Plan was implemented in 2017 as a “precautionary and temporary measure” to “resolve institutional conflicts and ensure institutional monitoring by the national education authorities.” iii. In February 2018 the Support and Restitution Plan was created to address situations of violence committed or detected in schools of the national education system, in order to effectively manage the Ministry of Education’s efforts to guarantee support for children and adolescents affected by sexual violence.²¹⁵

d) *Training for public officials:* i. A total of 59,129 teachers have received training on preventing and addressing sexual violence in schools²¹⁶. ii. Various “awareness-raising workshops” have been implemented with health professionals and public officials.²¹⁷ iii. Between April and July of 2019, 12 national workshops were held with professionals of the country’s Student Counseling Departments to prevent and address violence in schools.

e) *Disseminating information on sexual and reproductive health and gender-based violence:* i. Implementation of “sexual and reproductive health counseling services” and information campaigns to prevent sexual violence.²¹⁸ ii. The Ministry of

²¹² The State indicated that this Protocol establishes mandatory guidelines to be applied by all educational institutions and their staff, and imposes administrative and criminal sanctions for non-compliance. The first principle established is the obligation to report acts of sexual violence.

²¹³ The State indicated that despite this, “[o]n that occasion teachers and officials of the district conflict resolution boards received training on the administrative procedures to be followed in cases of sexual violence. Actions were coordinated to prevent sexual violence in [...] 2017 through the Plan of Harmonious Coexistence and Culture of Peace, and in [...] 2018, through the Intersectoral Policy for the Prevention of Pregnancy in Girls and Adolescents.” (Cf. Ministry of Education, Undersecretary for Educational Innovation and Well-being. National Office of Education for Democracy and Well-being. Report on measures to prevent and eradicate school-related sexual violence, March 29, 2019.)

²¹⁴ Cf. Ministry of Education, Undersecretary for Educational Innovation and Well-being. National Office of Education for Democracy and Well-being. Report on measures to prevent and eradicate sexual violence in schools, March 29, 2019.

²¹⁵ Cf. Ministry of Education, Undersecretary for Educational Innovation and Well-being. National Office of Education for Democracy and Well-being. Report on measures to prevent and eradicate sexual violence in schools, March 29, 2019.

²¹⁶ In August 2018, a course on prevention and actions to address violence was implemented with school teachers and authorities of the educational system in order to raise awareness: 13,874 teachers have completed the course and 5,000 were taking the course when Ecuador presented its answering brief. In 2020, the plan was to train 164,000 teachers in this subject. (Cf. Ministry of Education, Undersecretary for Educational Innovation and Well-being. National Office of Education for Democracy and Well-being. Report on measures to prevent and eradicate sexual violence in schools, March 29, 2019).

²¹⁷ The workshop contents include: human rights, gender, gender-based violence and mandatory notification form for alleged cases of gender-based violence and serious human rights violations. The State added that the Ministry of Health implements the following training courses for public officials: workshop for the implementation of the Technical Standards for Comprehensive Action on Gender-based Violence; awareness-raising workshops on the Primary Assistance Service and Mandatory Form for Notification of Alleged Cases of Gender-based Violence and Serious Human Rights Violations; and, virtual course on Technical Standards for comprehensive care of victims of gender-based violence.

Education organized “participatory workshops” for the prevention of gender-based violence, sexual violence and adolescent pregnancies. iii. Creation of the “*Educando en familia*” program that includes a module on preventing sexual violence in the family, by reviewing patterns, customs and parenting guidelines in homes that foster situations of sexual violence against children and adolescents. This program is being implemented in schools. iv. A campaign entitled “*más unidos más protegidos*” was implemented jointly by the Ministry of Education and the Ministry of Public Health in 2017, and disseminated at national level through 2,641 public events, with a total of 1,379,161 attendees.²¹⁹ v. Numerous information campaigns have been implemented with the aim of reducing levels of sexual violence in schools and informing students about how to exercise their sexual and reproductive rights. vi. Current study plans include two hours of teaching on topics such as self-esteem, conflict management and decision-making. In addition, schools have developed “coexistence codes” as tools to create environments that promote learning in a violence-free environment.

239. Ecuador also indicated that it has implemented the following actions: a) a computerized system to record cases of sexual violence reported in schools -REDEVI;²²⁰ b) updated rules on the obligation to protect children and punish sexual offenses committed in educational establishments;²²¹ c) the Ministry of Education has adopted several plans, protocols and rules aimed at preventing and eradicating sexual violence in Ecuador’s schools, such as the Comprehensive National Plan to eradicate sex offenses in the education system and others;²²² and d) different public policies for the prevention of sexual violence in schools. In that context, other actions include teacher training, prevention and support measures, dissemination of information, design of protocols and implementation of public policies and institutional coordination for effective detection and comprehensive protection.²²³

²¹⁸ During the second semester of 2018, 140 professionals of the Student Counseling Department received training (Cf. Ministry of Education, Undersecretary for Educational Innovation and Well-being. National Office of Education for Democracy and Well-being. Report on measures to prevent and eradicate sexual violence in schools, March 29, 2019).

²¹⁹ Cf. Ministry of Education, Undersecretary for Educational Innovation and Well-being. National Office of Education for Democracy and Well-being. Report on measures to prevent and eradicate sexual violence in schools, March 29, 2019.

²²⁰ The State indicated that the system “registers information on the alleged perpetrator, the victim, the school in which he/she studies, psychosocial support as well as administrative and legal actions implemented in each case detected.” In this regard, the State presented the following document: Ministry of Education, Official letter No. MINEDUC-CGAJ-2020-0009-OF, of January 20, 2020, Annex II: REDEVI, Complaints of sexual violence detected or committed in the education system, December 30, 2019 (evidence file, annex 7 to the State’s final written arguments, folios 7622 to 7624).

²²¹ It referred to: a) the Organic Law on Intercultural Education, of March 31, 2011, and b) the General Regulations of the Organic Law on Intercultural Education of July 26, 2012.

²²² Cf. Ministerial Decision No. 340-11 of September 30, 2011. It also mentioned the following: Special Rules of Procedure and Mechanisms to Detect and Address Sexual Offenses in the Educational System (Ministerial Decision No. 4708 published in the Official Register 738 of January 6, 2003) and protocols to address acts of violence committed or detected in schools or the provisions to ensure that education responds to the constitutional and legal principle of the best interests of children and adolescents (Ministerial Decision No. 020-12 of January 25, 2012, Ministerial Decision No. MINEDUC-MINEDUC-2017-00052-A of June 22, 2017, and Ministerial Decision No. MINEDUC-MINEDUC-2017-00055-A of June 23, 2017).

²²³ The State referred to the following: a) Comprehensive project to strengthen efforts to address violence in the National Education System, developed in 2018. This will be implemented from March 2019 until 2022, to benefit all actors of the educational community. The aim is to strengthen efforts to tackle different forms of violence detected or committed in the National Education System, through various actions, and with two operational objectives: i) to prevent violence in the National Education System, and ii) to provide

240. In addition to the foregoing, the expert witnesses Cobos Velazco and Bustamante Torres stated that in 2006 the Ministry of Education began to implement various measures to prevent sexual violence in schools, such as the National Education Program on Sexuality and Love (PRONESA) and, based on ministerial decisions, the national plan for the eradication of sexual offenses in schools and the institutionalization of sexual education in national school curriculum; also, since 2012, teachers have received training on the prevention and eradication of sexual abuse in schools. The experts added that action protocols were introduced in 2013 to address violence in schools and tackle "all forms of violence that could affect any child or adolescent." In that context, they mentioned a protocol adopted in 2017 to address sexual violence detected or committed in schools, including various actions for reporting cases to prosecutors' offices and to the administrative authorities when the perpetrator is a "teacher or an authority." This protocol also includes "accompaniment to the victim" as well as "psychosocial support" and "guarantees compliance with measures of protection and collaboration with investigation processes." That same year, the Ministry of Education issued an "Action Guide" for the "care of children and adolescent victims of sexual violence committed or detected in schools of the National Education System."

241. The recently appointed expert witnesses considered that "[t]hese regulatory instruments contribute significantly to processes of prevention, assistance and support for victims of sexual violence." However, they indicated that the "plans, programs and projects" implemented in 2019 "do not include a statistical survey," and that a report by the "Comptroller General regarding the National Plan to eradicate sexual offenses within the education system concluded that the Ministry of Education did not carry out continuous monitoring to ensure the implementation of this Plan."

242. The **Court** notes that the Commission and the representatives have requested actions related to: a) training of public officials; b) prevention of acts of sexual violence in schools; c) care for victims of sexual violence in schools; d) teaching of sex education; e) education and awareness campaigns, and f) preparation and availability of information on sexual violence in schools.

comprehensive protection and care for children and adolescents who are victims of violence in the National Education System. The project uses a participatory methodology for the prevention of violence, includes teacher training aimed at preventing violence and promoting reading on this topic, and implementation of the methodology of supportive accompaniment- care for caregivers of the Ministry of education teams that intervene in efforts to address violence- plus the Manual of the district boards for conflict resolution in cases of sexual violence committed in the National Education System. b) Intersectoral Policy to Prevent Pregnancy in Girls and Adolescents 2018 - 2025. c) Routes and protocols for action, investigation and care for child victims of violence and sexual violence committed and detected in the education system. In the second semester of 2018 a Pocket Guide was published and distributed to tackle sexual violence in schools, with around 610,000 copies printed. d) In 2017, the State published the action protocol to address pregnancy, motherhood and fatherhood in the education system. In 2019, a methodological guide was produced to prevent pregnancy in girls and adolescents. In the 2018-2019 academic year, the "human development hour" was implemented in the National Education Curriculum to help prevent different forms of violence within the school community. This classroom activity seeks to strengthen the students' all-round education. e) Inter-institutional coordination for effective detection and protection: on August 17, 2017, the Framework Agreement on Interinstitutional Cooperation was signed between the Attorney General's Office, the Judiciary Council, the Ministry of Education and the Ministry of Justice and Human Rights, to ensure violence-free spaces in schools. Subsequently, different "work groups" were set up to coordinate actions on topics related to the prevention and eradication of violence within the education system. f) Development of curriculum contents on human rights and gender perspective. g) Various teacher training programs such as the MOOC on "Preventing and addressing violence in the education system" (to date, 35,912 teachers have completed the course. In 2020, there are plans to train 164,000 teachers throughout the country), plus the training process for SCD professionals (Student Counseling Departments). Since 2017, a total of 426 SCD professionals have received training nationwide.

243. In this regard, this Court appreciates the information presented by the State, which reflects a varied range of actions and regulations on this issue. The Court also notes that various measures mentioned by Ecuador are related to the requests of the Commission or the representatives, for example: a) in relation to training, the State organized various workshops and courses between 2018 and 2020 on violence in the education system; b) in relation to prevention of sexual violence, Ecuador has developed the Action Protocol to address violence detected or committed in the education system; c) regarding support for victims, in 2018 the State established the Support and Restitution Plan, and d) regarding education and awareness campaigns, it organized several workshops.

244. However, with regard to the provision and dissemination of information, although Ecuador mentioned that it has implemented a computerized system (REDEVI) to record cases of sexual violence, the expert report provided by the State also reveals a lack of statistical information on various pertinent plans, projects and programs. Also, as indicated in that same report, no "follow-up" actions have been carried out to ensure the implementation of the National Plan to eradicate sexual offenses in the educational system.²²⁴

245. For the aforementioned reasons, this Court orders the State, within one year of notification of this judgment, to identify measures additional to those already under way, in order to correct and remedy any weaknesses detected in relation to: a) providing continuously updated statistical information on school-related sexual violence against children; b) detecting and reporting cases of sexual violence against children in schools, c) personnel training in the education sector to prevent and address sexual violence, and d) providing guidance, assistance and support to victims of sexual violence in schools and/or to their families. If considered appropriate, the State could seek the support of

²²⁴ In this regard, this Court recalls that in 2017 the Committee on the Rights of the Child stated, in its observations on Ecuador that, "although it [took] note of the information regarding the National Plan to Eradicate Sex Offenses," as well as "the zero tolerance approach toward sexual violence in schools, it show[ed] deep concern at the prevalence of gender-based violence, especially sexual violence, harassment and ill-treatment of girls in all spheres, together with the high rate of impunity in cases of sexual violence." According to the *amicus curiae* documents forwarded by *Fundación Desafío* and by SURKUNA containing data that they presented, a significant number of cases of sexual rights violations against girls continues in schools. In 2017, the Committee on the Rights of the Child included the following among its recommendations to Ecuador: "[a]dopt a nationwide strategy without delay, to eliminate sexual violence against girls in [...] the education system, [...] ensure that girls have access to effective complaint mechanisms to report sexual violence and to information about their sexual and reproductive rights," and "adopt clear standards for the provision of remedies and redress for girl victims of sexual violence and abuse, including psychosocial redress and counseling, reparations, compensation and guarantees of non-repetition" (Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Ecuador*, paras. 24 and 25). In addition, the expert witness Gauché Marchetti emphasized the importance of "keeping statistical records of complaints and follow-up investigations," since "it is essential to effectively prevent and eliminate harassment through strategies that take account of local conditions." In its *amicus curiae* brief, SURKUNA enumerated various measures implemented by Ecuador to tackle sexual violence in schools, including PRONESA and the National Plan for the Eradication of Sexual Offenses in Schools, of 2006, which includes actions of "prevention", "protection", "restitution of rights" and "investigation" and punishment of offenders. However, it indicated that in 2019 the Ecuadorian Technical Planning Secretariat, a State institution, assessed PRONESA and recommended "strengthening actions in schools," "providing specialized services for girls and adolescents [victims]" and "setting targets and indicators to conduct adequate monitoring, follow-up and evaluation." According to the expert witnesses proposed by the State, SURKUNA considers that the "public policy tools have not undergone an effective monitoring and evaluation phase" and that the proposed objectives and actions "have not materialized." In its *amicus curiae* brief, and based on guidelines adopted by at least 13 universities, *DeJusticia* referred to "good practices" for addressing sexual harassment, including "measures of protection" for victims, divided into "measures of containment or immediate action," "psychosocial support measures" and "legal assistance measures."

organizations such as the Inter-American Commission of Women or the Committee of Experts of the Follow-up Mechanism of the Belém do Pará Convention, to provide counseling or assistance that could be useful to comply with this measure. Also, based on the recommendations of the Committee on the Rights of the Child, the Court emphasizes the importance of children's involvement in the formulation of public policies of prevention.²²⁵

246. The State shall inform the Court, within one year of notification of this judgment, of any measures it deems necessary to adopt. That information will be made available to the representatives, who may present their observations. Ecuador must begin to implement these measures, at the latest, within six months after submitting information on these to the Court, without prejudice to any other measures that this Court may order in the course of monitoring compliance with this judgment, based on the information and any observations submitted. The State must also adopt the regulatory, institutional and budgetary measures required to fully implement these provisions. The Court will ensure that that the measures ordered, in the terms indicated, are executed effectively.

F. Other measures requested

247. The **Commission** asked the Court to order the State to "ensure that the judiciary, the Public Prosecutor's Office and the national police responsible for conducting criminal investigations and proceedings on violence against women and girls, including sexual violence committed in schools and in health care services provided in educational institutions, receive appropriate training and institutional strengthening to investigate these matters with a gender perspective and with due diligence."

248. The **representatives** requested the following additional measures for the "social rehabilitation" of Paola's mother and sister: 1) provide Denisse with a scholarship for university or post graduate studies of her choice, covering her enrolment, monthly fees, course materials and travel expenses, plus attendance at additional conferences and courses, if available, through the Ecuadorian Institute of Educational Credit and Scholarships (hereinafter, "IECE"), at the public or private educational institution of her choice, according to her personal interests, and for the entire duration of the course; 2) guarantee Mrs. Petita Albarracín's access to social security, with retroactive effect from 2002 and, in particular, ensure coverage of her retirement pension and funeral services; 3) offer Denisse a permanent job in one of the State institutions, appropriate to her professional profile (business administration), and preferably in the National Secretariat of Human Rights in Guayaquil;²²⁶ 4) ensure that the victims have access to housing of their choice, in an area of Guayaquil agreed with them, with suitable living conditions of quality, safety and hygiene; 5) rename the Reception Room for victims of sexual violence at the Martha Roldós Health Center in Area No. 9 of Guayaquil, using the name "Paola Guzmán Albarracín;" the wording of the plaque must be previously agreed with the petitioners, and the State must include an acknowledgement of its responsibility for the violations committed against Paola and her family, a commitment to prevent a repetition of the facts and mention the work of organizations that fight for women's rights, specifically naming CEPAM and CDR and 6) erect a monument or public tribute in memory of the victims of sexual violence, in the Plaza de San Francisco or Plaza de la

²²⁵ Cf. Committee on the Rights of the Child, General Comment No. 13, para. 39.

²²⁶ They stated that if this is not possible, she should be provided with access to a business development program or be granted a specific sum of money to set up a business or "seed capital" to start a production project.

Independencia. In their final written arguments, the representatives specified that the monument should make reference to Paola Guzmán Albarracín. Also, as a guarantee of non-repetition, the representatives asked the Court to order Ecuador to strengthen the Judicial Police and its mechanisms for the location and capture of fugitive defendants, in order to improve the efficiency of intelligence work through interinstitutional coordination, making use of various State resources to minimize cases of prescription of criminal actions owing to the absence of the accused.

249. With regard to the requests for a scholarship, housing and a job for Denisse Guzmán Albarracín, the **State** considered that these measures do not serve the purpose of restoring the victim to the original situation before the unlawful acts were committed.

250. The **Court** does not consider it appropriate to order the measures requested by the Commission and the representatives to “strengthen” the institutional capacities of the police, the Judiciary or the Public Prosecutor’s Office. This Court does not consider it proven that the facts of this case can be attributed to a lack of resources or training in those institutions. Furthermore, it considers that the measures of satisfaction and rehabilitation already ordered are sufficient. Therefore, it is not pertinent to order the additional “social rehabilitation” measures requested by the representatives (*supra* para. 248).

G. Compensation

G.1 Pecuniary damage

251. The **Commission** requested comprehensive reparation for the human rights violations committed, both in the material and the moral aspect, including measures of financial compensation.

252. The **representatives** asked the Court to order the State to pay the following amounts, in equity, for pecuniary damage arising from the death of Paola del Rosario Guzmán Albarracín: a) for *consequential damage*, the sum of USD\$ 200,000.00 (two hundred thousand United States dollars) in favor of her family,²²⁷ and b) for *loss of profits*, USD\$ 56,502.00 (fifty-six thousand, five hundred and two United States dollars) in favor of Paola Guzmán’s family, taking into account her life expectancy and the minimum wage in Ecuador at the time of her death.²²⁸

253. The representatives also requested that the State guarantee compliance with the compensation for civil damages ordered in the domestic courts and ensure that this is paid by the vice principal to Paola’s family.

254. The **State** considered that the representatives did not prove a direct causal link between the actions or omissions of its officials and Paola Guzman’s death. Therefore, it argued that the Court should dismiss their request for compensation for expenses incurred as a result of her death, such as funeral expenses. With respect to loss of profits,

²²⁷ The representatives explained that Paola’s death entailed expenses for her family: funeral expenses and 17 years of efforts to obtain justice. However, they indicated that Paola’s family does not have documents to support those expenses.

²²⁸ The representatives argued that, according to the World Bank, in 2001 life expectancy in Ecuador was 73 years, and the minimum monthly wage for that year was USD\$ 86 (eighty-six United States dollars). They considered that the amount should include not only 12 annual salaries but also the corresponding annual bonuses, so that Paola would have an annual income equivalent to 14 minimum salaries. They understood that 25% should be deducted from that sum for personal expenses.

the State requested that, if the Court should order this measure, the amount be calculated based on the period of employment, and not from the date of her death.²²⁹ As to the ruling on compensation arising from the civil lawsuit against the vice principal, Ecuador held that the representatives' claim would result in "double compensation," since they were also asking the State to pay the total of the damages claimed.

255. In its case law, the **Court** has indicated that pecuniary damage involves the loss of or detriment to the victims' income, the expenses incurred as a result of the facts, and the monetary consequences that have a causal nexus with the facts of the case.²³⁰

256. This Court has determined that Ecuador violated the right to life of Paola del Rosario Guzmán Albarracín. Therefore, it must pay compensation for pecuniary damage arising from her death. In relation to consequential expenses, the representatives have not justified the amount claimed. However, it is reasonable to assume that expenses were incurred after Paola's death and in the efforts to obtain justice. Therefore, the Court considers their claim reasonable and establishes, in equity, compensation of USD\$ 20,000.00 (twenty thousand United States dollars) for consequential damages. With respect to loss of profits, based on the information provided by the representatives on the amount of the minimum wage and life expectancy in Ecuador, which was not challenged by the State, and considering the period of time that Paola would have worked, the Court decides to set in equity, the sum of USD\$ 50,000.00 (fifty thousand United States dollars) as compensation. Therefore, the State must pay the total sum of USD\$ 70,000.00 (seventy thousand United States dollars). Said amount must be distributed, in equal parts, between Mrs. Petita Paulina Albarracín Albán and Denisse Selena Guzmán Albarracín.

257. On the other hand, the Court does not find that Ecuador is responsible for human rights violations specifically related to the civil lawsuit for damages pursued in the domestic courts. Therefore, it is not appropriate to order any measure or compensation in that regard.

G.2 Non-pecuniary damage

258. As indicated previously (*supra* para. 251), the **Commission** requested compensation for moral damages.

259. The **representatives** specified that the damages owed to the victims may be assessed under two headings: a) those related to the sexual harassment and abuse, torture and death of Paola Guzmán and b) those corresponding to the direct and prolonged suffering endured by Paola's relatives as a consequence of the impunity surrounding the facts and the loss of Paola.

260. With respect to the first component, the representatives requested that the Court order compensation for non-pecuniary damage of USD\$ 80,000.00 (eighty thousand United States dollars), to be distributed in equal parts between Mrs. Petita Albarracín

²²⁹ It added that: a) regarding the claim for consequential damages, the representatives did not provide any justification or substantiate their claim with any evidence, and therefore it should be dismissed, and b) in relation to loss of profits, an eventual calculation should include an assessment of the victim's future income prospects, considering her academic record and professional development at the time of her death.

²³⁰ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Azul Rojas Marín et al. v. Peru*, para. 256.

and Denisse Guzmán. As to the second component mentioned, the representatives requested that compensation be set at USD\$ 30,000.00 (thirty thousand United States dollars) for each of the surviving victims.

261. The **State** indicated that the facts in this case do not constitute acts of torture, and that there is no causal link between the actions or omissions of the State agents and Paula's death. Therefore, it concluded that the State's responsibility in relation to the girl's death has not been proven and, consequently, this must be taken into account in assessing the non-pecuniary damage. The State also asked the Court to dismiss the unproven factual allegations in its assessment of the non-pecuniary damage, considering that it could hardly grant compensation for damages allegedly caused by an event of which it had no knowledge.

262. In its case law, the **Court** has developed the concept of non-pecuniary damage, and has established that this may include both the suffering and distress caused to the direct victim and his family, and the impairment of values that are highly significant to the individual, as well as alterations of a non-pecuniary nature that affect the living conditions of the victim or his family.²³¹

263. This Court considers that in this case, in which Paola del Rosario Guzmán Albarracín suffered serious acts of sexual violence that led to her suicide, it is evident that she experienced a high degree of suffering. It has also been established how these events affected Mrs. Petita Paulina Albarracín Albán and Denisse Selena Guzmán Albarracín, including the impunity surrounding this case, and their re-victimization through actions such as showing Mrs. Albarracín her daughter's body during the autopsy (*supra* para. 210). Therefore, the Court deems it pertinent to establish in equity, the sum of USD\$ 110,000.00 (one hundred and ten thousand United States dollars) for non-pecuniary damage in favor of Paola del Rosario Guzmán Albarracín; the sum of USD\$ 55,000.00 (fifty-five thousand United States dollars) in favor of Petita Paulina Albarracín Albán; and the sum of USD\$ 45,000.00 (forty-five thousand United States dollars) in favor of Denisse Selena Guzmán Albarracín. The amount ordered in favor of Paola del Rosario Guzmán Albarracín shall be distributed, in equal parts, between Mrs. Petita Paulina Albarracín Albán and Denisse Selena Guzmán Albarracín.

H. Costs and Expenses

264. In their pleadings and motions brief, the **representatives** requested that the Court order payment totaling USD\$ 96,593.49 (ninety-six thousand, five hundred and ninety-three United States dollars and forty-nine cents) for costs and expenses,²³² and provided supporting documentation for the expenses incurred. In their final written

²³¹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Azul Rojas Marín et al. v. Peru*, para. 261.

²³² In this regard, they provided the following details: a) expenses incurred by the victims: USD\$ 3,500.00 (three thousand, five hundred United States dollars) for legal assistance from private lawyers "during the domestic proceedings" from 2002-2005; b) expenses and costs incurred by CEPAM: USD\$ 18,195.92 (eighteen thousand, one hundred and ninety-five United States dollars and ninety-two cents), arising from: USD\$ 3,605.64 (three thousand six hundred and five United States dollars and sixty-four cents) in "travel expenses" and USD\$ 14,590.98 (fourteen thousand five hundred and ninety United States dollars and ninety-eight cents) for "legal assistance"; c) costs and expenses incurred by the Center for Reproductive Rights: USD\$ 74,879.57 (seventy-four thousand, eight hundred and seventy-nine United States dollars and fifty-seven cents), arising from: "travel expenses," USD\$ 45,735.75 (forty-five thousand, seven hundred and thirty-five United States dollars and seventy-five cents) and "legal assistance" USD\$ 29,143.82 (twenty-nine thousand, one hundred and forty-three United States dollars and eighty-two cents).

arguments, the representatives also presented details of the expenses incurred since the submission of their pleadings and motions brief and up until the public hearing, for a total of USD\$ 15,637.31 (fifteen thousand, six hundred and thirty-seven United States dollars and thirty-one cents).²³³ The representatives also requested that “future expenses” be taken into account, pointing out that the expenses indicated so far do not include all those that might be incurred during the remainder of the proceedings before this Court.

265. The **State** asked the Court to reject any receipts that are not duly justified, or those corresponding to expenses that were not strictly necessary to obtain justice.²³⁴ It also argued that it should not have to pay expenses for personnel associated with the Center for Reproductive Rights, for whom no work contracts were attached and no justification was provided for their work. It added that CEPAM had attached receipts for a medical appointment (angiology) and medications for Mrs. Petita Albarracín, even though it could not identify a causal link between those expenses and the harm resulting from this case. The State further argued that the amount claimed by the representatives is excessive and has not been justified. It called for a detailed breakdown of the expenses and asked the Court to set a reasonable amount of between USD\$ 5,000.00 (five thousand United States dollars) and USD\$ 10,000.00 (ten thousand United States dollars).

266. The **Court** reiterates that, based on its case law, costs and expenses form part of the concept of reparation, because the efforts made by the victims to obtain justice, both at national and international level, entail disbursements that must be compensated when the State’s international responsibility has been declared in a condemnatory judgment. Regarding the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, which includes expenses incurred before the authorities of the domestic courts and those generated during the proceedings before the Inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of equity, taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.²³⁵

267. This Court has indicated that,

the claims of the victims or their representatives with regard to costs and expenses, and the evidence to support them, must be submitted to the Court at the first procedural opportunity granted to them; that is, in the pleadings and motions brief, without prejudice to these claims being updated subsequently, in keeping with the new costs and expenses incurred during the proceedings before this Court.²³⁶

268. The Court also reiterates that it is not sufficient merely to forward probative documents; rather, the parties are required to include arguments that relate the evidence to the fact that it is considered to represent and, in the case of alleged financial

²³³ In this regard, they indicated the total expenses incurred by the Center for Reproductive Rights: USD\$ 10,967.75 (ten thousand nine hundred and sixty-seven United States dollars and seventy-five cents), and expenses incurred by CEPAM: USD\$ 4,669.56 (four thousand, six hundred and sixty-nine United States dollars and fifty-six cents).

²³⁴ Expenses such as food, cell phone recharging, computer and accessories, etc.

²³⁵ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Azul Rojas Marín et al. v. Peru*, para. 274.

²³⁶ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*, para. 79, and *Case of Azul Rojas Marín et al. v. Peru*, para. 275.

disbursements, ensure that the items and their justification are clearly described.²³⁷ The representatives provided receipts for expenses totaling USD\$ 58,500.00 (fifty-eight thousand, five hundred United States dollars) from the Center for Reproductive Rights, and USD\$ 8,618.00 (eight thousand, six hundred and eighteen United States dollars) from the organization CEPAM. However, the link between these expenses and the present litigation has not been proven in all cases.²³⁸

269. Taking into account the amounts requested by each of these organizations and the receipts submitted for expenses, the Court sets, in equity, the total sum of USD\$ 57,300.00 (fifty-seven thousand, three hundred United States dollars), which shall be distributed as follows: USD\$ 50,000.00 (fifty thousand United States dollars) for the Center for Reproductive Rights and USD\$ 7,300.00 (seven thousand, three hundred United States dollars) for CEPAM. These amounts shall be delivered directly to the named organizations. The Court notes that the representatives requested payment for costs and expenses directly to the victims, given that they were assisted by private attorneys "during the domestic proceedings" between 2002 and 2005 (*supra* footnote 232). However, the expenses related to their search for justice have already been considered as part of the pecuniary damages awarded, as requested by the representatives. Therefore, it is not appropriate to order the payment of costs and expenses in favor of the victims in this case. At the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victims or their representatives for any reasonable expenses incurred during that procedural stage.²³⁹

I. Method of compliance with the payments ordered

270. The State shall make the payments for compensation of pecuniary and non-pecuniary damage, as established in this judgment, directly to the persons indicated herein, within one year of notification of this judgment, or it may bring forward the full payment, pursuant to the following paragraphs.

271. If the beneficiaries are deceased or die before they receive the respective compensation, this shall be delivered directly to their heirs, in accordance with the applicable domestic law.

272. The State shall comply with its monetary obligations through payment in United States dollars.

273. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit these amounts in an account or certificate of deposit in their favor in a solvent Ecuadorian financial institution, in United States dollars, and on the most favorable financial terms permitted by the State's law and banking practice.

²³⁷ Cf. *Case of Chaparro Álvarez and Lapo Ñíñez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 277, and *Case of Azul Rojas Marín et al. v. Peru*, para. 275.

²³⁸ By way of example, the representatives included Mrs. Albarracín's medical expenses, and the salaries for professional services corresponding to a proportion of their working time, which is an unconfirmed estimate.

²³⁹ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of Rojas Marín et al. v. Peru*, para. 275.

If the corresponding compensation is not claimed after ten years, the amounts shall be returned to the State with the interest accrued.

274. The amounts allocated in this judgment as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, shall be delivered in full to the persons and organizations indicated, as established in this judgment, without any deductions arising from possible taxes or charges.

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

IX OPERATIVE PARAGRAPHS

276. Therefore,

THE COURT

DECLARES,

Unanimously, that:

1. The State is responsible for the violation of the rights to life, personal integrity, the protection of honor and dignity and education, recognized in Articles 4(1), 5(1) and 11 of the American Convention and Article 13 of the Protocol of San Salvador, in relation to Articles 1(1) and 19 of the American Convention on Human Rights, and for failure to comply with the obligations to prevent and refrain from acts of violence against women, pursuant to Articles 7.a, 7.b and 7.c of the Belém do Pará Convention, to the detriment of Paola del Rosario Guzmán Albarracín, as established in paragraphs 109 to 144 and 153 to 168 of this judgment.

2. The State is responsible for the violation of the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to the right to equality before the law, recognized in Article 24 thereof, and of the obligations recognized in Articles 1(1) and 2 of the Convention and Article 7.b of the Belem do Pará Convention, pursuant to paragraphs 171, 176 to 195, 201 and 202 of this judgment.

3. The State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Petita Paulina Albarracín Albán and Denisse Selena Guzmán Albarracín, pursuant to paragraphs 207 to 214 of this judgment.

4. The State is not responsible for the violation of the right not to be subjected to torture recognized in Article 5(2) and the right to freedom of thought and expression recognized in Article 13 of the American Convention on Human Rights, or for the violation of the obligations contained in Articles 1 and 8 of the Inter-American Convention to Prevent and Punish Torture, pursuant to paragraphs 147 to 152, 169, 170 and 203 of this judgment.

AND ORDERS:

Unanimously, that:

5. This judgment constitutes, *per se*, a form of reparation.
6. The State shall provide, free of charge and immediately, appropriate, timely and effective, psychological and/or psychiatric treatment to Petita Paulina Albarracín Albán and Denisse Selena Guzmán Albarracín, pursuant to paragraphs 226 to 229 of this judgment.
7. The State shall issue the publications indicated in paragraph 231 of this judgment.
8. The State shall hold a public act to acknowledge its international responsibility, in the terms indicated in paragraphs 232 and 233 of this judgment.
9. The State, in agreement with the victims, shall award a posthumous high school diploma to Paola del Rosario Guzmán Albarracín, if this is accepted by Mrs. Petita Paulina Albarracín Albán, pursuant to paragraph 231 of this judgment.
10. The State shall declare an official Day Against Sexual Violence in Schools, pursuant to paragraph 234 of this judgment.
11. The State shall identify and adopt measures to address sexual violence in schools, in accordance with the provisions of paragraphs 245 and 246 of this judgment.
12. The State shall pay the amounts established in paragraphs 256, 263 and 269 of this judgment as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, pursuant to paragraphs 270 to 275 of this judgment.
13. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it, notwithstanding the provisions of paragraph 231 of this judgment.
14. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfilment of its duties under the American Convention on Human Rights, and will close this case when the State has complied fully with all its provisions.

DONE, at San José, Costa Rica, on June 24, 2020, in the Spanish language

I/A Court HR. *Case of Guzmán Albarracín et al. v. Ecuador. Merits, reparations and costs.*
Judgment of June 24, 2020.

Elizabeth Odio Benito
President

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary