

**REPORT No. 110/18**  
CASE 12,678  
MERITS  
PAOLA DEL ROSARIO GUZMÁN ALBARRACÍN AND RELATIVES  
ECUADOR  
OCTOBER 5, 2018

**I. SUMMARY**

1. On October 2, 2006, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition submitted by the Center for Reproductive Rights and the Centro Ecuatoriano para la Promoción y Acción de la Mujer (CEPAM-Guayaquil) (hereinafter “the petitioner”) alleging that the Republic of Ecuador (hereinafter “the Ecuadorian State,” “the State,” or “Ecuador”) was internationally responsible to the detriment of Paola del Rosario Guzmán Albarracín (hereinafter “Paola”).

2. The Commission approved Admissibility Report 76/08 on October 17, 2008.<sup>1</sup> The processing from the filing of the petition to the decision on admissibility can be found described therein. On February 20, 2009, the Commission notified the parties of the report and made itself available to help them reach a friendly settlement.<sup>2</sup> The parties were given the time provided for in the Rules of Procedure to submit additional comments on the merits. All the information received was duly transferred between the parties.<sup>3</sup> On October 19, 2015, the IACHR held a hearing on the merits of the case.

3. The petitioner alleged that the State is responsible for the harassment, sexual abuse, and lack of medical attention that took the life of Paola at the age of 16. It stated that the assistant principal of the public institution where Paola was studying took advantage of his position of authority to sexually harass her, culminating in a forced sexual encounter that resulted in a pregnancy. It stated that the institution did not respond properly to her suicide attempt, leading to Paola’s death. It alleged that the inefficiency of the judicial and administrative system have allowed the facts to remain in impunity.

4. For its part, the State indicated that at the time of the facts, a myriad of laws and public policies were in place that were designed to protect the rights of girls and women, in compliance with international standards. It also argued that the case involves a relationship between private parties for which the State has no responsibility, adding that State authorities have responded appropriately under the law to the report of the facts.

5. Based on the considerations of fact and of law, the Commission concluded that the State of Ecuador is responsible for the violation of articles 4(1) (right to life), 5(1) (humane treatment), 11 (privacy), 19 (rights of the child), 24 (equal protection); 26 (work and health) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in conjunction with the obligations established in Article 1(1) of the same instrument. Likewise, the State is responsible for violating Article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”; all of the above to the detriment of Paola del Rosario Guzmán

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<sup>1</sup> IACHR. Report No. 76/08. Petition 1055-06. Admissibility. Paola del Rosario Guzmán Albarracín. Ecuador. October 17, 2008.

<sup>2</sup> On June 7, 2010, the petitioner informed the Commission of its decision to withdraw from the friendly settlement process it had informally begun with the State in May 2009. In May 2011, the petitioner decided to reopen the possibility of reaching an agreement with the State of Ecuador. On December 12, 2013, the petitioner informed the Commission of its decision to permanently withdraw from the friendly settlement process. On January 7, 2014, the Commission informed the parties of its decision to move forward with the merits of the case.

<sup>3</sup> In addition to the communications of the parties, on August 9, 2015, an *amicus curiae* brief was received from the Universidad San Francisco in Quito. The State alleged that such briefs were not provided for under the Rules of Procedure, and that rather than an opinion, the document was an attempt to position the university as an interested third party in the dispute. The Commission first noted that there was no such figure as an “interested third party” in the inter-American process. The parties before the IACHR are the petitioner and the State. It had been the IACHR’s practice to consider other types of information received in the framework of the case as *amicus curiae* briefs, thus providing the parties with an opportunity to make comments on their content, as happened in this case. Second, the IACHR observes that the brief itself from the university states it is strictly an *amicus curiae* brief, and thus, in keeping with its practice, it will be considered and weighed as such.

Albarracín. In addition, the Commission concluded that the State is responsible for violating Articles 5.1 (humane treatment), 8.1 (judicial guarantees), and 25.1 (judicial protection) of the American Convention, to the detriment of Paola's family members. The Commission concluded that the State is responsible for violating Article 7 of the Inter-American Convention for Preventing, Punishing, and Eradicating Violence against Women, "Convention of Belém do Pará". The Commission formulated the corresponding recommendations.

## **II. POSITIONS OF THE PARTIES**

### **A. Petitioners**

6. The petitioners stated that Paola lived at home with her mother's family—her grandmother, her mother, and her sister—in a suburb of Guayaquil, Ecuador. It stated that at the age of 12, Paola enrolled at the Dr. Miguel Martínez Serrano National Technical School of Commerce and Administration (hereinafter "the school"). It alleged that in 2001, Paola began having problems in two subjects and faced the possibility of being held back. In light of the situation, the vice principal, Bolívar Eduardo Espín Zurita (hereinafter "Bolívar Espín" or "the vice principal") offered to help her on the condition that she go out with him. It stated that after a period of constantly pressuring Paola, the vice principal established a sexual relationship with her, the consequences of which she was not capable of handling or evaluating.

7. They stated that in November 2002, Paola showed two classmates her positive pregnancy test and told them that the man responsible was the vice principal, and that he had given her money for an injection to terminate the pregnancy. As a favor to the vice principal, the injection would be administered by the school doctor, Raúl David Ortega Gálvez. They stated that the doctor told Paola he would give her the injection on the condition that she have sexual relations with him. It stated that on December 12, 2002, Paola swallowed 11 white phosphorous firecracker pellets (called *diablillos*), of which she informed her friends on the bus to school. It stated that when the bus arrived at school, her friends immediately took her to the school infirmary.

8. The petitioners alleged that neither the doctor nor any other school official took the necessary measures to address Paola's serious condition or arrange that she be transferred to a hospital even though she was under their custody and care. It added that Paola's mother, Petita Paulina Albarracín Albán (hereinafter "Petita" or "Petita Albarracín") learned of what happened after one of Paola's classmates called her and it was not until she arrived at the school, 30 minutes later, that Paola was taken to a hospital in a taxi. It stated that Paola died in the early morning hours of December 13, 2002, as a result of white phosphorus poisoning. The petitioners stated that it was not until after Paola's death that her relatives learned about the harassment of which she had been a victim.

9. The petitioners stated that on December 17, 2002, Paola's mother filed a criminal complaint regarding the facts, and in October 2003, her mother initiated a private criminal prosecution against the vice principal for sexual harassment, rape, and instigation to suicide. It added that Ms. Petita also turned to the civil courts and administrative forums in seeking punishment of the vice principal and reparation of the damage caused to her daughter. They stated that the legal proceedings have suffered from unjustified delays, negligence, bias, discriminatory assumptions, and gender prejudices, all of which have obstructed the relatives' quest for justice.

10. Regarding the criminal proceeding, they stated that only the sexual harassment and not the rape would be investigated and that the order to initiate the trial omitted the accusation of the crime of instigation of suicide. It alleged that the warrant for the vice principal's arrest was not executed because he was a fugitive, although it was known that he never left Guayaquil. They stated that prescription took effect in 2008 due to delays in the judiciary. Regarding the administrative procedure, it indicated that on January 23, 2003, the Guayas Provincial Office of Education issued a report concluding that the available evidence only showed that Paola fell in love with the vice principal and that it was not clear whether he had encouraged or requited that love. It added that the report questioned the truth of the testimony from the students, did not take into account Paola's vulnerability, and came to prejudicial conclusions. They stated that the report also failed to take into account a survey conducted of teachers and students, several of which stated that the vice principal

had harassed Paola. They indicated that in 2004, Bolívar Espín was dismissed for “unexcused leave,” leaving the charges against him of sexual harassment and abuse off the record.

11. They said the civil proceeding, which began on October 13, 2003, exceeded by one year and seven days the duration required by law, and during the proceeding, Ms. Albarracín filed more than 30 briefs asking for the process to move forward. It stated that on June 7, 2005, Bolívar Espín was ordered to pay US\$25,000. The sentence was not executed because he was supposedly a fugitive from justice. The petitioners added that even if it were executed, it would not have fully redressed the damage caused to the satisfaction of international standards. They indicated that the file was closed on the case nine years later without the compensation having been paid out.

12. The petitioners stated that the lack of punishment and reparation exposes students to repetition of the facts, and as for Paola's relatives, it has affected their mental and emotional health.

13. They argued that the lack of due diligence in investigating and punishing the acts of sexual violence in this case confirms and perpetuates stereotypes that blame women for the violence of which they are victims, facilitating legal and social impunity for such acts. They stated that Paola's case is representative of a reality of sexual harassment in Ecuador's educational institutions. They added that due to the conduct of its public agents—the vice principal and the school doctor—the Ecuadorian State failed to fulfill its duty to care for Paola, a duty that is reinforced because she was in its custody. Based on this, they emphasized that the State violated Paola's right to security. They also alleged that the State has failed to comply with its obligation to prevent, as it did not establish the laws necessary to protect the girls from acts of violence in schools and to punish those responsible for such acts.

14. Regarding Ecuador's argument that the relationship between the vice principal and Paola was personal and did not entail State responsibility, the petitioners stated that the actions of public officials are the State's responsibility and that the sexual harassment and abuse perpetrated by the vice principal and the school doctor took place in the course of exercising their public duties.

## **B. The State**

15. In arguments presented during the admissibility stage, the State acknowledged that Paola was the victim of the crimes of sexual harassment and statutory rape at the hands of the vice principal, and that he took advantage of his position of authority to “coerce the minor and force (...) upon her a sexual act that resulted in a pregnancy.”

16. During the merits stage, the State underscored that the petitioners' allegations that Paola's right to personal security was violated were invalid because the Commission declared this charge inadmissible in Report No. 76/08.

17. The State indicated that at the time of the facts, the existing legal framework was adequate and effective for the exercise of the rights of children and adolescents. It stated that the Political Constitution of 1998 was in force, along with the Code on Minors. It added that the Law against Violence against Women and the Family was passed in 1995, noting that it meets international standards and its regulations were promulgated in 2004. It stated that the Code on Children and Adolescents, which entered into force in 2003, fully recognized the rights of the child, codified sexual violence as abuse, and included the innovative concept of institutional abuse and sexual abuse. It stated that a National Wellbeing Plan is in place that, among other things, includes educational components aimed at eradicating all discrimination. As an example, the State highlighted the Organic Law on Intercultural Education. It also highlighted its National Plan for the Eradication of Gender Violence against Children, Adolescents, and Women.

18. Regarding the violation of the rights to life and humane treatment, the Ecuadorian State indicated that the Political Constitution in force at the time of the facts, the Civil Code, and the Criminal Code protected these rights, for which reason the “IACHR could not rule regarding them.” It added that Ecuador has had a new Constitution since 2008 that reflects the State's ongoing work to guarantee the rights of all

individuals, with special emphasis on children and adolescents. It stated that Ms. Petita Albarracín was able to access the various legal mechanisms available to her domestically without any discrimination and with equal protection. Thus, she was able to file a criminal complaint, file a suit for moral damages, and bring an administrative proceeding against Mr. Bolívar Espín. It argues that the fact that the processes had not concluded to the petitioner's liking does not mean her rights have been violated.

19. The State argued it had not committed any action or omission for which it would be internationally responsible because the relationship was between private parties and the Ecuadorian State's only involvement came in its efficient and effective administration of justice. Regarding medical care, the State indicated that school authorities cannot provide the same care as a clinic in a situation as serious as the poisoning of a person. It said that the petitioner's analysis of the facts places a disproportionate burden on the school.

20. The State indicated with regard to the criminal process that after the complaint was filed, preliminary inquiries were conducted and the prosecutor began the preliminary investigation stage. On December 16, 2003, the High Court of Justice ordered that the accused be placed in pretrial detention. The State added that in October 2003, the prosecutor issued charges for the crime of sexual harassment, and in August 2004, the order was issued to begin the trial of the vice principal. It stated that on September 1, 2005, the High Court of Justice changed the charge to aggravated statutory rape because "the aggravating factors were present in the infraction, as it led to the death of the minor." It stated that on September 18, 2008, prescription was triggered for the criminal action. It concluded that this process respected all rights and that for close on three years, since a ruling was issued on an appeal, neither Ms. Petita Albarracín nor her representatives have filed any petition before the court, thus demonstrating their lack of interest.

21. With regard to the civil suit for nonpecuniary damages brought by Paola's mother, the State indicated that the Settlement Board met on May 6, 2004, and that on June 7, 2005, the court issued a judgment ordering the defendant to pay US\$25,000. It added that the resolution was appealed by Mr. Bolívar Espín on June 10, 2005, and almost one year later, on May 15, 2006, Ms. Albarracín also appealed the ruling. The State reported that Ms. Albarracín did not activate the process for six years, leading to the case being closed on July 14, 2012, after it was declared abandoned. Should it be found internationally responsible, the State asked the Commission to find that it would not be able to provide nonpecuniary damages, as the petitioner had rejected this in the domestic jurisdiction.

22. Regarding the administrative process, the State held that Paola's mother filed a complaint for sexual harassment with the Office of the Regional Deputy Secretary for Education. The complaint was remitted to the Guayas Provincial Office of Education (hereinafter the "Provincial Office"), which assembled a special subcommittee of superintendents to conduct an exhaustive investigation of the facts alleged, reach an administrative decision, and sanction the vice principal, in keeping with current law.

### **III. ESTABLISHED FACTS**

#### **A. Prior consideration regarding the public hearing on October 19, 2015**

23. In a communication sent on September 18, 2015, the Commission called the State and the petitioner to a public hearing, to be held on October 19 that year. On October 6, the IACHR sent a follow-up communication to both parties. In messages dated October 12 and 15, the State informed the Commission that it had not received the letter calling the hearing, asked that the hearing be rescheduled for the next period of sessions, and indicated that should the Commission decide not to reschedule it, the State would be forced not to attend. In communications dated October 14 and 17, the Commission informed the State that it had the properly-verified evidence to demonstrate that the letter calling the hearing had been sent in a timely manner and reiterated that it would indeed be held. The State did not attend. In a communication dated November 6, 2015, the State alleged that because it had not received the communication calling the hearing in a timely manner, the State had not been able to exercise its right to defense. Because of this, it asked that everything that had taken place subsequent to the calling of the hearing be declared invalid.

24. The Commission reiterates that it has evidence demonstrating that notification of the hearing was sent to the State in a timely manner. In this regard, by deciding to not attend the hearing, the State was acting on its own, and its action cannot be attributed to the Commission as an alleged violation of the right to defense. In any case, during the merits stage, the State was extended the period of time established in the Rules of Procedure to present its comments on the merits. Also, the hearing held on October 19, 2015, was public, so it had an opportunity to present, subsequently and in writing, any pleadings it deemed pertinent on the oral allegations of the petitioner and the statements of Ms. Albarracín and Dr. Ximena Cortés Castillo. It should be added that this expert witness testimony was presented in writing one year before the hearing and forwarded to the State on October 21, 2014. In this regard, the Commission finds that no due process violation has taken place, and the State has been provided with extensive opportunity to mount its defense.

## **B. Relevant legal framework**

25. At the time of the facts, both the 1998 Constitution<sup>4</sup> and the Code on Minors<sup>5</sup> enshrined an obligation to prevent, eliminate, and punish violence against children, women, and adolescents.

26. Articles 509 and 510 of the Criminal Code in force at the time of the facts established:

Statutory rape shall be copulation with another person through the use of seduction or deceit to secure consent.

Statutory rape shall be punished with a prison term of between three months and three years if the victim is older than the age of 14 and younger than the age of 18.

27. Regarding sexual harassment, Article 511-A of the Criminal Code reads:

Those soliciting sexual favors for themselves or for a third party in a position of workplace, classroom, or similar authority with the explicit or tacit understanding that harm can be caused in relation to the legitimate expectations the victim may have in the realm of that relationship will be punished with a prison term of six months to two years.

Those who, in the same sense as the foregoing paragraph, act using the fact that they are in charge of proceedings or resolutions of any kind, shall be punished with the same sentence.

Those soliciting favors or making malicious insinuations of a sexual nature that infringe upon the sexual integrity of another person in a way that is not set forth in the above paragraphs will be punished with a prison term of three months to one year.

The punishments established in this article necessarily include the prohibition of conducting activities that would involve contact with the victim.

If sexual harassment is committed against minors, it shall be punished with a prison term of 2 to 4 years.

28. Article 512 of the same instrument stated that:

Rape is carnal intrusion, via total or partial penetration with 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 victim is under the age of 14;

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<sup>4</sup> Articles 23, 47, 48, 49, and 50 of the Political Constitution of the Republic of Ecuador of 1998.

<sup>5</sup> Articles 21, 22, 144, and 145 of the Code on Minors.

2. 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.

29. The punishments established for this crime were aggravated when the perpetrator had power over the victim and were committed by public officials "who have abused their offices to commit them."<sup>6</sup>

### **C. Paola del Rosario Guzmán Albarracín, her possible pregnancy, and her death**

30. Paolo was born on December 10, 1986, in Guayaquil and was the daughter of Petita Albarracín and Máximo Enrique Guzmán Bustos. Starting at the age of 12, she attended the Martínez Serrano School, located in that city. The school is public and directed by the Ministry of Education of the Republic of Ecuador. Paolo lived with her mother, her grandmother, and her younger sister, Denisse Guzmán Albarracín.<sup>7</sup> This information was not challenged by the State.

31. According to Paola's mother, in 2001, when she was 14 years old and in her second year at the school, she began having problems with certain subjects, and the vice principal offered to pass her on to the next year. According to the statement of Vilma Esperanza Olaya Soria, Paola's cousin in law, Paola told her that she did not have the scores to move to the next grade but that "she was going to see how she could handle it, that we shouldn't worry, that she had a godfather at the school;" she also stated that she went with Ms. Petita to speak to Mr. Bolívar Espín regarding this, and when Paola arrived he told her "but I already talked with you, right princess?"; she added that Paola told her that he always treated her like that, affectionately.<sup>8</sup> During the public hearing before the IACHR, Ms. Petita stated that she saw a change in Paola around October 2001. She stated the following: "she was not the same Paola who would come home from school to tell me things, she wasn't happy the same way."<sup>9</sup>

32. The petitioner stated that on December 11, 2002, the inspector for Paola's grade summoned the mother to appear at the school the next day.<sup>10</sup> On December 12, 2002, at the age of 16, Paola swallowed white phosphorous pellets at home, then 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. According to statements from her classmates, they called Paola's mother, who arrived at the school 30 minutes later and took her in a taxi to Hospital Luis Vernaza, where they pumped her stomach. When she did not improve, they took her to the Clínica Kennedy. Paola died in the early morning hours of December 13, 2002, at the Clínica Kennedy in the city of Guayaquil, as a result of poisoning by white phosphorus that she swallowed voluntarily.<sup>11</sup>

33. Based on an autopsy conducted by forensic doctors of the National Police of Guayas, the death certificate stated that the cause of death was "acute edema of the lungs and hemorrhagic pancreatitis."<sup>12</sup> Later, in Autopsy No. 931, of December 13, 2002, the forensic doctor concluded:

[...] Cadaver, female sex, mixed-race, 16 years of age, 157 cm tall, died within the last 4 to 5 hours approximately, victim of: ACUTE PULMONARY EDEMA. Which caused her death.<sup>13</sup>

34. Regarding the uterus, the forensic doctor stated: "cyanotic uterus measuring 7 cm in length, 5 cm across, and 2 1/2 cm deep, upon opening the uterine cavity, a moderate amount of bloody material is observed, ovaries with cysts, some of them bloody...."<sup>14</sup>

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<sup>6</sup>Article 515, Criminal Code of 1971.

<sup>7</sup> Attachment 1. Communication from the petitioner of October 14, 2014, and hearing of October 19, 2015.

<sup>8</sup> Attachment 2. Statement of Vilma Esperanza Olaya Soria, March 20, 2003. Attached to the communication of the petitioner, October 14, 2014.

<sup>9</sup> Public hearing held on October 19, 2015, before the IACHR.

<sup>10</sup> Attachment 1. Communication of the petitioner of October 14, 2014.

<sup>11</sup> Attachment 3. Medical record. Attachment to initial petition.

<sup>12</sup> Attachment 4. Death certificate. Attachment to initial petition.

<sup>13</sup> Attachment 5. Autopsy Report No. 931 of December 13, 2002. Attachment to initial petition.

<sup>14</sup> Attachment 5. Autopsy Report No. 931 of December 13, 2002. Attachment to initial petition.

35. In Official Letter No. 114-2003-MFD-G, of January 28, 2003, the Prosecutor asked the Leopoldo Izquieta Pérez Health Institute to conduct “the toxicology and pathology test, and also conduct a blood test to verify whether she was pregnant.”<sup>15</sup> It is worth highlighting a handwritten note provided on receipt of the official letter.

Nine unsealed plastic containers are received, labeled 13/DEC/02 and the samples indicated in the autopsy protocol—the containers with stomach contents and test tube with blood—are sent to toxicology. The containers with the samples, without formaldehyde, with the exception of the uterus and its attachments, have been previously opened. Dr. Carolina Pérez C. January 30 10:35.<sup>16</sup>

36. The medical report issued on February 12, 2013, by Dr. José A. Kuri, a surgeon, clinical pathologist, and biochemist, stated:

It should be noted that the sample is old and not properly preserved. Under these conditions, even if beta chorionic gonadotropin had been present, it would be totally destroyed in one week's time [...]

I suggest that if a physiological status that increases the quantity of this hormone is suspected, complementary anatomic-pathological studies be conducted on the ovaries and the uterus.<sup>17</sup>

37. In his statement of September 6, 2003, during the criminal proceeding, Dr. Kuri reiterated that the sample was old and stated that “in order for a blood sample to be well preserved, the plasma has to be separated from the cells immediately after coagulation. Once the serum is obtained, it can be optimally preserved if it is stored at less than 4°C. If it is kept in a regular refrigerator, it decomposes within a week, but if it is mixed with other products that destroy blood, as was the case with this sample, protein hormones like those being tested for here are destroyed in less than a week.”<sup>18</sup>

38. As far as whether or not she was pregnant, forensic medical autopsy H-2003-11-502 (no date) of the Leopoldo Izquieta Pérez National Institute for Health and Tropical Medicine found the following:

[...] UTERUS: Uterine neck shows histological changes consistent with chronic cervicitis and intense vascular congestion. Endometria in a stage of advance secretion, with dilated and twisted glands with secretion in their interior. Congestive stroma with focal hemorrhage areas. NO DECIDUAL TRANSFORMATION OF THE ENDOMETRIAL LINING WHICH SIGNIFIES LACK OF PREGNANCY.<sup>19</sup>

39. The final diagnosis of the autopsy was as follows:

1. PULMONARY CONGESTION AND EDEMA
2. NO DECIDUAL TRANSFORMATION OF THE ENDOMETRIAL LINING. NO PREGNANCY.
3. NECROTIC LIVER, KIDNEYS, HEART, AND STOMACH
4. EDEMA AND NECROSIS OF THE BRAIN<sup>20</sup>

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<sup>15</sup> Attachment 6. Official Letter No. 114-2003-MFD-G of January 28, 2003, from the Office of the District Prosecutor of Guayas and Galápagos. Attachment to initial petition.

<sup>16</sup> Attachment 6. Official Letter No. 114-2003-MFD-G of January 28, 2003, from the Office of the District Prosecutor of Guayas and Galápagos. Attachment to initial petition.

<sup>17</sup> Attachment 7. Medical report by Dr. José A. Kuri. Attached to the communication of the petitioner, October 14, 2014.

<sup>18</sup> Attachment 8. Statement of Dr. Alberto Kuri González. Attached to the communication of the petitioner, October 14, 2014.

<sup>19</sup> Attachment 9. Forensic medical autopsy H-2003-11502 of the Leopoldo Izquieta Pérez National Institute for Health and Tropical Medicine. Attached to the communication of the petitioner, October 14, 2014.

<sup>20</sup> Attachment 9. Forensic medical autopsy H-2003-11502 of the Leopoldo Izquieta Pérez National Institute for Health and Tropical Medicine. Attached to the communication of the petitioner of October 14, 2014.

40. It is worth highlighting the final comment on this autopsy, which reads:

[...]

It should be underscored that upon receiving the viscera, the uterus and its right and left attachments (ovaries) were completely open.

The macroscopic and microscopic review of the uterus and ovaries rule out pregnancy.<sup>21</sup>

41. The Commission understands this autopsy to be different from and subsequent to the one described in paragraph 33 of this report. Although its exact date was not provided, based on its numbering, the IACHR understands it to have been conducted in 2003. The State did not provide an explanation in this regard.

42. During the public hearing before the IACHR, Petita Albarracín stated that the doctors waited too long to do the autopsy, and that the doctor called her to show her the uterus and told her "this is the uterus and there is no pregnancy." However, she added that the prosecutor had the uterus inspected again and "the doctor told [me] it had been manipulated, scraped, and that it was therefore impossible to tell if Paola had been pregnant." Ms. Albarracín pointed to the expert witness report of Dr. José María Nájera Ochoa, "which describes all the irregularities involved in the autopsy."<sup>22</sup> That expert witness report, dated April 11, 2011, states:

1) the autopsy was conducted without regard for background prior to death; 2) general information that should have been written down was not recorded; 3) no photos were taken; 4) microscopic assessments were made upon simple visual examination of the organs; 5) the hymen were not described; 6) the vagina was not swabbed; 7) the cause and manner of death are not established; 8) the samples were packed poorly; 9) proper chain of custody was not maintained; 10) the color of the samples was different depending on the doctor describing them; 11) it is not clear if the samples seen and sent by the autopsy doctor were the same ones analyzed by the pathologist; 12) there is no indication if seven of the samples are necrotic because of the way they were packed and stored; 13) it is interesting that seven of the nine samples were necrotic. (...) If blood samples were taken from the body, human chorionic gonadotropin levels could have been measured to rule out pregnancy.<sup>23</sup>

43. During the public hearing before the IACHR, Ximena Cortés Castillo, a psychiatric doctor, presented the results of the forensic psychiatric expert report that she had prepared on Paola and her relatives at the request of the petitioner. Among the results, it highlighted the "barbarity of the autopsy" conducted on Paola's body, as the doctor in charge of it showed Ms. Petita Albarracín the opened body and the organs of her daughter. It also stated that "it had to have been an extremely clumsy process for basic medicine not to inform authorities whether a girl was pregnant or not at the time she died. Forensic medicine can do this easily." She added that the autopsy and other forensic procedures conducted on Paola's body in the criminal process show a series of technical shortcomings that prevented the facts from being resolved. It stated that the autopsy was conducted without establishing the history prior to the death, which is why some examinations were not done despite the insistence of the mother.<sup>24</sup>

44. The criminal complaint submitted on October 13, 2003 by Ms. Petita Albarracín against Bolívar Espín for the crimes of sexual harassment, rape, and instigation to suicide refers to three receipts from the obstetrics department of the Hospital Clínica Kennedy that were included in the prosecutor's preliminary investigation, underscoring the suspicion that Paolo was pregnant when she entered the hospital. It also referred to audio and video recordings of the chief doctor of the Forensics Department of the National Police in which he stated "it cannot at this time be determined if she was pregnant, but there is a significant possibility

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<sup>21</sup> Attachment 9. Forensic medical autopsy H-2003-11502 of the Leopoldo Izquieta Pérez National Institute for Health and Tropical Medicine. Attached to the communication of the petitioner of October 14, 2014.

<sup>22</sup> Public hearing held on October 19, 2015.

<sup>23</sup> Attachment 10. Expert witness report of Doctor José Mario Nájera Ochoa. Attached to the communication of the petitioner, October 14, 2014.

<sup>24</sup> Public hearing held on October 19, 2015, before the IACHR.



of it due to the presence of blood in the uterus."<sup>25</sup> The State did not contest the existence of these elements to which the private prosecution referred.

45. Regarding Paola's mental health prior to her death, Doctor Cortés stated that she was not suffering from any mental illness that would lead her to commit suicide, and that the reconstruction of what had taken place in days prior indicated a situation of significant stress from learning her mother had been called to the school. The doctor stated that "in conclusion, the [psychological] autopsy finds that this was an act of suicide to denounce sexual transgression with an incestuous dynamic, the result of a symptomatic romantic attachment facilitated by the immaturity of adolescence and psychosocial vulnerability, precipitated by the imminent revelation of the facts by third parties."<sup>26</sup>

46. In her written expert report, Dr. Cortés copied the text of one of the three suicide notes written by Paola before she died.<sup>27</sup> She stated that Petita Albarracín suffers from "psychosocial damage as a result of the indirect victimization from the suicide and the sexual abuse, in her capacity as a mother. Psychosocial damage was also caused to her through the direct victimization perpetrated by the judicial investigation process of which the State of Ecuador was in charge." It concluded that Paola's sister, Denisse Selena Guzmán Albarracín, suffers from "psychosocial damage as a result of indirect victimization from the facts and the judicial investigation process."<sup>28</sup>

## **D. Domestic proceedings and information that emerged during them on the facts prior to the death of Paola del Rosario Guzmán Albarracín**

### **1. Criminal proceeding**

47. The petitioner stated that on December 17, 2002, Paola's father filed a criminal complaint against the vice principal before the Office of the Public Prosecutor of Guayas over the death of his daughter. In the complaint, Mr. Guzmán Bustos stated that "the decision to swallow the poisonous white phosphorous pellets was in response to a romantic deception, as the vice principal of the school, Mr. Bolívar Espín Zurita, had seduced my daughter, and among her belongings were found three letters: two for this Mr. Espín Zurita and one for the mother of the girl, the originals of which are attached to this complaint."<sup>29</sup> The State did not dispute this fact. A document expert report signed by experts of the forensics department of the Judicial Police

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<sup>25</sup> Attachment 11. Private prosecution brought by Ms. Petita Albarracín on October 13, 2003. Attached to initial petition.

<sup>26</sup> Public hearing held on October 19, 2015, before the IACHR.

<sup>27</sup> Attachment 12. Expert report from Dr. Ximena Cortés. Attached to the communication of the petitioner, October 14, 2014. The letter reads as follows:

From: your beloved princess  
To: The man I love.  
I write you this letter because I love you  
even though you always betrayed it  
I never cared because I only  
wanted to be with you.  
Now I am not with you but I hope  
that you will always remember me as one  
of the many women you have had and that I am sure  
you will continue loving and having.  
My love I took poison because I can no longer  
stand all the things I've suffered.  
I hope you don't tell anyone what I  
have written you here.  
I fell in love with an older person.  
That was you, you took the love that I  
had for my lover I could not stop  
thinking about you day and night.  
Take care, my love. I love you.  
Bolívar and Paola.

<sup>28</sup> Attachment 12. Expert report from Dr. Ximena Cortés. Attached to the communication of the petitioner, October 14, 2014.

<sup>29</sup> Attachment 1. Communication of the petitioner, October 14, 2014.

is included in the record. It concludes that the letters were written by Paola after confirming their “calligraphic and morphological identity” against her school notebook.<sup>30</sup>

48. On December 19, 2002, the Criminal Prosecutor of Guayas (hereinafter “the Criminal Prosecutor”) assigned the case asked the chief of the Judicial Police of Guayas (hereinafter “the chief of police”) to appoint an agent to investigate facts of the case.<sup>31</sup>

49. On December 24, 2002, Mr. Máximo Guzmán informed the Criminal Prosecutor that two of Paola's classmates told him that his daughter had done a blood test and found out she was pregnant. She therefore went to the school infirmary, where, according to what Paola told her classmates, the doctor was going to give her an injection to abort the pregnancy, for which she was required to have sexual relations with that doctor. He stated that the classmates had told him “they were willing to testify, but they wanted a guarantee, as the school principal had threatened them that if they told what they knew they would suffer the consequences.”<sup>32</sup>

50. On January 2, 2003, Bolívar Espín appeared before the Criminal Prosecutor and asked to freely and voluntarily give his statement. In it, he stated the following:

[...] I find myself forced to give a statement [...] To reject the reckless, malicious, and baseless complaint as follows: on Thursday, December 12, 2002, at approximately 1400 hours, I went to the aforementioned school to do my job as an educator, and I was in my office when Ms. Luz Arellano de Azán entered. She was very concerned and told me that a student had swallowed white phosphorous pellets and was in the infirmary, and her mother needed to be called urgently, at which point she used the telephone to make the call. I left my office immediately and went to where the now deceased student was, and in the presence of several people, including the school doctor, Dr. Raúl Ortega Gálvez, and General Inspector Luz Arellano de Azán, the school guidance counselors, and several students, friends of the deceased. I asked her why, why did you swallow the pellets? I asked if at that time she was having any problems at home, with a relative, or what problem she was having. The student appeared lucid, and the only thing she did was cry and shake her head. At that time, her mother arrived accompanied by a relative. When they saw what state the student was in, they cried and hugged her. Upon seeing the situation, and because the school does not have the adequate means to address these types of emergencies, I told Dr. Raúl Ortega to issue an order for the student to be transported to and cared for in the Hospital Luis Vernaza. I also ordered the school superintendent to call a taxi, and in the company of the mother and her relative, along with Doctor Ortega and the school Inspector General, I accompanied the student, who left on foot and supported by her two relatives, to the door of the school, on Antepara Street. I should tell you that in my capacity as vice principal, the discussions I normally have with students are on the progress of the teaching-learning process, which they undergo with their teachers. Also, my activity is academic, pedagogical, and therefore my relationships are professorial. Disciplinary matters are handled by the inspector general [...].<sup>33</sup>

51. That same day, Luz Angélica Arellano Quiroz, who at the time was the Inspector General of the school, freely and voluntarily gave a statement on the facts before the Office of the Public Prosecutor of Guayas:

[...] On Thursday, December 12, 2002, at 14:15, the school doctor came to notify me that a student had swallowed white phosphorus pellets. He told me to communicate with her relatives. When I arrived at the infirmary, I recognized the student, Paola Guzmán. I asked her why she had taken the pellets and she did not answer, but simply cried. When I asked if she believed in God and said she should ask forgiveness, and the student prayed with me. At that

<sup>30</sup> Attachment 13. Document expert report. Attached to the communication of the petitioner, October 14, 2014.

<sup>31</sup> Attachment 1. Communication of the petitioner of October 14, 2014.

<sup>32</sup> Attachment 14. Brief of December 24, 2002, by Mr. Máximo Enrique Guzmán Bustos. Attachment to initial petition.

<sup>33</sup> Attachment 15. Statement of Bolívar Eduardo Espín Zurita. Attached to initial petition.

time, her mother arrived with her aunts. She hugged them and asked forgiveness. Her mother took the student to the hospital. She was calm and looked well as she walked. The school doctor and I accompanied them to the exit, and the vice principal of the school was on the patio [...]. he approached and asked the student why she had taken the pellets and the girl did not answer anything and looked calmly at Mr. Espín.<sup>34</sup>

52. That same day, Dr. Raúl David Ortega Gálvez freely and voluntarily gave his statement:

[...] A group of students approached and told me that a student had swallowed 11 white phosphorus pellets. I asked them at what time did she swallow them and they told me between 1030 and 1100. I immediately told them to bring her to the infirmary so she could be cared for [...]. I told [Paola] that because she waited a long time before seeking help for her pain, she might die. She replied and said I want to die, and I asked her why she would poison herself, and she said in front of a group of students that she simply wanted to die. I told her that the school authorities should be informed so she could be taken to a health facility, and I immediately communicated with the Inspector General [...] and the school's vice principal, immediately informing them where she was and explaining the problem. At that time, Ms. Luz de Azan made her pray and suggested she ask God for forgiveness for what she had done. Minutes later, the mother and the aunts appeared, crying and asking the student why she had made this decision. She did not answer quickly. I immediately told the mother and the aunt that they should take her to a health facility for treatment because white phosphorus poisoning is very lethal and the student could die. I accompanied them to the door, and they left for a hospital.<sup>35</sup>

53. After he gave his statement, the Criminal Prosecutor asked him several questions:

[...] Please indicate if you have previously provided care to Ms. Paola Guzmán and for what.- R: Yes, one month ago, for headaches. – How long did she wait before she was taken to the hospital? R: about five minutes, enough to decide which hospital to take her to, by then the parents had arrived. Did you know the minor was pregnant? R: no.<sup>36</sup>

54. On January 7, 2003, Irene Monserrate Mejía Ruíz, a teacher, freely and voluntarily gave a statement indicating that Powell "was extroverted and sociable, and in terms of discipline, unstable."<sup>37</sup> Likewise, Eloisa Vanessa Troncoso Regato, who was 15 years old at the time, stated the following:

[...] I have to say that Paola went with school vice principal Bolívar Espín Zurita. When he entered the school, she would gesture for her to come to his office every day. When she went, sometimes we went with her [...] Paola sat on his lap [...] Also with the school doctor, once she asked him to get her an injection for an abortion [...]. I know they had been going out together since 2001 because she was not passing a subject and he had told her that she could enroll for the third year but with conditions. She told us the conditions were that she had to go out with him and maintain romantic relations and more or less since the month of October 2002, she told me she began having sexual relations with him. – When did you become aware that your friend Paolo was pregnant? – R.- in the month of November, she showed us a pregnancy test. – Describe how you were the one who accompanied Ms. Paola Guzmán Albarracín to the guidance department and what her comment was there as to why she swallowed the pellets. R.- She did not tell us why, but she was sorry [...] all she said was that the vice principal [...] "knows why I did it."<sup>38</sup>

55. Jennifer Stefanía Morante López, who was 14 years old at the time, stated the following:

<sup>34</sup> Attachment 16. Statement of Luz Angélica Arellano Quiroz. Attached to initial petition.

<sup>35</sup> Attachment 17. Statement of Dr. Raúl Ortega. Attached to initial petition.

<sup>36</sup> Attachment 17. Statement of Dr. Raúl Ortega. Attached to initial petition.

<sup>37</sup> Attachment 18. Statement of Irene Monserrate Mejía Ruíz. Attached to initial petition.

<sup>38</sup> Attachment 19. Statement of Eloisa Vanessa Troncoso Regato. Attached to initial petition.

[...] She showed me a pregnancy test and told me the test was hers and also, her name was on the test. She told me she was pregnant by Vice Principal Bolívar Espín Zurita [...] the attorney for the complainant asks the deponent. – P1.– Were you at any time pressured by school authorities to not provide testimony in this case? – We were pressured by the president of the teachers Association, Oswaldo Terrero. He told us we had to sign a blank sheet in support of school leadership, that is, the vice principal. – P2. What was the injection for that was supposedly to be given to the young woman who is now deceased? – R.– For an abortion [...].<sup>39</sup>

56. 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," and asked that the person in charge of the school be ordered to "punish anyone who intimidates or threatens any student, for any reason [...]." He also asked the school principal to be summoned to testify "because he has threatened students at the school and told them not to say anything...." He also asked "the doctors be ordered to expand their forensic medical report."<sup>40</sup> For her part, Petita Albarracín asked on January 22 that a handwriting test be conducted of the three letters that Paola left and that the statements of several students at the school be taken.<sup>41</sup> On January 27, Paola's father asked that a blood test be conducted of the sample obtained from Paola's body to verify if she was pregnant at the time of her death.<sup>42</sup>

57. The case file includes several briefs from mothers of students at the school dated between January and February 2003 stating that the Criminal Prosecutor "cannot take any statements from the minors who, in most cases, were only classmates. They therefore cannot know the reasons for which the deceased minor committed suicide."<sup>43</sup> The briefs were identical and they question why Ms. Albarracín needs the students' testimony.<sup>44</sup>

58. Based on the statements of Eloisa Vanessa Troncoso and Jennifer Estefanía Morante, as well as the forensic document report, on February 4, 2003, the Criminal Prosecutor asked the Criminal Circuit Court of Guayas to have Bolívar Espín arrested.<sup>45</sup> Two days later, the Third Criminal Judge of Guayas informed the Chief of the Judicial Investigative Police that he had issued the arrest warrant.<sup>46</sup> On February 13, 2003, the aforementioned judge reported that he had issued a search warrant with the Criminal Prosecutor.<sup>47</sup> The petitioner said that by the time the search was conducted, the suspect had fled.

59. On February 14, 2003, principal José Vicente Ruíz Méndez testified freely and voluntarily as follows:

Both the vice principal and the principal share the same space [...] where during the school day, whether for interviews with the vice principal or the principal, teachers, inspectors, parents, administrative personnel, service personnel, and students enter and, once they are heard, exit, meaning nobody stays in that space [...]. I should add that at the entry way of the principal and vice principal's space is the desk of the school's inspector general. Across from her is the teacher meeting area, which is a space down the corridor, and in the corridor itself are three desks occupied by the school's three guidance counselors [...]. So, during the school day, there are people not only in the principal and vice principal's office but also near its entryway [...].<sup>48</sup>

<sup>39</sup> Attachment 20. Statement of Jennifer Estefanía Morante López. Attached to initial petition.

<sup>40</sup> Attachment 21. Brief from Mr. Máximo Guzmán. Attached to initial petition.

<sup>41</sup> Attachment 22. Brief from Ms. Albarracín. Attached to initial petition.

<sup>42</sup> Attachment 23. Brief from Mr. Enrique Guzmán Bustos. Attached to initial petition.

<sup>43</sup> Attachment 24. Briefs from several mothers of students at the school Attached to initial petition.

<sup>44</sup> Attachment 24. Briefs from several mothers of students at the school Attached to initial petition.

<sup>45</sup> Attachment 25. Official Letter No. 0134- MFD-G of February 4, 2003. Attached to initial petition.

<sup>46</sup> Attachment 26. Official Letter No. Ex46-03.J.T.P.O. Attached to the communication of the petitioner, October 14, 2014.

<sup>47</sup> Attachment 27. Official Letter No. 728-JTPG-46-2003. Attached to the communication of the petitioner, October 14, 2014.

<sup>48</sup> Attachment 28. Testimony of Mr. José Vicente Ruiz Méndez. Attached to initial petition.

60. On March 14, 2003, Ingrid Alexandra Izurieta Piedrahita, 16 years of age, appeared before the Office of the Criminal Prosecutor of Guayas and gave the following statement:

I met Paola Guzmán Albarracín and she told me when we were in third year he called her my sweetheart and I didn't say anything. Paola was there when he said this. When vice principal Bolívar Espín Zurita then pulled her to his desk and kissed her and took Paola's hand to touch his parts, that is, his genitals. One time we were both in the office, I went in to get a drink of water, then she went up to him and kissed him on the mouth and he returned the kiss and when I looked they tried to hide it. At that time, I had just cut my hair and he told me why did you cut your hair and he told me he liked it more when it was long. Then he asked me if we could meet on the patio. Several classmates said that the vice principal had asked them to meet outside the school but he had not shown up [...] teacher Gladys Gatay asked me once why I hadn't entered the principal's office to tell the principal about the things that have happened, so I've decided with my parents to leave that school. People say at the school that the vice principal molests several girls.<sup>49</sup>

61. Preliminary report S/N-PJG, prepared by the investigator from the National Office of the National Police and dated March 16, 2003, concluded that Paolo "poisoned herself to take her own life" and passed away on December 13, 2002. It states that the motives were unknown and that Vice Principal Bolívar Espín "had been in a romantic relationship" with Paola.<sup>50</sup>

62. On June 12, 2003, the Public Prosecutor filed formal charges against Bolívar Espín Zurita for the crime of sexual harassment. Among other evidence, the Prosecutor mentions an anonymous survey conducted by the Provincial Office of Education of Guayas, in which the majority of those surveyed answered in the affirmative to the question "do you think the Vice Principal had something to do with what happened?" It also made reference to the three letters written by Paola, two addressed to Bolívar Espín expressing "how much I love you" and the other written to her mother.<sup>51</sup>

63. Among the other elements on which the charges were based, the Criminal Prosecutor describes the following: 1) the statements of Ingrid Alexandra Izurieta Piedrahita, Jennifer Estefanía Morante López, and Eloiza Vanessa Troncoso Regato; 2) the statement of Blanca Azucena Cuenca, which, among other things, states that she is a teacher at the Dr. Martínez Serrano School,[...] That once the inspector general told her that a student was in love with the Vice Principal, and that her own inquiries revealed that the student was Miss Guzmán, that she caught her attention because she talked a lot with Doctor Ortega, the school doctor, that she called the student's mother and talked with her about the matter, and that she said her daughter was a bad girl, she has also informed the school principal of the situation, he stated that he knew about it and that it was nothing, that once a student named Jessica Ruiz passed him a note written by one of her classmates, surname Hidalgo, who went to the principal's office with the deponent, and, in front of the principal and vice principal, the student had accused the school Vice Principal Bolívar Espín of having wanted to grope her in order for her to pass social studies;<sup>52</sup> and 3) the statement of Ángela Silveria Navarro Manzo, "who, among other things, stated that she is the mother of Mayra Hidalgo, a former students at the Martínez Serrano School, that she had been molested by the Vice Principal at the school, which is why she sought the help of Miss Blanca Cuenca through a friend to whom she gave a note stating that the Vice Principal molested her daughter Mayra Hidalgo, who had to quit school."<sup>53</sup>

64. On August 22, 2003, the Public Prosecutor asked the Twentieth Criminal Judge of Guayas to order Bolívar Espín Zurita be placed in pretrial detention.<sup>54</sup> The request was denied.<sup>55</sup> On October 6, 2003, the

<sup>49</sup> Attachment 29. Testimony of Alexandra Izurieta Piedrahita. Attachment to initial petition.

<sup>50</sup> Attachment 30. Preliminary report S/N-PJG of the National Office of the National Police. Attached to initial petition.

<sup>51</sup> Attachment 31. Formal charges of the Criminal Prosecutor of Guayas against Bolívar Eduardo Espín Zurita. Attached to initial petition.

<sup>52</sup> Attachment 32. Statement of Blanca Cuenca de Schneider. Attached to the communication of the petitioner, October 14, 2014.

<sup>53</sup> Attachment 31. Formal charges of the Criminal Prosecutor of Guayas against Bolívar Eduardo Espín Zurita. Attached to initial petition.

<sup>54</sup> Attachment 33. Official Letter No. 1034-MFD-G August 22, 2003. Attached to Note from the State No. 4-2-248/07 of November 27, 2007.

<sup>55</sup> Attachment 33. Official Letter No. 1034-MFD-G August 22, 2003. Attached to Note from the State No. 4-2-248/07 of November 27, 2007.

suspect submitted a certification from the Provincial Office of Education of Guayas indicating that he had never been sanctioned during his career.<sup>56</sup>

65. During this same process, on October 13, 2003, Ms. Albarracín formally launched a private prosecution. In her brief, she gave her version of the facts, emphasizing that Paolo swallowed the white phosphorus pellets because of psychological pressure from Bolívar Espín to have sexual relations with him, resulting in a pregnancy that he pressured her to end. She also based her accusation on the testimony collected during the process, on the document expert report, and on the audio and video recordings from news channels UNO and TELEAMAZONAZ “in which the students [...] stated publicly that a true circle of corruption had been established inside the Martínez Serrano School that caused psychological harm to the underage students.” It also included a statement made by Juan Montenegro, the chief doctor of the Forensics Department of the National Police, to the program “Archivos del Destino” in which he stated “it cannot at this time be determined if she is pregnant, but there is a significant possibility of it due to the presence of blood in the uterus” even though she was not menstruating. Thus, she brought a private prosecution against Bolívar Espín for sexual harassment, rape, and instigation to suicide.<sup>57</sup>

66. On November 10, 2003, Ms. Petita filed a motion of recusal against the Twentieth Criminal Judge of Guayas for having taken triple the time allowed to resolve, prove, or dismiss the process.<sup>58</sup> On November 14, 2003, the criminal proceeding was assigned to the Fifth Criminal Court.<sup>59</sup>

67. On December 16, 2003, the High Court of Justice of Guayaquil ordered Bolívar Espín placed in pretrial detention.<sup>60</sup> On January 5, 2004, the Fifth Criminal Judge ordered that he be located, captured, and transported to the Men's Social Rehabilitation Center.<sup>61</sup>

68. On April 13, 2004, a preliminary hearing was scheduled for April 27, 2004. The hearing was postponed due to a lack of clarity on the judge in charge of the proceeding. An official letter issued on May 4, 2004, by the Fifth Criminal Judge, states that the Twentieth Criminal Judge was definitively removed from the case as a result of the judgment handed down in the recusal proceeding. The official letter schedules a preliminary hearing for May 13, 2004. However, the hearing was not held until August 20, 2004.

69. On August 23, 2004, an order was issued to initiate the sexual harassment trial. An arrest warrant was once again issued, ordering the Judicial Police to capture the suspect, and the order to initiate the trial was suspended until the arrest warrant could be executed.<sup>62</sup>

70. On September 2, 2005, the High Court of Justice of Guayaquil dismissed the remedy sought by the accused and upheld the order to initiate the trial, changing the charge to aggravated statutory rape. Among the Court’s rationale for why sexual harassment was not the appropriate charge, the following stands out:

It is self-evident that the elements of the crime alleged are not present [...] Bolívar Espín did not pursue Paola Guzmán. Rather, she sought favors from him as an educator. [...] Based on the statement of the deceased’s classmate, Jennifer Morante y [...] Vanesa Troncoso, starting in mid-2001, because Paola del Rosario Guzmán Albarracín “was failing that year in a subject, she went to ask the accused, Bolívar Eduardo Espín Zurita, for help, which he offered in exchange for romantic relations.” This was the reason for the seduction, amply demonstrated by the letters written by Paola [...]. She thus granted Espín her consent to have sexual relations. [...] The conduct of the accused is consistent with the criminal offense defined in articles 509 and 510 of the Criminal Code, as the circumstances described therein do include seduction,

<sup>56</sup> Attachment 34. Certificate presented in a brief dated October 6, 2003, by the attorney of Mr. Bolívar Eduardo Espín Zurita before the Criminal Prosecutor. Attached to initial petition.

<sup>57</sup> Attachment 35. Complaint of Ms. Petita Paulina Albarracín Albán of October 10, 2003. Attachment to initial petition.

<sup>58</sup> Attachment 36. Motion of recusal. Attached to the communication of the petitioner, October 14, 2014.

<sup>59</sup> Attachment 37. Assignment of process by the Judicial Case Receipt and Assignment Office. Attached to initial petition.

<sup>60</sup> Attachment 38. Official Letter No. 1034-MFD-G August 22, 2003. Attached to Note from the State No. 4-2-248/07 of November 27, 2007.

<sup>61</sup> Attachment 39. Official Letter No. 011-J-20PG. Attached to the communication of the petitioner, October 14, 2014.

<sup>62</sup> Attachment 40. Resolution of the Twentieth Criminal Court of Guayas of August 23, 2004. Attachment to initial petition.

which is absolutely demonstrated, to achieve consent and carnal knowledge with an honest woman.<sup>63</sup>

71. October 5, 2005, the Fifth Criminal Judge of Guayas suspended the preceding until the accused appeared or could be captured.<sup>64</sup> On September 18, 2008, the action was declared proscribed at the request of the defense.<sup>65</sup> All measures against the accused were dropped.<sup>66</sup>

## **2. Civil proceeding for nonpecuniary damages**

72. On October 13, 2003, Petita Albarracín filed a civil suit against Bolívar Espín for “nonpecuniary damages resulting from the instigation to suicide that this individual is responsible for against my underage daughter after he forced her to have sexual relations, impregnated her, and forced her to have an abortion.” Ms. Albarracín said the suit for nonpecuniary damages did not require exhaustion of the criminal proceeding that was underway.<sup>67</sup>

73. On November 26, 2003, the Twenty-third Civil Court of Guayaquil (hereinafter “the Twenty-third Court”) admitted the suit and ordered the defendant be served notice that he had 15 days to file preemptory motions or motions to extend that time period.<sup>68</sup> On February 3, 2004, the Citations Office informed the Court that it could not serve the defendant because he had not attended work for several weeks.<sup>69</sup>

74. On January 21 and February 4, 2004, Ms. Albarracín asked that the parties be called before a Settlement Board.<sup>70</sup> In March, an attempt was made to serve Mr. Bolívar Espín at his home, and the information was left with other individuals.<sup>71</sup> Through his representative, on April 15, 2004, Bolívar Espín filed his response, pleading, among other things, that the civil suit could not proceed before the criminal trial was concluded.<sup>72</sup> On May 6, 2004, the settlement hearing was conducted without the presence of the defendant.<sup>73</sup>

75. After conducting the evidence collection requested by Ms. Albarracín, on July 16, 2004, the Twenty-third Judge scheduled the defendant and the plaintiff to appear on July 23 for the confession. As Mr. Espín did not appear that day, the judge rescheduled it for September 6, 2004. After Ms. Albarracín filed multiple briefs, finally, on September 14,<sup>74</sup> 2004, the Judge found the defendant to have confessed.<sup>75</sup>

76. In November and December 2004, Ms. Albarracín asked the judge on multiple occasions to issue a judgment,<sup>76</sup> and on January 28, 2005, the judge in charge was recused due to the delay in issuing a judgment.<sup>77</sup> On June 7, 2005, the Twenty-third Judge issued a judgment ordering the defendant to compensate the plaintiff for the nonpecuniary damages caused in the amount of US\$25,000.<sup>78</sup> Both parties appealed this decision, and on June 19, 2006, the case was brought before the High Court of Justice of Guayaquil.<sup>79</sup> Both the State and the petitioner reported that in July 2012, the Twenty-third Court declared the case abandoned and ordered it closed.

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<sup>63</sup> Attachment 41. Resolution of appeal, Superior Court of Justice of Guayaquil, September 2, 2005. Attachment to initial petition.

<sup>64</sup> Attachment 42. Resolution of October 5, 2005. Attached to the communication of the petitioner, October 14, 2014.

<sup>65</sup> Attachment 43. Decree of prescription of the criminal action. Attached to the communication of the petitioner, October 14, 2014.

<sup>66</sup> Attachment 44. Official Letter No. 17003-J-20PG of November 18, 2008. Attached to the communication of the petitioner, October 14, 2014.

<sup>67</sup> Attachment 45. Civil suit. Attachment to initial petition.

<sup>68</sup> Attachment 46. Resolution of the Twenty-third Civil Court of Guayaquil of November 26, 2003. Attached to initial petition.

<sup>69</sup> Attachment 47. Official letter from the Office of Citations of the Judicial District of Guayas of February 3, 2004. Attached to initial petition.

<sup>70</sup> Attachment 48. Briefs from Ms. Albarracín of January 21 and February 4, 2004, filed with the Twenty-third Civil Court of Guayaquil. Attached to initial petition.

<sup>71</sup> Attachment 49. Official letter of the Citations Office of the Judicial District of Guayas of April 1, 2004. Attached to initial petition.

<sup>72</sup> Attachment 50. Response to the suit. Attached to initial petition.

<sup>73</sup> Attachment 51. Minutes of the Settlement Board of May 6, 2004. Attached to the brief of the petitioner, October 14, 2014.

<sup>74</sup> Attachment 52. Briefs from Ms. Albarracín to the Twenty-third Civil Judge of Guayaquil. Attachments to initial petition.

<sup>75</sup> Attachment 53. Resolution of the Twenty-third Civil Court of Guayaquil of September 14, 2004. Attached to initial petition.

<sup>76</sup> Attachment 54. Multiple briefs from Ms. Albarracín to the Twenty-third Civil Judge of Guayaquil. Attached to initial petition.

<sup>77</sup> Attachment 55. Request for recusal filed on January 28, 2005 by Ms. Petita Albarracín. Attached to initial petition.

<sup>78</sup> Attachment 56. Judgment of June 7, 2005. Attached to initial petition.

<sup>79</sup> Attachment 57. Official Letter No. 343-JVTCG-2006 of June 19, 2006. Attached to initial petition.

### 3. Reports from the administrative process

77. The case file includes an undated letter from Ms. Albarracín addressed to the Provincial Director for Education of Guayas in which she described what happened to her daughter, referring to the letters addressed to her and to the Vice Principal describing the seduction and deception to which she was subjected. She also described what happened on the day of her death, as follows:

At the school (...) when my daughter suffered from the effects of the poison she had swallowed and had already informed her classmates and teachers that she had swallowed white phosphorus tablets, she was not provided with the immediate care she needed. Rather, they told her to pray, with the Inspector General, Vice Principal Bolívar Espín Zurita, and the medical doctor, surname Ortega, who is also a teacher at the school, being some of the individuals who did not provide immediate care (...).<sup>80</sup>

78. On December 19, 2002, Inspector General Luz Arellano de Asán gave her version of what happened the day of the death, similar to what she had stated for the criminal proceeding. Specifically, she stated that at 2:20 PM, the school doctor told her that a student had swallowed 11 white phosphorus tablets and asked her to call her guardian to take her to the hospital. In her words: "(...) When I got to the infirmary, I saw the student. I recognized her, that her name was Paola Guzmán Albarracín, from section 10/3. I asked her why she did it. She did not respond, she was calm, although she had swallowed the poison at home between 1030 and 11 the morning. I immediately suggested she ask God for forgiveness for what she had done and we started to pray; at that time, a woman arrived, one of Paola's relatives, and moments later her mother arrived. (...) At no time did she appear to feel desperate, anguished, sad, disappointed, or guilty at what was happening."<sup>81</sup>

79. On December 21, 2002, Vice Principal Bolívar Espín gave a voluntary statement to the Provincial Superintendent of Education of Guayas, offering the same account as in the voluntary statement he gave on December 12, 2002, during the criminal proceeding into what happened. He added that he did not maintain a relationship with Paola nor was he her teacher, and that his only contact with students was with regard to the learning process.<sup>82</sup>

80. In the report of December 22, 2002, the Provincial Superintendent of Education said he had interviewed Paola's friends and classmates, noting the following for the record:

One of her friends (Ma. Gabriela) said that Paola told her that starting at that time (May 2002) she fell in love with the vice principal and had relations.

According to the classmates (Eloisa, Jenniffer, Michelle), Paola frequently left class and went to the principal's office [...] They state that Paola told them that the vice principal caressed her and (Jennifer and Eloisa) say they saw her sit in the vice principal's lap.

Sandra and Jennifer state that Paola told them on one occasion that "she was pregnant by Bolivar" (the vice principal), although she did not show them the pregnancy test.<sup>83</sup>

81. On December 23, 2002, the Vice Principal sent a communication to the administrative, contract, and service staff at the school stating that "I never could have imagined these painful events that today have upended my life and damaged my health, forcing me to rest in order to treat the stress, from which I hope to recover quickly."<sup>84</sup>

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<sup>80</sup> Attachment 58. Letter from Ms. Paulina Petita Albarracín Albán to the Provincial Director of Education of Guayas. Attachment to initial petition.

<sup>81</sup> Attachment 59. Official letter with no number of December 19, 2002. Attached to initial petition.

<sup>82</sup> Attachment 60. Statement of Mr. Bolívar Eduardo Espín Zurita. Attached to initial petition.

<sup>83</sup> Attachment 61. First Report of the Provincial Office of Education, December 22, 2003. Attached to initial petition.

<sup>84</sup> Attachment 62. Brief of Vice Principal Bolívar Espín Zurita of December 23, 2002. Attached to initial petition.



82. On January 9, 2003, Ms. Albarracín sent a communication to the Deputy Secretary of the Ministry of Education asking for corrective measures, to include the suspension or dismissal of Vice Principal Bolívar Espín Zurita<sup>85</sup>

83. On January 23, 2003, the Provincial Superintendent of Education of the Provincial Office of Education filed his second report. Regarding the investigative actions, it points to the anonymous surveys conducted of teachers and students<sup>86</sup> and the testimony of Blanca Cuenca, a teacher. Thus, of the 83 students surveyed, 68 answered yes to the question "Do you believe the vice principal had anything to do with what happened?" Likewise, 43 students commented on the relationship between Paola and the vice principal.<sup>87</sup> The report also states that on January 2, 2003, Ms. Petita Albarracín and several family members visited the Oversight Departments of the Provincial Office of Education where they stated that they did not trust the report issued by the forensic investigator who conducted Paola's autopsy, and they asked why the school doctor did not act immediately. In response to this, it is indicated that the explanation of Doctor Raúl Ortega was that if Paola had taken 11 white phosphorus pellets at 10:30 am, and did not seek care until 2 pm, he thought it was very late and decided to make an urgent phone call to the relatives.<sup>88</sup>

84. The report includes the testimony of Ms. Blanca Cuenca de Schnaider and underscores that the teacher indicates that she knew Paola "was in love" with the Vice Principal and that she scolded her saying "aren't you ashamed that people say you're a mistress of old men?" The report also states that the teacher said she had called the mother in October to tell her what was happening and that the mother told her "she already knew."<sup>89</sup> The conclusions of the report are as follows:

1. It is an obvious fact that the deceased, student Paola Guzmán, was in love with the school vice principal
2. There is no conclusive evidence that the Vice Principal returned the affection (that is, he may have or he may not have). The limits of this inquiry prevent this from being established. Is it true what some students say, that they have seen the vice principal with Paola outside school?

As a school authority, I believe it is clear that the vice principal was very permissive with the students, as demonstrated by the following facts:

- a) He took a photo with Paola and another classmate in his office, which is even worse if he knew Paola was in love with him.
  - b) He allowed the students—including Paola—to enter his office to drink water from the sink in there.
3. The vice principal's situation is very difficult and threatens his safety. He could be attacked based on the publicity surrounding what happened.<sup>90</sup>

85. The report's recommendations pertinent to the case were as follows:

1. That the case should be investigated by the Office of the Public Prosecutor, especially regarding the veracity of the report on the autopsy of Paola Guzmán Albarracín's body, to provide peace of mind to the relatives, the school's leadership, the teachers, and the students.
2. That the vice principal should be moved to another school in the city for his own safety.<sup>91</sup>

<sup>85</sup> Attachment 63. Complaint to the Deputy Secretary of the Ministry of Education. Attached to initial petition.

<sup>86</sup> Attachment 64. Copy of the surveys. Attached to the communication of the petitioner, October 17, 2014.

<sup>87</sup> Attachment 65. Second Report of the Provincial Office of Education, January 23, 2003. Attachment to initial petition.

<sup>88</sup> Attachment 65. Second Report of the Provincial Office of Education, January 23, 2003. Attachment to initial petition.

<sup>89</sup> Attachment 65. Second Report of the Provincial Office of Education, January 23, 2003. Attachment to initial petition.

<sup>90</sup> Attachment 65. Second Report of the Provincial Office of Education, January 23, 2003. Attachment to initial petition.

<sup>91</sup> Attachment 65. Second Report of the Provincial Office of Education, January 23, 2003. Attachment to initial petition.

86. On June 6, 2003, the Vice Principal asked the provincial Director of Education of Guayas for "two months of unpaid leave" until the arrest warrant was lifted.<sup>92</sup> The request was denied.

87. On August 19, 2003, Ms. Petita Albarracín reported the Vice Principal to the Provincial Director for "immoral conduct related to his teaching position, an offense established in section 4 of Article 32 of the Teaching Profession Act," as well as "for having violated the Ministerial Regulations on sexual harassment committed in educational institutions [...], asking that the corresponding administrative inquiry into the educator be launched."<sup>93</sup>

88. In communication of September 2003, with no date of receipt, four teachers from the school reported to the Education Superintendent of the Province of Guayas "a series of incidents of misconduct that have damaged the school's reputation, incidents that were witnessed and concealed by the principal, DR. JOSÉ RUIZ MÉNDEZ [...]." Regarding Bolívar Espín, they stated that at that time, he was having relations with a fourth-year student, and that three years ago, he had also covered up relations with another student of the same grade.<sup>94</sup>

89. On January 9, 2004, the Provincial Superintendent of Education of Guayas sent the Provincial Office a report entitled "Report of the Special Oversight Committee to Investigate the Matter of the Doctor Miguel Martínez Serrano School." This report, which the IACHR understands to have a broader scope than just the case of Paola, states that on December 10, 2003, a teacher named Rosario Isabel Soto reported "the misdeeds committed some time ago culminating in the death of Miss Paola Guzmán Albarracín." These included a professor of natural science who "regularly groped" the female students. The report illustrated this with the example of a student who went to the psychologist and told her this teacher "gropes" her. They took this to the principal, who answered "that this could not be, because the students do not know what HARASSMENT means [...]." <sup>95</sup> Regarding Rosario Isabel Soto, it should be noted that in her statement to the Office of the Public Prosecutor, she indicated that she had been harassed by Bolívar Espín at the end of the 88-89 school year. Because of this, she left her job for a time, but later returned to the school<sup>96</sup>.

90. In a brief filed on January 14, 2004, with the Provincial Director of Education of Guayas, Ms. Albarracín stated that she knew that during the 89-90 school year, Vice Principal Bolívar Espín Zurita was suspended for sexually harassing a student. She submitted a copy of the arrest warrant issued by the Fifth Criminal Judge of Guayas on January 5, 2004, and asked that justice be done by applying the Code on Children and the Criminal Code.<sup>97</sup>

91. On December 30, 2004, Bolívar Espín was dismissed from the educational profession for unjustifiably leave from his work. It is worth noting the brief dated January 24, 2011, in which the Provincial Director of Education of Guayas informed the Deputy Secretary of Education for the Coastal Region that there was no record that Bolívar Espín had been punished for "immoral conduct in the performance of his duties," but rather for abandoning his position although he indicates that Paola Guzmán Albarracín is mentioned.<sup>98</sup>

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<sup>92</sup> Attachment 66. Communication of June 6, 2003. Attached to the brief of the petitioner, October 14, 2014.

<sup>93</sup> Attachment 67. Communication of August 19, 2003. Attached to the brief of the petitioner, October 14, 2014.

<sup>94</sup> Attachment 68. Communication of September 2003. Attached to the brief of the petitioner, October 14, 2014.

<sup>95</sup> Attachment 69. Report of the Provincial Superintendent of Education of Guayas of January 9, 2004, and complaint of the teacher named Rosario Isabel Soto de la Torre. Attachments to the brief of the petitioner, October 14, 2014.

<sup>96</sup> Attachment 69. Report of the Provincial Superintendent of Education of Guayas of January 9, 2004, and complaint of the teacher named Rosario Isabel Soto de la Torre. Attachments to the brief of the petitioner, October 14, 2014.

<sup>97</sup> Attachment 70. Brief of Ms. Petita Paulina Albarracín to the Provincial Director of Education of Guayas. Attachment to initial petition.

<sup>98</sup> Attachment 71. Judgment of 24 January 2011, Attached to the brief of the petitioner, October 14, 2014.

#### IV. ANALYSIS OF LAW

- A. Right to life<sup>99</sup>, humane treatment<sup>100</sup>, honor and dignity<sup>101</sup>, rights of the child<sup>102</sup>, right to equal protection<sup>103</sup> and right to education and health, (Articles 4, 5, 11, 19, 24, and 26 in conjunction with Article 1.1<sup>104</sup> of the American Convention), the right to education (Article 13<sup>105</sup> of the Protocol of San Salvador) and the right to live a life free from violence (Article 7. a and 7.b)<sup>106</sup> of the Convention of Belem do Pará**

- 1. General considerations regarding the right of children and adolescents not to be subject to any form of violence and regarding violence against women and girls**

92. Regarding the duty to provide special protection and the principle of the best interests of the child, the Inter-American Court has stated that children are holders of the rights set forth in the American Convention, in addition to enjoying the special protection rights provided for in Article 19 thereof that need to be defined according to the specific circumstances of each concrete case.<sup>107</sup> With respect to Article 11.2 of the American Convention, the Court has pointed out that although Article 11 refers to respect for a person's honor and recognition of his or her dignity, it also covers protection of a person's private life.<sup>108</sup> For its part, the concept of a "private life" is broad and difficult to define exhaustively, but it includes, among other protected spheres, a person's sex life and his or her right to take decisions in that area.<sup>109</sup>

93. General Comment No. 13 of the Committee on the Rights of the Child construes violence against children and adolescents to mean "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse."<sup>110</sup> It also asserts "Children's survival and their "physical, mental, spiritual, moral and social development ... are severely negatively impacted by violence" and the short- and long-term health consequences of violence against children may include: fatal injury; non-fatal injury; physical health problems; cognitive impairment (including impaired school performance); psychological and emotional consequences; mental health problems and mental health-risk behaviors.<sup>111</sup>

<sup>99</sup> Article 4.1: Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

<sup>100</sup> Article 5.1: Every person has the right to have his physical, mental, and moral integrity respected.

<sup>101</sup> Article 11.1: Everyone has the right to have his honor respected and his dignity recognized.

<sup>102</sup> Article 19: Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

<sup>103</sup> Article 24: All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

<sup>104</sup> Article 1.1: The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

<sup>105</sup> Article 13 of the Protocol of San Salvador provides, 1. Everyone has the right to education; 2. The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.

<sup>106</sup> Article 7 of the Convention of Belém do Pará states that: The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; b. o act with due diligence to prevent, investigate, and punish violence against women (...).

<sup>107</sup> I/A Court H.R. Case of Fornerón and daughter v. Argentina. Merits, Reparations and Costs. Judgment of April 27, 2012, Series C No. 242,, par. 144; Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011, Series C No. 221, par. 121.

<sup>108</sup> I/A Court HR. Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006, Series C No. 148, par. 193; Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009, Series C No. 193, par. 55.

<sup>109</sup> I/A Court HR. Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010, Series C No. 216, par. 119.

<sup>110</sup> Committee on the Rights of the Child, General Comment No. 13: The right of the child to freedom from all forms of violence, 2011, par. 4.

<sup>111</sup> Committee on the Rights of the Child, General Comment No. 13: The right of the child to freedom from all forms of violence, 2011, par. 15.

94. At the same time, the same Committee considers that the concept of caregivers, in the case of children, "covers those with clear, recognized legal, professional-ethical and/or cultural responsibility for the safety, health, development and well-being of the child, primarily: parents [...] foster parents [...] school and early childhood personnel [...]".<sup>112</sup>

95. In its preamble, the Convention of Belém do Pará points out that violence against women is "a manifestation of the historically unequal power relations between women and men" and it recognizes that the right of every woman to a life free from violence includes the right to be free from any form of discrimination.

96. Likewise the Commission issues a reminder that gender-based violence, such as sexual violence against a woman or girl, is a form of discrimination against women.<sup>113</sup> Both the Commission and the Court have pronounced on cases involving sexual violence against women and they have analyzed how sexual violence involves impairing the rights to human treatment, a private life, autonomy, and non-discrimination.<sup>114</sup>

97. The Commission considers that harassment in any context constitutes a form of sexual violence and that when it is committed against women and girls it must be construed as an act of gender-based violence and therefore as discrimination. As both the Commission and the Court have pointed out, forms of sexual violence, such as abuse, harassment, pornography, sexual exploitation, forced sterilization, forced maternity, neglect of girls, and so on are manifestations directly derived from the social and historical discrimination that women have endured and still endured. "They are the culmination of a situation characterized by reiterated and systematic violation of human rights."<sup>115</sup>

98. Along those same lines, the Convention of Belém do Pará defines violence against women as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere." It includes the physical, sexual, and psychological violence that takes place in the family or home or in any interpersonal relationship, be it in the case of an aggressor living or having lived in the same home as the woman (which includes cases of rape, mistreatment, sexual abuse); be it a case of violence in the community, perpetrated by anyone, which may include, inter alia, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping, and workplace sexual harassment; or be it violence in educational establishments, health facilities or anywhere else; or be it violence perpetrated or tolerated by the State or agents of the State, regardless of where it occurs.<sup>116</sup>

99. The Commission and the Court have underscored that sexual violence against children triggers specific obligations for the State as regards its duty to respond, while bearing in mind the need to ensure special protections for the victim.<sup>117</sup> In the case of *VRP and VPC v. Nicaragua*, the Inter-American Court pointed out:

The special protection measures that the State is required to take are based on the fact that children and adolescents are considered to be more vulnerable to human rights violations, to an extent that will also depend on a series of factors, such as age, the particular

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<sup>112</sup> Committee on the Rights of the Child, General Comment No. 13: The right of the child to freedom from all forms of violence, 2011, par. 33.

<sup>113</sup> I/A Court H.R. Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, par. 207.

<sup>114</sup> IACHR, Report 76/11, Case 11.769, Merits, J., Peru, July 20, 2011. See, also: I/A Court HR. Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010, Series C No. 215.

<sup>115</sup> IACHR. Access to justice report. Citing I/A Court H.R., Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par.128.

<sup>116</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, "Convention of Belém do Pará"

<sup>117</sup> IACHR, Report No. 4/16. Case 12.690. Merits. VRP and VCP, Nicaragua. August 25, 2016, par. 84.

circumstances of each child, his or her stage of development or maturity,<sup>118</sup> and so on.<sup>119</sup> In the case of girls, that vulnerability to human rights violations may be shaped and exacerbated by historically discriminatory factors<sup>120</sup> that have led to women and girls suffering higher sexual violence indices (...).<sup>121</sup>

100. General Recommendation No. 28 of the CEDAW Committee regarding Article 2 of the Convention for the Elimination of All Forms of Discrimination against Women stated:

States parties in particular are obliged to promote the equal rights of girls since girls are part of the larger community of women and are more vulnerable to discrimination in such areas as access to basic education, trafficking, maltreatment, exploitation and violence. All these situations of discrimination are aggravated when the victims are adolescents. All these situations of discrimination are aggravated when the victims are adolescents. Therefore, States shall pay attention to the specific needs of (adolescent) girls by providing education on sexual and reproductive health and carrying out programmes that are aimed at the prevention of HIV/AIDS, sexual exploitation and teenage pregnancy.<sup>122</sup>

101. For its part, the European Court has maintained that cases of sexual assaults against children have a particularly profound impact, especially when the aggressor is in a position of authority and control over the victim.<sup>123</sup> That exacerbates the vulnerability of a child by depriving her or him of protection.<sup>124</sup>

102. Moreover, the Commission has stressed that, as indicated in Article 9 of the Convention of Belém do Pará, States must pay special heed to the needs and rights of girls who, as females, pertain to a vulnerable group.<sup>125</sup> Along those same lines, the Inter-American Court has pointed out:

Here, it is pertinent to point out that the Convention of Belém do Pará itself found it relevant to stress that state policies designed to prevent, punish, and eradicate violence against women had to take into account the vulnerability to violence of girls or adolescents. Article 9 of the Convention establishes that States Parties shall pay special heed to the vulnerability to violence of women under 18 years of age, so that in cases in which a girl or an adolescent is a victim of violence against women, especially sexual violence or rape, State authorities shall take special care in the course of investigations and internal processes, as well as when it

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<sup>118</sup> I/A Court H.R. 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, par. 156. Citing: The Committee on the Rights of the Child has pointed out that: "At a universal level all children aged 0- 18 years are considered vulnerable until the completion of their neural, psychological, social and physical growth and development. Babies and young children are at higher risk due to the immaturity of their developing brain and their complete dependency on adults. Both girls and boys are at risk, but violence often has a gender component." Committee on the Rights of the Child, General Comment N° 13. The right of the child to freedom from all forms of violence, 2011, par. 72(f).

<sup>119</sup> I/A Court HR. 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, par. 156. Citing: Cf. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, supra, par. 61, and Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-17/14, supra, par. 71.

<sup>120</sup> I/A Court HR. 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, par. 156. Citing: Report of the Special Rapporteur on violence against women, its causes and consequences, 13 June 2017, United Nations Document A/HRC/35/30, paras. 21 and 100, and Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, 26 July 2017, United Nations document CEDAW/C/GC/35, para. 10.

<sup>121</sup> I/A Court HR. Case of V.R.P., V.P.C. et al v. Nicaragua. Preliminary Objections, Merits, Reparations, and Costs. Judgment of Thursday, March 08, 2018. Series C No. 350, par. 156.

<sup>122</sup> Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 28, 2010, para 21. Likewise, according to CEDAW, "States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them." Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 28, 2010, para 18.

<sup>123</sup> ECHR, O'Keeffe v. Ireland. Judgment of January 28, 2014, par. 153.

<sup>124</sup> ECHR, C.A.S. and C.S. v. Romania. Judgment of September 24, 2012, par. 71.

<sup>125</sup> IACHR Report No. 170/11, Case 12.578, Merits, María Isabel Véliz Franco et al, Guatemala, November 3, 2011, par. IACHR, Report 4/16, Case 12.690, Merits, VRP and VCP, Nicaragua, August 25, 2016, par. 104.

comes to adopting protection measures and lending support during proceedings and thereafter, to achieve the rehabilitation and reintegration of the victim.<sup>126</sup>

## **2. Relevant consideration regarding the right to education and health in sexual violence contexts.**

103. Article 26 of the American Convention establishes an obligation on the part of the States Parties of the Organization of American to realize progressive development of the rights set forth in the OAS Charter. For its part, Article 1 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights "Protocol of San Salvador" <sup>127</sup> provides that state parties undertake to adopt the necessary measures, to the extent allowed by their available resources and taking into account their degree of development, for the purpose of achieving progressively the full observance of the rights recognized in the Protocol.<sup>128</sup>

104. Although both organs of the inter-American human rights system<sup>129</sup> have reaffirmed their competence to pronounce on possible violations of Article 26 of the American Convention within the framework of the individual petitions and cases system, that provision has barely been expounded in inter-American jurisprudence with respect to contentious cases. However, by virtue of Article 19.6<sup>130</sup> of the Protocol of San Salvador, both the Inter-American Court and the IACHR have competence to decide in contentious cases relating to facts covered by Article 13 of that treaty, which recognizes the right to education.<sup>131</sup>

105. The Commission acknowledges that there may be certain difficulties with interpreting Article 26 of the Convention and determining its specific scope and content. Accordingly, the Commission deems it necessary to expand on some of its previous pronouncements on the subject, specifically with regard to an appropriate methodology for analysis that takes the text of the provision into account but interprets it in a manner consistent with developments in international jurisprudence that turn out to be very useful for deciphering its scope and content.

106. Thus, the Commission considers that any analysis of a concrete case in light of Article 26 of the American Convention needs to be conducted at two levels: First, it is necessary to establish whether the law relevant to the case at hand is derived from "the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States," as indicated in the text of Article 26. That is to say, it is Article 26 of the American Convention on Human Rights that points to the OAS Charter as the direct source of rights, characterizing as human rights such provisions in the treaty as may be discerned therein. Given that the purpose of the OAS Charter was not to single out rights but to establish an international organization, it is necessary to resort to ancillary texts to discern the rights that may transpire from the provisions of the Charter.

107. Once that has been established, it is a matter of determining whether the State in question fulfilled its obligation to "progressively achieve" the full realization of such and such a right or those general obligations to respect and guarantee it. At this second level of analysis, it is necessary to take into consideration

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<sup>126</sup> I/A Court H.R. 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, par. 157.

<sup>127</sup> The Ecuadorian State ratified the Protocol on March 25, 1993.

<sup>128</sup> IACHR. Report No. 38/09. Case 12.670. Admissibility and Merits. National Association of Former Employees of the Peruvian Social Security Institute et al. Peru. March 27, 2009. par. 134.

<sup>129</sup> See, for instance, some admissibility reports acknowledging possible violation of Article 26 of the Convention. Report 29/01. Case 12.249. Jorge Odir Miranda Cortez et al. El Salvador, March 7, 2001; and Report 70/04. Petition 667/01. Admissibility. Jesús Manuel Naranjo Cárdenas et al. (Pensioners of the Venezuelan Aviation Company - VIASA). Venezuela, October 13, 2004. See also the pronouncement on the merits regarding Article 26 in Report 38/09. Case 12.670. National Association of Former Employees of the Peruvian Social Security Institute et al. Peru. Friday, March 27, 2009. In the same vein, the Court reaffirmed said competence in the Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru (Preliminary Objections, Merits, Reparations and Costs), Judgment of July 1, 2009.

<sup>130</sup> Article 19.6 of the Protocol allows application of the individual petitions system regulated by Articles 44-51 and 61-69 of the American Convention on Human Rights in the event of a violation of Articles 8.1 (Trade Union Rights) and 13 (Right to Education) of the Protocol.

<sup>131</sup> I/A Court HR. Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 15, 2005. Series C No. 298, par. 234.

the nature and scope of the obligations that a State can be required to meet under Articles 1.1, 2, and 26 of the Convention, as well as the content of the right concerned, as we shall do below.

108. To establish the criteria needed to derive specific rights from the OAS Charter, determine their contents and States' obligations with respect to them, Article 29 of the American Convention, which establishes parameters regarding general rules for interpreting the Convention, proves helpful as a guideline. Thus, based on that Article, interpretation of the provisions of the American Convention may not restrict or suppress rights recognized by virtue of the domestic laws of States or by virtue of any other treaty to which a State is party, nor may it exclude the effects of the American Declaration of the Rights and Duties of Man and other international acts of the same nature. In this manner, the provision embraces the "pro homine" principle in the inter-American system and provides a key tool for the effective protection of all the human rights recognized in the Constitutions of the States Parties and in inter-American or universal human rights instruments they have ratified.

109. Based on the comprehensive interpretation called for in Article 26 in light of the provisions of Article 29, the Commission deems it pertinent to refer to the obligations that transpire from Article 26 of the American Convention and that can be the subject of pronouncements by the organs of the inter-American system in connection with contentious cases. In the specific case addressed here, the Commission considers that, in interpreting Article 26 of the American Convention account should be taken of the above-mentioned Article 1 of the "Protocol of San Salvador" because it makes it possible to determine the scope of the State's obligation with respect to the progressive development of law under review.

110. For its part, the International Covenant on Economic, Social and Cultural Rights<sup>132</sup> contains, in Article 2.1<sup>133</sup> similar provisions to those of Article 26 of the American Convention and those of Article 1 of the Protocol of San Salvador. The Commission has already referred to pronouncements of the Committee on Economic, Social and Cultural Rights regarding the notion of progressiveness and the scope of the obligations it gives rise to.<sup>134</sup> Thus, it stresses that said concept does not render state obligations essentially meaningless; on the contrary, it should be interpreted in the light of the general purpose of the treaty with a view to ensuring the full realization of the rights involved.<sup>135</sup>

111. In light of the above, it is fair to assert that the Commission understands that Article 26 of the American Convention imposes a number of obligations on States that are not restricted to a ban on regression, which correlates with the obligation to be progressive, but cannot be construed to be the only obligation under this provision that is actionable (justiciable) in the inter-American system. Thus, the Commission affirms that, bearing in mind the interpretative framework set forth in Article 29 of the American Convention, Article 26, when seen in conjunction with Articles 1.1 and 2 of the same instrument, gives rise to at least the following immediate and enforceable obligations: i) general obligations to respect and guarantee; ii) application of the non-discrimination principle to economic, social, and cultural rights; iii) obligations to take steps or adopt measures to achieve enjoyment of the rights included in said Article; and iv) to provide suitable and effective resources for their protection. The methodologies or analytical sources that may prove to be pertinent for each of these obligations should be established according to the circumstances of each particular case.

112. Referring to the enforceable and immediate components of the obligation to take steps or adopt measures, the CESCR has indicated, for example, that the adoption of measures, in and of itself, is not limited or conditioned by other considerations; for that reason, although achieving the full realization of rights may be gradual, the adoption of measures or arrangements to that end must be deliberate, concrete, and geared

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<sup>132</sup> The Brazilian State acceded to said Treaty on January 24, 1992.

<sup>133</sup> According to that Provision, "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

<sup>134</sup> IACHR. Report No. 38/09. Case 12.670. Admissibility and Merits. National Association of Former Employees of the Peruvian Social Security Institute et al. Peru. March 27, 2009. par. 136.

<sup>135</sup> United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations ((Art. 2, Para. 1, of the Covenant) 1990.

as clearly as possible to their fulfillment.. Moreover, the State has fundamental obligations that must bring about essential levels of satisfaction of such rights which are not subject to progressive development but rather, by their very nature, immediate.<sup>136</sup>

113. Specifically concerning the right to education, with respect to the first level of analysis, Article 49 of the OAS Charter explicitly upholds it and refers to the various levels of education. Article 34.b of the same instrument underscores the role of the State in "rapid eradication of illiteracy and expansion of educational opportunities for all." Article 47 likewise establishes that States must give primary importance to the encouragement of education oriented toward the overall improvement of the individual, and Articles 3.h, 30, 31, 48, 50, and 52 all refer to actions and cooperation to be undertaken by State with respect to education. Likewise, Article XII of the American Declaration establishes that every person has the right to an education, which includes the right to equality of opportunity, and which is geared to attainment of a decent life and to raising a person's standard of living. For its part, as mentioned above, Article 13 of the Protocol of San Salvador addresses this right and points out that everyone has the right to education, which should be directed to the full development of the human personality and respect for human rights, justice and peace.

114. In light of the above, the Commission considers it clear that the right to education constitutes one of the economic and social standards mentioned in Article 26 of the American Convention and, accordingly, States Parties are under the obligation to seek the progressive development of that right, and to respect, guarantee, and adopt such measures as are needed to realize said right. Furthermore, the IACHR considers that, in addition to its competence to directly review the content of the right to education and compliance by the States Parties to the Protocol of San Salvador with their obligations in respect of that right, it will also take into account effects for the protection of that right pursuant to Article 26 of the American Convention.

115. Regarding the contents of the right to education, the CESCR refers to it in General Comment No. 13 as "both a human right in itself and an indispensable means of realizing other human rights."<sup>137</sup> It also pointed out that to guarantee the right to education care needs to be taken to safeguard the principle of equality and nondiscrimination at all educational levels and ensure that the education provided exhibits the following interrelated and essential features: i) availability; ii) accessibility; iii) acceptability; and iv) adaptability.<sup>138</sup> In particular with respect to acceptability, it states that the form and substance of education have to be relevant, culturally appropriate and of good quality, which includes removing gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups.<sup>139</sup>

116. In relation to sexual violence and discrimination against women, girls, and adolescents in education, the IACHR underscores with concern the prevalence of such practices<sup>140</sup> and considers that certain widespread social and cultural beliefs may obstruct the pursuit of educational policies capable of guaranteeing the right to education inasmuch as they promote or facilitate forms of socialization contrary to the dignity of persons. That being so, for the IACHR, the right to education cannot omit consideration of gender issues. Bearing in mind that girls are more vulnerable to sexual violence due to the influence of gender-based power relations that are deeply entrenched in society, combating all forms of violence and discrimination against women, girls, and adolescents require that educational systems eliminate prejudices, customs, and practices based on superiority or inferiority of the sexes or on stereotypes regarding the roles of man and women.<sup>141</sup>

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<sup>136</sup> United Nations Committee on Economic, Social and Cultural Rights, , General Comment No. 3: The Nature of States Parties' Obligations ((Art. 2, Para. 1, of the Covenant), 1990. Along those lines, see: IACHR. Report on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147, September 7, 2017, paragraphs 236 and 237.

<sup>137</sup> Committee on Economic, Social and Cultural Rights. General Comment No. 13. United Nations document E/C.12/1999/10, 8 December 1999, para. 1.

<sup>138</sup> Committee on Economic, Social and Cultural Rights. General Comment No. 13. United Nations document E/C.12/1999/10, 8 December 1999, para. 6.

<sup>139</sup> Committee on Economic, Social and Cultural Rights. General Comment No. 13. United Nations document E/C.12/1999/10, (8 December 1999), paras. 6 and 55.

<sup>140</sup> United Nations. World Report on Violence against Children, pp. 7 and 119.

<sup>141</sup> IACHR, The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights, OEA/Ser.L/V/II.143, Doc. 59, November 3, 2011, par. 218.



117. Regarding girls and female adolescents, the IACHR also takes into consideration the fact that they are the principal victims of sexual abuse by their schoolmates and teaching or administrative staff in schools and that sexual violence, harassment, groping, verbal humiliations or rapes are generally accompanied by threats of physical punishment, the use of force, manipulation, or the promise of financial or academic rewards. The IACHR also points out that only few teachers have formal training for teaching topics relating to sexuality, sexual abuse, and the rights of the child.<sup>142</sup> On this, the Committee on the Rights of the Child has stated that it "notes with concern continuing authoritarianism, discrimination, disrespect and violence which characterize the reality of many schools and classrooms. Such environments are not conducive to the expression of children's views and the due weight to be given these views" and it concludes that "Giving children's views weight is particularly important in the elimination of discrimination, prevention of bullying and disciplinary measures."<sup>143</sup>

118. In addition, the IACHR has stressed that one of the risk factors for sexual violence in the educational sector has to do with the very nature of educational institutions, in which relations of trust are formed between pupils and teaching or administrative staff, in which the latter can misuse their authority to commit acts of sexual violence. Another factor has to do with cover-ups and institutional tolerance of perpetrators. Finally, a third factor may be associated with the weakness of justice system mechanisms for responding to violations, together with individual factors that raise the potential for sexual violence (gender, age, ethnicity, sexual diversity, disability, migration, poverty, and living in rural or marginalized areas).<sup>144</sup>

119. For the IACHR, given that school is the primary setting for teaching, development, and socialization and plays a vital part in the life and formation of children and adolescents, the existence of harmful practices violating their rights by the personnel responsible for safeguarding them in the design, implementation, and supervision of education, impairs the right to receive adequate, high-quality education in a safe environment and in the best interests of the child. For the IACHR, protecting girls and adolescents against sexual and gender-based violence in school not only constitutes an immediate, priority requirement; it also demands the involvement and commitment of the entire educational apparatus, from the crafting of teaching materials imbued with a human rights and gender equality approach; the construction of appropriate toilet facilities; access to impartial and timely information regarding sexual and reproductive rights; the training and sensitization of both teaching and administrative staff; comprehensive reparation for the victims; proper administrative and criminal investigation and punishment of those responsible for sexual violence.

120. As regards the right to health, both the IACHR and the Inter-American Court of Human Rights have pronounced on the links between the right to humane treatment and the right to health.<sup>145</sup> The Inter-American Court has repeatedly voiced its interpretation that the right to humane treatment is directly and closely linked with human health care.<sup>146</sup> and that "lack of adequate medical care" may constitute a violation of that right.<sup>147</sup> The Commission considers that this intrinsic link constitutes a manifestation of the interdependence and indivisibility of civil and political rights, on the one hand, and economic, social, and cultural rights, on the other. As the Court puts it, both sets of rights should be "fully understood as human rights, without any rank and enforceable in all cases before competent authorities."<sup>148</sup>

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<sup>142</sup> ACHR, Access to Justice for Women Victims of Sexual Violence. Education and health, December 28, 2011, par. 101.

<sup>143</sup> Committee on the Rights of the Child, General Comment No. 12. United Nations document CRC/C/GC/12, July 20, 2009, paras. 105 and 109.

<sup>144</sup> IACHR, Access to Justice for Women Victims of Sexual Violence. Education and health, December 28, 2011, par.

<sup>145</sup> IACHR, Report No. 102/13, Case 12.723, Merits, TGGL, Ecuador, November 5, 2013. IACHR. Report: Access to Maternal Health Services from a Human Rights Perspective. June 7, 2010. Section II:

<sup>146</sup> I/A Court HR. *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, par. 130; and *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, par. 43.

<sup>147</sup> I/A Court HR. *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, par. 130; *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 7, 2004. Series C No. 114, par. 157; and *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, par. 44.

<sup>148</sup> I/A Court HR. *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru* Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, par. 101. Along those same lines, see: United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 9, para. 10.

121. Bearing in mind what was said above regarding Article 26 of the American Convention, Article 45.b of the OAS Charter calls for decent working condition to ensure health. Article 34.i of the same instrument also underscores the role of the State in "protection of man's potential through the extension and application of modern medical science," thereby underscoring the importance of guaranteeing health for a person's integral development, and paragraph l) of the same Article mentions the quest for urban conditions or factors that offer the opportunity for a "healthful" life. Likewise, Article XI of the American Declaration establishes that "Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources." For its part, Article 10 of the Protocol of San Salvador states that "everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being," and it indicates that health is a public good. Accordingly, for the IACHR, the right to health is included in the protection afforded by Article 26 of the American Convention.

122. Regarding the contents of the right to health, the CESCR has pointed out that all health services, assets, and installations must meet availability, accessibility, acceptability and quality requirements.<sup>149</sup> Both the Commission and the Court have taken these concepts into account and built them into their analysis of a number of cases.<sup>150</sup> Particularly with respect to medical emergency situations, the I/A Court of Human Rights has ruled that health establishments and services must respect medical ethics and culturally appropriate criteria. In addition, they must espouse a gender perspective and ensure that qualified personnel are available to respond to medical emergencies.<sup>151</sup>

123. Likewise, it is worth pointing out that the United Nations Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, recently stated that "it is very important to emphasize that violations of sexual and reproductive health rights have a direct, negative impact on the mental health of women."<sup>152</sup> For that reason, the various forms of sexual violence are intrinsically incompatible with the right to health.<sup>153</sup> In that connection, the Committee on the Rights of the Child has expressed its concern at the high suicide rates among adolescents, due, among other causes, to violence, maltreatment, abuses and neglect, including sexual abuse, unrealistically high expectations and/or intimidation and hazing in and outside school.<sup>154</sup>

124. It has also mentioned that "violence [is] a significant cause of mortality and morbidity in children, particularly adolescents, the Committee emphasizes the need to create an environment that protects children from violence and encourages their participation in attitudinal and behavioural changes at home, in schools and in public spaces."<sup>155</sup> It also recognizes that "the health-related behaviours of parents and other significant adults have a major impact on children's health."<sup>156</sup>

125. Likewise, other international experts have pointed out that sexual harassment at school not only impairs the right to education, but also has negative physical and emotional effects, triggering, among other consequences, serious impacts on the overall health of the victims, decreased productivity, absenteeism from school, difficulty concentrating, declining academic performance or dropping out from school, often following an unwanted pregnancy.<sup>157</sup>

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<sup>149</sup> United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 14, E/C.12/2000/4, 11 August 2000, para. 12.

<sup>150</sup> IACHR. Report No. 2/16. Case 12.484. Merits. Cuscul Pivaral et al. Guatemala, April 13, 2016, par. 106; I/A Court H.R. Case of Mendoza Poblete Vilches et al. v. Chile. Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 349, par. 120.

<sup>151</sup> I/A Court H.R. Case of Mendoza et al. v. Chile. Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 349, par. 121.

<sup>152</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. United Nations document A/HRC/35/21, 28 March 2017, par. 59.

<sup>153</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, United Nations document E/CN.4/2004/49, 16 February 2004, para. 25.

<sup>154</sup> Committee on the Rights of the Child. General Comment No. 4, United Nations document CRC/GC/2003/4, 21 July 2003, para. 22.

<sup>155</sup> Committee on the Rights of the Child. General Comment No. 15, United Nations document CRC/GC/2003/15, 17 April 2013, para. 64.

<sup>156</sup> Committee on the Rights of the Child. General Comment No. 15, United Nations document CRC/C/GC/15, April 17, 2013, para. 18.

<sup>157</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. United Nations document A/69/368, September 1, 2014, para. 30 and 31.

126. The IACHR has already pointed out that gender stereotypes are still endemic in the health sector and that "attitudes such as indifference, mistreatment and discrimination perpetrated by health sector employees that affects women and girls victims of violence and/or sexual abuse, as well as the lack of appropriate reproductive health services to address situations of violence, constitute barriers to access of health services."<sup>158</sup> Therefore, the IACHR considers that States must adopt appropriate measures to eliminate all types of violence and discrimination against girls and adolescents in the health sector. This includes not only the duty to refrain from reproducing said practices but also to act with due diligence with regard to acts of violence against girls and adolescents in that sphere, which includes, for instance, implementing regulatory frameworks, including health protocols, for dealing with sexual violence against girls and adolescents, allocating health personnel properly trained to detect and treat sexual violence against people in this age group, and providing access to effective judicial remedies for protecting the rights of young and adolescent girls with respect to acts of sexual violence.

### **3. Characterization of what happened to Paola Guzmán Albarracín and its causal link to her death**

127. As was established in the foregoing section of this Report, in domestic proceedings relating to Paola's death there is multiple evidence of Mr. Bolívar Espín initiating an improper relationship with her, taking advantage of his position of authority and of the particular vulnerability Paola was experiencing as a result of her academic performance. This transpires from the reiterated and consistent statements by Paola's mother, the statement by her cousin-in-law, the statements of at least three pupils, and position taken by the State itself at the admissibility stage, with regard to Paola being a victim of sexual harassment and statutory rape by Bolívar Espín. It is worth mentioning that, although at the merits stage the State argued that it was a question of a relationship between private individuals for which it could not be attributed international responsibility, that defense refers essentially to the question of its international liability but does not affect nor contradict the acknowledgment of facts effected at the admissibility stage, as to the existence what the State described as sexual harassment and statutory rape. Taking the content of those crimes under domestic law into account, from the statement made by the State, together with the other elements cited, it is possible to establish the existence of the relationship and that it resulted from the position of authority held by the aggressor.

128. The Commission underscores the fact that neither the age of consent, nor the question of whether or not aggressor had sexual relations with Paola, nor the issue of whether or not she was pregnant alter the fact that Mr. Bolívar Espín misused his authority, experience, and adulthood by improperly using the power he had over Paola to achieve that relationship, Paola had neither the tools nor the autonomy to be able to reject or exit that relationship, a situation that impaired her right to study in an environment free from harassment and violence and her right to the minimum conditions needed to develop and lead a life with dignity.

129. The file on the case also contains circumstantial evidence that Paola was also sexually harassed by the school doctor, who allegedly forced her to have sexual relations with him in exchange for terminating her possible pregnancy. As will be analyzed in the corresponding section, this circumstance, brought up in several statements, was not duly investigated and no light was shed on it by the State in connection with this case. Nor did the State deny these facts. Accordingly, bearing in mind that the failure to throw light on this aspect is attributable to the State, plus the context of institutional acceptance of sexual violence by the staff, as we shall analyze in due course, the Commission considers that it is possible to infer the veracity of this additional and aggravating factor in the violence to which Paola was subjected.

130. In short, the Commission establishes that Paola was a victim for too many months of a situation of violence based on her condition as a woman and girl by the then Vice-Principal of the school, manifested at the very least in a relationship resulting from harassment of a sexual nature, which, in addition to constituting gender-based violence, should be construed as a serious instance of sexual violence.

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<sup>158</sup>IACHR. Report on Access to Maternal Health Care from a Human Rights Perspective, p. 7

131. Having established this characterization of what happened to Paola, the IACHR will now proceed to analyze the causal link between that situation of violence against her and her death. Here there is no dispute as to the fact that on December 12, 2002, Paola Guzmán Albarracín swallowed 11 white phosphorous pellets known as "diablillos" and that she died as a result of that action the next day in the Kennedy Clinic.

132. In another section, the Commission will analyze how the school authorities acted on December 12, 2012, after hearing about Paola's attempted suicide. On this matter, the Commission stresses that there are multiple indications of a causal link between the situation of violence suffered by Paolo and her attempt to kill herself. The conclusions reached in the expert opinion by psychiatrist Dr. Ximena Cortés point clearly to such a link. Dr. Cortés further asserted that "there was no mental disturbance at the time that would have caused her to commit suicide." Likewise, the Commission draws attention to the fact that the letters that Paola wrote before swallowing the pellets make it clear that the decision to take her own life had to do with her relationship with the Vice Principal. The circumstantial evidence related to the existence of a possible pregnancy, which, as will be analyzed below, could not be clarified due to negligence and irregularities at the initial stages of investigation, amounts to another pointer to a causal link between the violence Paola endured and her suicide. The Commission further stresses that the Ecuadorian State did not deny this causal link and that no alternative hypothesis regarding her death emerges from the domestic proceedings.

133. The Commission considers that all the elements culled thus far, taken together, justify a conviction that Paola del Rosario Guzmán Albarracín was a victim of violence based on her being a woman and girl, including sexual violence perpetrated by Mr. Bolívar Espín and the school doctor, both of whom are public servants, and that there is a direct causal link between Paola's circumstances at school and her decision to take her own life.

#### **4. Analysis of the attribution of international responsibility to the State**

##### **4.1 General considerations regarding the duty to respect and guarantee human rights**

134. Ever since its first judgment in a contentious case, the Inter-American Court stated that:

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights that can be attributed, under the rules of international law, to the act or omission of any public authority constitutes an act imputable to the State and which entails its responsibility as established in the Convention.<sup>159</sup>

135. The international responsibility of the State may be based on acts or omissions committed by any of its authorities or organs that violate the American Convention and it is generated immediately by the international illegal act of which it is charged. In such circumstances, to establish a violation of the rights enshrined in the Convention one need not determine, as in domestic criminal law, the guilt of its agents or their intent, nor need one individually identify the agents to which the violations are attributed. It is sufficient to demonstrate "that acts or omissions have been verified that have allowed the perpetration of these violations or that a State obligation exists that the State has failed to meet."<sup>160</sup>

136. In the course of their work, the Commission and the Court have defined the contents of the obligations to respect and guarantee under Article 1.1 of the Convention. Concerning the obligation to respect,

<sup>159</sup> I/A Court H.R. Velásquez Rodríguez Case v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4. par. 164.

<sup>160</sup> I/A Court H.R. Case of Gonzalez Medina and Family v. Dominican Republic. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 27, 2012 Series C No. 240, par. 133; I/A Court H.R., Case of the Massacre of Pueblo Bello v. Colombia, Judgment of January 31, 2006, Series C No. 140, par. 112.

the Court states that "According to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Accordingly, whenever a State organ or official, or a public entity violates one of those rights, this constitutes a failure in the duty to respect the rights and freedoms set forth in that Article."<sup>161</sup>

137. In the Court's own words, this conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority. Under international law, a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.<sup>162</sup>

138. For its part, the Commission has stated that a violation of human rights protected by the Convention may entail the international responsibility of a State Party, either because the violation is perpetrated by its own agents or else -- even though initially they may not be directly attributable to the State because the violation is perpetrated by a private individual -- when it could not be ascertained who the perpetrator was due to the lack of diligence by the State to reasonably prevent the violation or to treat it as required under the Convention. The important thing is to determine whether the illicit act involved the participation, support, or tolerance of state agents or resulted from the State's failure to comply with its obligation to take reasonable steps to prevent human rights violations, to conduct a serious investigation to identify and punish those responsible, and to make adequate reparation to the victim or his or her family members for the harm done.<sup>163</sup>

139. As for the obligation to guarantee, the Court has pointed out that it entails the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.<sup>164</sup>

140. These obligations also apply to possible acts by non-state actors. The Inter-American Court has specifically pointed out that "The Court has also recognized that the State's international responsibility may arise from attribution to the State of human rights violations committed by third parties or individuals, within the framework of the State's obligations to guarantee respect for those rights between individuals<sup>165</sup>[...] The obligations erga omnes to respect and ensure respect for the norms of protection, which is the responsibility of the States Parties to the Convention, extend their effects beyond the relationship between its agents and the persons subject to its jurisdiction, because they are also manifest in the positive obligation of the State to adopt the necessary measures to ensure the effective protection of human rights in inter-individual relations."<sup>166</sup> "These obligations devolve upon all subjects of international law and presumptions of non-compliance must be determined in function of the need for protection in each particular case."<sup>167</sup>

141. Specifically concerning the duty to prevent, the Court has established that "a State cannot be responsible for all the human rights violations committed between individuals within its jurisdiction." Indeed, the nature erga omnes of the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds of individuals,<sup>168</sup> because their obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by i) awareness of a situation of risk; ii) of that risk being real

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<sup>161</sup> I/A Court H.R. Velásquez Rodríguez Case v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4. par. 169; see also: IACHR, Report No. 11/10, Case 12.488, Merits. Members of the Barrios Family, Venezuela, March 16, 2010. par. 91

<sup>162</sup> I/A Court H.R. Velásquez Rodríguez Case v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4. par. 170.

<sup>163</sup> IACHR, Report No. 65/01. Case 11.073. Merits. Case of Juan Humberto Sánchez. Honduras. March 6, 2001, par. 88.

<sup>164</sup> I/A Court H.R. Velásquez Rodríguez Case v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4. par. 166.

<sup>165</sup> I/A Court H.R. Pueblo Bello Massacre Case. Judgment of January 31, 2006. Series C No. 140, par. 113.

<sup>166</sup> I/A Court H.R., Case of the "Mapiripán Massacre". Judgment of September 15, 2005. Series C No. 134, par. 111.

<sup>167</sup> I/A Court H.R., Case of the Pueblo Bello Massacre. par. 117.

<sup>168</sup> I/A Court H.R. Pueblo Bello Massacre Case. par. 117.

and imminent; and iii) whether that State took the steps that could reasonably be expected of it to prevent that danger from materializing.<sup>169</sup>

142. In short, for the purposes of determining the international responsibility of the State, it is essential to work out whether a given violation of human rights recognized by the Convention took place with the support or tolerance of the authorities and whether those authorities acted in such a way that the transgression occurred due to a lack of any prevention or with impunity. Ultimately, it is a matter of determining whether the human rights violation stems from a State's failure to honor its duty to respect and guarantee said rights pursuant to Article 1.1 of the Convention.<sup>170</sup>

## **4.2 Analysis of the case**

### **4.2.1 Attribution of responsibility based on the violence suffered by Paola and its causal link to her death**

143. Having established that for months Paola Guzmán Albarracín was a victim of violence as a woman and girl, including sexual violence, and that that situation was so severe that it led her to commit suicide, it is now a question of determining whether those facts can be attributed to the Ecuadorian State .

144. First, the Commission points out that since the school Paola went to was a State school, both Bolívar Espín and the school doctor were public servants providing a service on behalf of the State. Accordingly, their actions violating Paola's rights that, as has been established, involved their taking advantage of the authority derived from the positions they held, are directly attributable to the Ecuadorian State. What includes the impairments to the rights to health, human treatment, honor and dignity, equality and nondiscrimination, to live a life free from violence, and the right to education, all results of violence against Paola as a woman and girl, including sexual violence, in the period leading up to her death, as analyzed in the present report. This determination further includes violation of the right to personal integrity/humane treatment and the right to life due to her death and the circumstances that surrounded it inasmuch as it occurred, as already established, as a result of the situation she was facing which is attributable to the State.

145. In addition to the violation of those rights due to failure to comply with the duty to respect [human rights], the IACHR notes that the State also failed to abide by its duty to guarantee those right, in the sense of preventing them (prevention component). In that regard, the Commission points out that it is accredited that the State, via other public servants and authorities at the same school, were aware of the situation of violence, including sexual harassment that Paola was experiencing. Teacher Cuenca declared that she had been advised by the Inspector General, that Paola was "in love with" the Vice Principal, which she reported to the Principal, who told her he already knew about it, but "there was nothing more to it" ("*no pasa nada*"). Likewise, the Commission considers that if Paola's classmate knew that she often entered the Vice Principal's office and accompanied her at times and saw how she sat on his lap and that he caressed her, it is fair to say that the Principal, who in his own statement says he shared office space with Mr. Espín,, also knew what was going on and even witnessed it.

146. In addition to the above, the Commission considers that it is fair to say that if 43 pupils stated in anonymous surveys conducted during the administrative investigation that they knew that Paola and Bolívar Espín "used to meet" and "went out with one another", the public servants working at the school must also have known.

147. Furthermore, it transpires from the file that other acts of sexual harassment prior to the harassment of which Paola was a victim were also common knowledge. Thus, it is worth highlighting the fact

<sup>169</sup>In several of its judgments, the Inter-American Court has relied on the jurisprudence of the European Court with respect to the aforesaid elements of the duty to prevent violations. In that connection, see: I/A Court H.R. Case of the Massacre of Pueblo Bello v. Colombia. Judgment of January 31, 2006. Series C No. 140, par. 124; I/A Court H.R. Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 284; I/A Court H.R. Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, par. 124.

<sup>170</sup> I/A Court H.R. Velásquez Rodríguez Case v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4. par. 173.

that teacher Rosario Isabel Soto declared that she had reported to the Provincial Board of Education that she had been harassed between 1988 and 1999 by the Vice Principal, who was then temporarily suspended. Then there were the statements given by a minor, Mayra Hidalgo, and her mother in which they mention telling the Principal about the harassment of which pupil Mayra had been a victim and on account of which she had decided to leave that school. That was confirmed by teacher Cuenca, who declared that prior to what happened to Paola, she had accompanied another girl pupil to the Office of the Principal, where she accused the Vice Principal of having groped her to that she would receive a "pass" and be able to move on to the next year of studies.

148. Despite the incidents referred to in the foregoing paragraphs, the Commission points out that neither the Principal nor the female public servants who declared that they had some knowledge of the situation took any steps to prevent or investigate the Vice Principal's behavior. On the contrary, from the information available it transpires that there was permissiveness and tolerance of this state of affairs within this State school.

149. The State argued that at the time of these facts it did have appropriate and effective regulations in place to guarantee exercise of children's rights. However, in the Commission's view, the school staff had not received the training needed for them, as guarantors in charge of looking after children, to recognize abuse of authority and pupil harassment situations and to act accordingly. The Commission notes, on the contrary, from the statements made by the public servants aware of what was happening, total ignorance regarding the sexual harassment of girls and adolescents. Thus, when she heard about Paola's case, the Inspector General described the situation as a "crush" and teacher Cuenca approached Paola to ask her whether she was not "ashamed that people were saying she was a lover of old men". Putting a romantic twist on a situation of harassment between a public servant holding a position in which he wields authority and a pupil not only places the blame for the harassment on the victim, it also perpetuates discrimination and gender stereotypes.

150. Likewise, the Commission considers that the State's educational authorities responsible for such matters should have known what was going on in this State school by fulfilling their supervisory and inspection duties. The State has provided no information, nor does it transpire from the file on the case that State authorities had conducted inspections or regular visits to the school, with interviews with the pupils, like those that were conducted after Paola's death, or any other preventive measures.

151. The IACHR has stressed that in the case of girls, sexual violence situations are even more acute when they are regarded as objects of protection and not subjects of rights.<sup>171</sup> Likewise, the Commission has maintained that girls, for example, will often not turn to the justice system in cases of this type, for fear of reprisals "or simply because they assume that sexual violence is 'normal'".<sup>172</sup> Thus, the Commission notes that Paola had no one to turn to at the school because there was no proper reporting mechanism whereby she, any of her schoolmates, or anyone else could have notified the authorities of the circumstances she was in, without fear of reprisals. The Commission points out that neither the school nor the State of Ecuador had preventive or early warning tools or accountability mechanisms vis-a-vis situations like that Paola experienced. Regarding this aspect, the inappropriate and stereotypical nature of the administrative proceedings was clearly demonstrated in the content of the reports issued on the instant case and their outcome, in the sense that the grounds given for Bolívar Espín's dismissal was abandonment of his post. As will be analyzed below, this minimized and covered up what had really happened and the seriousness of the violence endured by Paola and that led to her death, making it abundantly clear that the State lacked accountability mechanisms in keeping with its international obligations.

152. Based on what has been adduced thus far, the Commission considers that the responsibility of the State extends beyond that derived from failure to comply with the duty to respect human rights, as already analyzed, to include also responsibility for failing to comply with the prevention component of the duty to

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<sup>171</sup> IACHR, Access to Justice for Women Victims of Sexual Violence. Education and health, December 28, 2011, par. 13.

<sup>172</sup> IACHR, Access to Justice for Women Victims of Sexual Violence. Education and health, December 28, 2011, par. 20.

guarantee human rights, so that both facets of international responsibility converge and apply in the instant case.

#### **4.2.2 Attribution of responsibility for what happened on December 12, 2002**

153. The State has indicated that school authorities cannot provide the same assistance as a clinic in such a grave emergency. However, the Commission notes that no public servant at the school responded promptly to the situation after learning, on December 12, that Paola had swallowed white phosphorus pellets. Thus, from the statements cited in the foregoing section regarding the events on December 12, the Commission highlights the fact that, when he heard about the pellets, Dr. Raúl David Ortega decided that it was very late and there was nothing to be done; instead of calling an ambulance immediately to attempt a transfer to a health center that did have the resources to respond to Paola's situation, that doctor deemed it more of a priority to apprise the Vice Principal and the Inspector General, Luz Arellano de Azán, of the situation. For her part, upon learning what had happened, the Inspector General deemed it necessary to get Paola to start praying and "ask God's forgiveness" while the Vice Principal just asked for the reasons why she had decided to swallow the pellets. Thus none of the three public servants took the necessary steps to have Paola immediately driven to a hospital to receive the emergency treatment she needed. From statements made by Paola's classmates, it transpires that the three public servants waited for her mother to arrive and for her to look after Paola's transfer to hospital, thereby losing at least 30 minutes that might have saved her life.

154. Consequently, the Commission concludes that the same Vice Principal, the doctor, and the school inspector all failed to adopt the measures needed to respond to the serious emergency situation in which Paola found herself on December 12, 2002 after swallowing the pellets known as "diablillos". Accordingly, the acts and omissions of these public servants, who had the added duty of caring for Paola in a school environment, contributed to the victim's demise, thereby making the State also internationally responsible for what happened that day.

### **5. Conclusion**

155. In light of all the considerations detailed in this section, the Commission concludes that the Ecuadorian State is responsible for violation of the rights to life, humane treatment, honor and dignity, special protection of the State for a girl, equality and nondiscrimination, education, health, and a life free from violence, established in Articles 4.1, 5.1, 11, 19, 24, and 26 of the American Convention on Human Rights in conjunction with the obligations to respect and guarantee human rights set forth in Article 1.1 of that same instrument; in Article 13 of the Protocol of San Salvador, and Articles 7.a and 7.b of the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women (Convention of Belém do Pará), all to the detriment of Paola del Rosario Guzmán Albarracín.

## **B. The right to judicial guarantees <sup>173</sup>, judicial protection <sup>174</sup>, and equality and nondiscrimination (Articles 8.1, 25.1, and 24 of the American Convention and Article 7 of the Convention of Belem do Pará)**

### **1. General considerations**

156. That Commission has stressed that the obligation of the States to act with due diligence includes enabling access to suitable and effective remedies when human rights are violated.<sup>175</sup> The Commission has further established that Article 25 of the American Convention relates directly to Article 8.1 ,

<sup>173</sup> Article 8.1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>174</sup> Article 25. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

<sup>175</sup> IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007.



which establishes the right of every person to a hearing, with due guarantees and within a reasonable time<sup>176</sup> and confers upon the family members of victims the right to receive reparation for the harm done by the death of their loved ones.<sup>177</sup> The Inter-American Court has pointed out that access to justice must ensure, within a reasonable period of time, the right of the alleged victims or their next of kin to have everything possible done to know the truth of what happened and to punish those responsible.<sup>178</sup>

157. The organs of the inter-American system have underscored the importance of conducting *ex officio* an immediate, exhaustive, serious and impartial investigation of human rights violations.<sup>179</sup> They have further established that, although the duty to investigate is one of means, not results, it must be assumed by the State as its own legal duty and not as a mere formality preordained to be ineffective,<sup>180</sup> or simply as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.<sup>181</sup>

158. Failure to observe the obligation to investigate occurs not just because no one is convicted in a case or when, despite efforts undertaken, it proves impossible to accredit the facts. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.<sup>182</sup>

159. In cases of violence against women, the generic obligations established in Articles 8 and 25 of the American Convention complement one another and are reinforced, for States, like Ecuador, that are States Parties to it, the obligations derived from the specific inter-American treaty on the subject, the Convention of Belém do Pará<sup>183</sup>. Article 7.b of that Convention expressly obliges States Parties to it to act with due diligence to prevent, investigate, and punish violence against women. The Commission has pointed out that States should have an appropriate legal framework of protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to complaints of violence against women.<sup>184</sup>

160. The Inter-American Court has recently reiterated that for cases of sexual violence against adult women a series of criteria have been established that States must abide by to ensure that investigations and proceedings that have been instituted are heard with due diligence. It has also emphasized that in cases of an act of sexual violence against a girl, an intersectional approach is needed that takes the child's gender and age into account.<sup>185</sup> The Court added that:

(...) without prejudice to the standards established in cases of violence and sexual violence against adult women, the States must adopt, pursuant to Article 19 of the American

<sup>176</sup> IACHR. Report No. 26/09. Case 12.440. Wallace de Almeida. Brazil. March 20, 2009, par. 119.

<sup>177</sup> IACHR Report No. 52/16. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016, par. 105; IACHR. Report No. 62/01, Case 11.564, Massacre of Riofrío, Colombia, April 6, 2001, par. 44.

<sup>178</sup> See I/A Court H.R. Case of the Miguel Castro Castro Prison v. Peru. Judgment of November 25, 2006. Series C No. 160, par. 382, citing Vargas Areco case; I/A Court H.R. Case of the Ituango Massacres v. Colombia. Judgment of July 1, 2006. Series C No. 148, par. 289; and I/A Court H.R., Case of the Massacre of Pueblo Bello v. Colombia. Judgment of January 31, 2006. Series C No. 140, par. 171.

<sup>179</sup> I/A Court H.R. Godínez Cruz Case v. Honduras. Judgment of January 20, 1989. Series C No. 5, par. 188; I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, par. 177; I/A Court H.R., The “Street Children” Case (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, par. 226.

<sup>180</sup> I/A Court H.R., Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988. Series C No. 4, par. 177; I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 131; and I/A Court H.R., Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 120.

<sup>181</sup> I/A Court H.R., Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988. Series C No. 4, par. 177; I/A Court H.R., Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 120.

<sup>182</sup> IACHR, Annual Report 1997, Report 55/97, Case 11.137 (Juan Carlos Abella et al.), Argentina, par. 412. On the same matter, see also: IACHR, Annual Report 1997, Report 52/97, Case 11.218 (Arges Sequeira Mangas), Nicaragua, par. 96 and 97.

<sup>183</sup> I/A Court H.R. Case of Espinoza Gonzáles v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, par. 239.

<sup>184</sup> IACHR Report No. 170/11, Case 12.578, Merits, Case of Espinoza Gonzáles v. et al, Guatemala, November 3, 2011, par. 84.

<sup>185</sup> I/A Court H.R. 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, par. 154.

Convention, individualized and special measures in cases where the victim is a child or adolescent, above all when an act of sexual violence has occurred and, even more so in cases of rape. Consequently (...) the Court will analyze the alleged violations of rights to the detriment of a girl not only on the basis of international instruments on violence against women; it will also examine them "in light of the international body of law on the protection of children" (...) which should serve to define the content and scope of the obligations assumed by the State when the rights of children and adolescents are analyzed,<sup>186</sup> and in the instant case of the State's increased due diligence obligation.<sup>187</sup>

161. The European Court has established that in cases of violence against children, States have a stepped-up (positive) obligation to initiate investigations to throw light on what happened<sup>188</sup> and it is essential that States implement mechanisms to allow complaints to be processed promptly.<sup>189</sup> Thus, it is particularly important that the authorities in charge of the investigation conduct it resolutely and effectively, mindful of the duty of society to reject violence against women and the of the obligations of the State to eradicate it and create trust among victims in the state institutions responsible for their protection.<sup>190</sup>

162. The Inter-American Court has pointed out that "criminal proceedings in sexual violence cases face intrinsic technical difficulties that make prosecution difficult. There is often scant evidence of what happened, the accused regularly denies any wrongdoing, and the discussion comes down to one person's word against another's. Add to that the prejudices and pre-conceived and stereotypical ideas proper to a patriarchal system that exist in the public consciousness regarding sexual violence."<sup>191</sup> Regarding the presence of stereotypes and prejudices in internal procedures for investigating acts of violence against women, the Court has pointed out:

(...) the gender stereotype refers to a preconception of the attributes, conduct, innate characteristics or roles that are or should be played by men and women respectively, and that it is possible to associate the subordination of women with practices based on socially dominant and persistent gender stereotypes.<sup>192</sup>

(...)

Stereotypes "distort perceptions and give rise to decisions based on preconceptions and myths, instead of facts," which in turn may lead to denial of justice, including revictimization of the complainants.<sup>193</sup>

163. The Commission recalls what it stated in its report entitled "Access to Justice for Women Victims of Violence in the Americas" to the effect that:

[t]he influence exerted by discriminatory socio-cultural patterns may cause a victim's credibility to be questioned in cases involving violence, or lead to a tacit assumption that she

<sup>186</sup> I/A Court H.R. 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, par. 155. Citing: Cf. The "Street Children" Case (Villagrán Morales et al.) v. Guatemala. Merits, and Case of Pacheco Tineo family v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 25, 2013. Series C No. 272, par. 217.

<sup>187</sup> I/A Court H.R. 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, par. 155.

<sup>188</sup> ECHR, M. and M. v. Croatia Judgment of September 3, 2015, par. 136.

<sup>189</sup> ECHR, O'Keeffe v. Ireland. Judgment of January 28, 2014, par. 148.

<sup>190</sup> I/A Court H.R. Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010, Series C No. 216, par. 177.

<sup>191</sup> I/A Court H.R. 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, par. 264.

<sup>192</sup> I/A Court H.R. Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 24, 2017. Series C No. 339, par. 169. Citing. Cf. Case of González et al. ("Cotton Field") v. Mexico, par. 401, and Case of Velásquez Paiz et al. v. Guatemala, para. 180.

<sup>193</sup> I/A Court H.R. Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 24, 2017. Series C No. 339, par. 173. Citing: Cf. Committee on the Elimination of Discrimination against Women, General Recommendation No. 33 on women's access to justice, 2015, para. 26.

is somehow to blame for what happened, whether because of her manner of dress, her occupation, her sexual conduct, relationship or kinship to the assailant and so on. The result is that prosecutors, police and judges fail to take action on complaints of violence. This bias may also exert a negative influence on the investigation of such cases and the subsequent weighing of the evidence, where stereotypes about how women should conduct themselves in interpersonal relations can become a factor.<sup>194</sup>

164. The Court has found that the duty not to discriminate is breached in cases where officials in charge of an investigation concerning the disappearance of—or violence against—a woman make statements that denote the existence of prejudice and stereotypes with regard to the role of women in society.<sup>195</sup>

## **2. Analysis of the case**

165. In the instant case, there was a criminal investigation, a civil suit for damages, and an administrative procedure, as a consequence of the facts relating to Paola's death. On December 17, 2002, Paola's father filed a criminal suit against the Vice Principal, Bolívar Espín Zurita; the proceedings concluded on September 18, 2008 with a statement that the criminal action had prescribed due to the statute of limitations. In those criminal proceedings, Paola's also acted a private plaintiff. The civil suit began with the complaint filed by Paola's mother on October 13, 2003 and was shelved in July 2012 due to alleged discontinuance by the plaintiff. As regards the administrative proceedings, the records indicate that they began in December 2002 and ended on December 30, 2004, with the defendant being sanctioned for unjustified abandonment of his post. Below, the Commission will analyze whether these proceedings amounted to effective access to justice in keeping with due process guarantees for Paola's family members.

166. To begin with, the Commission notes that the Ecuadorian State did not institute the investigation ex officio. As explained above, it began when Paola's father filed a complaint, four days after the facts. Moreover, the Commission notes that that is Paola's parents who constantly pushed for the investigation to advance, proposing evidence, asking that witnesses be cited, and repeatedly requesting that the investigation proceed at a proper pace. Due to the desultory pace of the investigations, Mrs. Petita Albarracín found herself forced to formally demand that the judge recuse himself from hearing the case, a plea that was granted.

167. The Commission notes with special concern the unwarranted delay by the Government Prosecuting Attorney, during the criminal proceedings, to order and perform blood tests on Paola's body. Thus, it is placed on record that, on January 27, 2007, Paola's father had to request that the corresponding blood tests be performed to ascertain whether his daughter had been pregnant at the time of her death. Thus, more than one month after Paola's death and after the Prosecuting Attorney had become aware of the allegations that she was pregnant, samples were sent to the laboratory for analysis. In addition to the delay, the Commission draws attention to several medical notes indicating that the samples had been poorly preserved, so that an anatomical-pathological examination of the uterus had to be performed, and of the ovaries which, for their part, had been completely opened, as described in the forensic medical autopsy H-2003-11-502. There is no indication of an administrative investigation being ordered as a result of those irregularities which were clearly detrimental to a proper clarification and characterization of the facts.

168. In addition to the above were the other irregularities in the autopsy mentioned by Dr. José María Nájera in his expert opinion, which the Commission was able to ascertain in the corresponding certificate and which were not contested by the State. The Commission considers it especially serious that the doctors responsible for the autopsy performed it without any information regarding the events prior to the death, which might have helped to have important tests performed in time, such as, precisely, a blood test to rule out pregnancy.

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<sup>194</sup> IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser.L/V/II. Doc. 68, January 20, 2007 (Annexes to the petition, Volume VII, Annex 2, page 1822).

<sup>195</sup> I/A Court H.R., *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, par. 212.

169. At the same time, notwithstanding a written statement by Mr. Máximo Guzmán on December 24, 2004, that classmates of Paola had told him that the school doctor, Dr. Raúl David Ortega, had asked for sexual favors from Paola, the Commission notes that the only action taken by the Government Prosecuting Attorney was to take his statement, without initiating any investigation into the allegations of sexual violence.

170. Likewise, as the Commission already established in the present report, at the very least, the school inspector, teacher Blanca Cuenca, teacher Gladys Gatay, and the School Principal had knowledge of the Vice Principal's improper relationship with Paola and of previous cases of sexual harassment at the school. Nevertheless, no investigation was carried out into the administrative responsibility they might bear for not having done anything about it.

171. The Commission notes that during the criminal proceedings, Mrs. Petita requested that several pupils at the school be invited to testify, but that request was denied by the Government Prosecuting Attorney on the basis of writs presented by those students' representatives stating that they had nothing to testify because they had not been classmates of Paola's. The Commission, however, considers that those statements were essential to clarify what happened to Paola and the context of misuse of authority and harassment among staff. That could also have been verified from the findings of the anonymous surveys conducted of numerous pupils during the administrative proceedings and from the two reports by the Supervisor of the Provincial Board of Education that Paola's father presented in the criminal proceedings on March 10, 2003, which contained enough information to at least initiate serious inquiries into the context of abuse. Accordingly, it was the State's obligation to take the necessary steps to ensure that the pupils could make their statements without fear of reprisals -- above all when evidence emerged of pressure being exerted by the school authorities - and with due safeguards to take their condition as adolescents into account.

172. The Commission further notes a complete lack of coordination among the authorities familiar with the three cases and that they failed to communicate with one another to use factors that might advance the investigations; despite the fact, noted in the records, that in each of the three proceedings Paola's parents provided information about the other two proceedings.

173. Consistent with the above, the Commission notes that there is no information indicating that any State institution responsible for safeguarding the interests of children intervened in the criminal proceedings, even though Paola's classmates who did make statements at those proceedings were adolescents. As the Court has held in this regard:

in order to facilitate access to justice for vulnerable persons, the participation of other State institutions and bodies is essential so that they can assist in the judicial proceedings in order to ensure that the rights of such persons are protected and defended.<sup>196</sup>  
(...)

Moreover, the Court reiterates that, while procedural rights and their corollary guarantees apply to all persons, in the case of children exercise of those rights requires, due to the special conditions of minors, that certain specific measures be adopted for them to effectively enjoy those rights and guarantees.<sup>197</sup> The specific types of measures are determined by each State Party and may include direct or additional party representation (*representación directa o coadyuvante*),<sup>198</sup> as the case may be, of the minor in order to reinforce the guarantee of the best interests of the child principle.<sup>199</sup>

<sup>196</sup> I/A Court H.R. Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246, par. 241.

<sup>197</sup> I/A Court H.R. Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246, par. 241. Citing: Advisory Opinion OC-17/02, par. 98

<sup>198</sup> I/A Court H.R. Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of Friday, August 31, 2012. Series C No. 246, par. 241. Citing *mutatis mutandi* Case of Atala Rifo and Girls. v. Chile, par. 199.

<sup>199</sup> I/A Court H.R. Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246, par. 242.

174. As regards the duty to investigate with a gender perspective, free from stereotypes and discriminatory prejudices, it is worth highlighting several stigmatizing and stereotypical resolutions issued by the authorities, including: a) the Government Prosecuting Attorney, when requesting that the Court on duty order the arrest of the Vice Principal, she asserted that it was evident that "he had had a sentimental relationship with Paola, that she had got pregnant, and for that reason had decided to take her own life"; b) in his preliminary report of March 3, 2003, the Provincial Chief of the Judicial Police concluded "that teacher Bolívar Espín Zurita, the Vice-Principal of the Martínez Serrano school, had maintained sentimental relations with third-grade student Ms. Paola del Rosario Guzmán Albarracín"<sup>200</sup>; c) the same Provincial Chief, in his second report, concluded that "there is no conclusive proof that the Vice Principal responded to the aforementioned "crush" (that is to say, he may or may not have)... "and as a recommendation," he suggested transferring the Vice Principal to another school, "for his own safety"; d) the Superior Court of Justice, in confirming the order summoning Bolívar Espín to face trial, asserted that "it is obvious that the criminal acts of which he is accused do not apply to this case [...] Bolívar did not pursue Paola Guzmán; rather she courted his favors as a teacher [...] which was the beginning of the seduction, as amply evidenced in Paola's handwritten letters [...]"; based on which he amended the sexual harassment crime being investigated to [...] the offense of aggravated statutory rape.

175. Finally, the Commission points out that the prescription of the criminal action was due mainly to the lack of diligence in the part of the judicial authorities; especially, the blatant inability to find Mr. Espín, who was supposedly a fugitive from justice but who nevertheless played an active part in all three proceedings through his attorney. Since February 2003, when Mr. Espín's arrest was first ordered in the criminal proceedings, the State was duty-bound to have taken serious and concrete steps to ascertain his whereabouts.

176. In addition, the Commission stresses that on October 5, 2005, the Fifth Criminal Court judge ordered the proceedings to be suspended "until he [Bolívar Espín] appeared in court or is arrested." The Commission considers that since the proceedings had been suspended, the statute of limitations should not have run, above all given that the proceedings were totally halted for three years. In short, the Commission considers that Mr. Espín benefited from a prescription that resulted from lack of due diligence on the part of the authorities.

177. As the Commission has already pointed out, the purpose of the statute of limitations is to guarantee legal certainty and impose temporal restrictions on the punitive power of the State. However, if a State fails to take diligent steps to establish the whereabouts of a fugitive from justice in cases involving human rights violations that should be pursued ex officio and then declares in that fugitive's favor that the case against him has prescribed, invoking that statute becomes a factor favoring impunity that is attributable to the State. The Commission also underscores the fact that in several countries the statute of limitations is interrupted when an accused flees justice, to the extent that said flight makes criminal prosecution impossible.<sup>201</sup>

178. In addition, the Commission considers that prescription times should be directly proportionate to the seriousness of the crimes being investigated. In the instant case, dealing with sexual violence against a woman and girl that culminated in her death, the Commission considers that a five-year prescription period does not match the gravity of the facts of the case.

179. Finally, Mrs. Petita actively sought to expedite the civil proceedings and requested that the judge recuse himself "for having failed to hand down a judgment in triple the time allowed." In this regard, it is worth pointing out that on September 14, 2004 the Judge of the Twenty-Third Civil Court declared Mr. Espín confessed (*declaró confeso*) for not having appeared at the hearings convened by said judge, but it was not until nine months later, on June 7, 2005, that he handed down judgment.

180. Based on all the elements listed above, the Commission considers that the impunity surrounding this case was due precisely to lack of due diligence on the part of the authorities. It likewise concludes that the proceedings instituted on account of Paola's death were not conducted with a gender

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<sup>200</sup> In annex I, p. 190.

<sup>201</sup> IACHR, Report No. 133/17. Case 12.332. Merits. Margarida Maria Alves and family members. Brazil. October 25, 2017, par. 114.

perspective and that the criminal, civil, and administrative proceedings were marred by stereotypes regarding the role and social behavior of women, a situation that entailed a violation of the principle of equality and nondiscrimination in access to justice.

181. Consequently, the Commission concludes that the State the rights to judicial guarantees and judicial protection, established in Articles 8.1 and 25.1, as well as the right established in Article 24, of the American Convention, in conjunction with Article 1.1 of the same instrument and Article 7.b of the Convention of Belém de Pará, to the detriment of Paola's next of kin.

### **C. Right to humane treatment of the family members of Paola del Rosario Guzmán Albarracín (Article 5.1 of the American Convention)**

182. The Commission and the Inter-American Court have indicated that the next-of-kin of victims of certain human rights violations may, in turn, be considered victims.<sup>202</sup> In that regard, the Court has ruled that their right to mental and moral integrity may be impaired as a result of the particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts.<sup>203</sup>

183. The Commission already considered it established that the State is responsible for failure to fulfill its duty to respect and guarantee human rights because of the sexual violence and subsequent death of which Paola was a victim at the hands of the Vice Principal of the school Paola's death constitutes in itself a cause of suffering for her family members, as was the fact that Mrs. Petita was shown the cut open body of her daughter while the autopsy was being performed. This suffering was exacerbated by the lack of due diligence in the judicial proceedings undertaken in respect of the facts and by impunity surrounding the case, both of which have been established.

184. The above is confirmed by the testimony given by Mrs. Petita during the hearing on October 19, 2015 and by the expert opinion of Dr. Ximena Cortés, referred to in the present report

185. Based on the above, the Commission considers that the loss of their loved one and the absence of justice have cause suffering and anguish to Paola's parents and her sister, in violation of the right to mental and moral integrity, established in Article 5.1 of the American Convention, in conjunction with Article 1.1 of the same instrument.

## **V. CONCLUSIONS**

186. Based on the determinations of fact and law, the Commission concludes that the Ecuadorian State is responsible for violation of the rights established in Articles 4.1, 5.1, 11, 19, 24, and 26 of the American Convention on Human Rights in conjunction with the obligations to respect and guarantee human rights set forth in Article 1.1 of that same instrument, and for violation of Article 13 of the Protocol of San Salvador, to the detriment of Paola del Rosario Guzmán Albarracín. The Commission further concludes that the State is responsible for violating Articles 5, 8.1, and 25.1 of the American Convention on Human Rights, to the detriment of Paola's next of kin. The Commission also concludes that the State is responsible for violation of Article 7 of the Convention of Belém do Pará.

## **VI. RECOMMENDATIONS**

187. In light of the foregoing conclusions,

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<sup>202</sup> I/A Court H.R. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 112; and Case of Bueno-Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C. No. 164, par. 102. See also: IACHR. Report No. 58/12. Case 12.606. Merits. Brothers Landaeta Mejías Venezuela. March 21, 2012, par. 256.

<sup>203</sup> I/A Court HR. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 112; and Case of Vargas-Areco v. Paraguay. Judgment of September 26, 2006. Series C No. 155, par. 96.

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RECOMMENDS THAT THE STATE OF ECUADOR:**

1. Provide full reparation for the human rights violations found in the instant report, including both material and moral dimensions. Adopt measures that prove both financial compensation and satisfaction.
2. Provide immediate and cost-free medical, psychological, psycho-social, or psychiatric care, as applicable, to the family members of Paola del Rosario Guzmán Albarracín, if they so desire and by agreement with them.
3. Conduct with due diligence and within a reasonable time frame the corresponding investigations and criminal proceedings with a view to individualizing, identifying, trying, and, as the case may be, punishing those responsible.

The Commission notes that the criminal proceeding in respect of Mr. Bolívar Espín concluded on September 18, 2008 due to prescription of the criminal action.. The Commission issues a reminder of the "fraudulent *res judicata*" concept and its connection with the *non bis in ídem* principle. As the Court pointed out in the case of *Gutiérrez and family v. Argentina*, presuming that the provisions of Article 8(4) of the Convention would be applicable in any circumstances would imply that the decision of a domestic judge would have preeminence over a decision taken one of the inter-American organs pursuant to the American Convention.<sup>204</sup> It would also mean, consequently, that the application, in any circumstance, of the said Article 8(4) of this treaty, could lead to impunity and to the non-applicability of the corresponding international norms, which would not accord with the object and purpose of the Convention.<sup>205</sup>

Considering that the prescription of the criminal proceedings was the result of an investigation and criminal proceeding incompatible with the American Convention, the IACHR considers that, in the instant case, the guarantee of *non bis in ídem* cannot be adduced by the State when it comes to complying with the present recommendation.

4. Impose appropriate administrative, disciplinary or criminal penalties for the acts or omissions of state officials that contributed to the denial of justice and impunity surrounding the facts in this case.
5. Adopt non-repetition measures that include: i) Establishing regulations and appropriate mechanisms for training, early detection, inspection, supervision, and accountability of public and private educational institutions, in order to prevent and properly respond to sexual harassment situations within said institutions, including the violence exercised through the health care services provided therein; ii) Designing protocols in the education and health sectors that facilitate whistleblowing, confidentiality, and care for students who are victims or witnesses of acts of sexual violence, mindful of their best interests, and paying particular heed to ethical medical treatment and the effects on the emotional and mental health of girls and adolescents; iii) Incorporating into mandatory teaching materials appropriate and timely information, geared to the children's level of maturity, designed to provide them with tools for preventing and reporting cases of sexual violence; iv) Ensuring that the authorities in the Judiciary, Public Prosecutors' Office, and National Police responsible for conducting investigations and criminal proceedings regarding violence against women and girls, including sexual violence in educational facilities and in the health services provided by those institutions, have the proper training and institutional backing needed to investigate with a gender perspective and due diligence, in the terms highlighted in this report; and v) Running educational and awareness-raising campaigns

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<sup>204</sup> I/A Court H.R. Case of *Gutiérrez and family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, par. 130.

<sup>205</sup> I/A Court H.R. Case of *Gutiérrez and family v. Argentina*. Merits, Reparations and Costs. Judgment of Monday, November 25, 2013. Series C No. 271, par. 130.

in State and private schools that address the social and cultural patterns that normalize or trivialize sexual violence in schools.