

Veliz Franco et al. v. Guatemala

ABSTRACT¹

This case is about the murder of a young woman and the subsequent bungled attempt to investigate the crime by the State authorities. The murder took place in the context of wide-spread criminality and high numbers of homicides in the State, coupled with a deep-rooted reluctance to investigate and protect women from violence. Eventually the Court found the State in violation both of the American Convention, as well as the Convention of Belém do Pará on the Prevention, Punishment, and Eradication of Violence Against Women.

I. FACTS

A. Chronology of Events

December 16, 2001: Fifteen-year-old María Isabel Veliz Franco is on vacation from school.² At 8:00 am, she leaves her home, where she lives with her mother, Mrs. Rosa Elvira Franco Sandoval, brothers Leonel Enrique and José Roberto, and grandparents Mrs. Cruz Elvira Sandoval and Mr. Roberto Franco Pérez, for her job, in Guatemala City, Guatemala.³ By 8:00pm she has not yet returned home.⁴

December 17, 2001: Mrs. Franco Sandoval reports her daughter's disappearance to the Bureau of Criminal Investigation of the National Civil Police of Guatemala ("PNC Investigation Service").⁵ The State officials do not take an official report and inform Ms. Franco Sandoval she must wait twenty-four to seventy-two hours before filing a missing person report.⁶

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2. Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 92 (May 19, 2014).

3. *Id.*

4. *Id.* ¶ 93(a).

5. *Id.* ¶ 93.

6. *Id.* ¶ 94(c).

December 18, 2001: Authorities find a woman's body in a vacant lot after an anonymous caller reports a corpse outside of Guatemala City.⁷ The body shows signs of violence.⁸ Evidence indicates the victim was strangled.⁹ An order to pathologists does not request that they test the body for sexual abuse.¹⁰ Additionally, the Homicide Section of the PNC Investigation Service reports that the crime scene had been contaminated, and the Site Inspection Unit had confiscated multiple items.¹¹

After seeing the body on the news, Mrs. Franco Sandoval goes to the morgue to identify the body as her daughter, María Isabel.¹² The death certificate prepared by the Forensic Medicine Service indicates María Isabel was stabbed in the head with a knife.¹³

Late in the evening, an anonymous caller reports to the police that he saw a woman exit a car and drop a black sack containing a woman's body in some bushes.¹⁴ He followed the car and watched it pull into a house in the same neighborhood as where the woman dropped the body.¹⁵

December 19, 2001: Investigators interview María Isabel's grandmother, her coworkers, and neighbors of the home identified by the anonymous caller.¹⁶

December 20, 2001: Through public records, investigators of the PNC Investigation Service's Homicide Section identify the owner of the building where the vehicle that had dropped the body later parked.¹⁷

January 18, 2002: An investigator searches the suspected house but does not locate the described vehicle.¹⁸

7. *Id.* ¶ 96.

8. *Id.* ¶ 97.

9. *Id.*

10. *Id.* ¶ 101.

11. *Id.* ¶ 101, n.132.

12. *Id.* ¶ 98.

13. *Id.* ¶ 102.

14. Veliz Franco et al. v. Guatemala, Report on Merits, Report No. 170/11, Inter-Am. Comm'n H.R., Case No. 12.587, ¶ 44 (Nov. 3, 2011).

15. Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 103.

16. *Id.* ¶ 104.

17. *Id.* ¶ 109(a).

18. *Id.*

March 11, 2002: The Eighth Court of Guatemala City disqualifies itself from hearing the case since the crime scene's location is outside of its jurisdiction and forwards the case to the Mixco First Court.¹⁹

March 26, 2002: The Mixco First Court takes over the proceedings.²⁰

April 30, 2002: An investigator's report reveals that upon finding the body, no one requested that the autopsy include tests to determine if María Isabel had been raped or drugged before her murder.²¹

May 17, 2002: The Guatemala City Agency No. 32 Prosecutor follows the Eighth Court of Guatemala City and recuses himself from the case, forwarding the case file to the Deputy District Prosecutor of the Mixco Municipal Prosecutor's Office.²²

July 12, 2002: The Mixco Agency No. 5 Prosecutor states before the First Instance Judge of Mixco that the case should be held before the judge in Guatemala City since the disappearance report had initially been filed in that jurisdiction.²³

September 2, 2002: Based on Mrs. Franco Sandoval's statement to the police, the Mixco First Court judge rules that the murder happened in Guatemala City and thus the case should be heard in the Eighth Court of Guatemala City.²⁴ The judge transfers the case back to the Eighth Court of Guatemala City.²⁵

September 25, 2002: The Eighth Court of Guatemala City files a jurisdictional dispute with the Supreme Court of Justice.²⁶

November 21, 2002: The Criminal Chamber of the Supreme Court rules that the First Court of Mixco is the competent court to hear María Isa-

19. *Id.* ¶ 107(b).

20. *Id.* ¶ 107(c).

21. *Id.*

22. *Id.* ¶ 107(d).

23. *Id.* ¶ 107(e).

24. *Id.* ¶ 107(f).

25. *Id.*

26. *Id.* ¶ 107(g).

bel's case.²⁷

December 3, 2002: The Assistant Prosecutor of Guatemala City Agency No. 32 receives a report on the incoming and outgoing calls on María Isabel's cell phone, her contact list, and four photographs of the vacant lot.²⁸

January 31, 2003: Mrs. Franco Sandoval files a complaint with the Ombudsman's Office ("the Ombudsman"), asserting Assistant Prosecutor I violated her right to due process because her daughter's investigation was not progressing.²⁹

March 18, 2003: The chief investigator recommends that the Assistant Prosecutor I question Mrs. Franco Sandoval about her daughter's night-life activities, relationships with gang members, potential drug addiction, and relationship with her stepfather.³⁰

March, June, and July 2003: More suspects are interviewed and asked to make statements, but all deny involvement in the murder.³¹

January 26, 2004: The Center for Justice and International Law ("CEJIL") and the Network to Combat Violence against Women in Guatemala (*Red de No Violencia contra las Mujeres en Guatemala*; "REDNOVI") submit a petition on behalf of Mrs. Franco Sandoval to the Commission.³²

May 19, 2004: The Mixco District Prosecutor issues a report to the Public Prosecution Service's General Secretariat stating it had not yet identified the perpetrator but would continue to pursue the investigation.³³

August 23, 2004: Mrs. Franco Sandoval arrives at Mixco Agency No. 5 and asserts that the investigation was not performed properly and requests a change in prosecutor.³⁴

27. *Id.*

28. *Id.* ¶ 108(a).

29. *Id.* ¶ 115.

30. *Id.* ¶ 118(b).

31. *Id.* ¶ 112(e).

32. *Id.* ¶ 2(a).

33. *Id.* ¶ 112(e).

34. *Id.* ¶ 114(b).

Around August 21, 2004: Mrs. Franco Sandoval visits the Assistant Prosecutor I to ask about any advances made in her daughter's case, and the Assistant Prosecutor I responds by pulling out María Isabel's file from the bottom of her drawer, informing Mrs. Franco Sandoval that her daughter was murdered because she was a prostitute, and laughing in her face.³⁵

August 30, 2004: After Assistant Prosecutor I refers to her daughter as a "tart," Mrs. Franco Sandoval writes the Prosecutor General and the head of the Public Prosecution Service to request that insults to her daughter's reputation stop.³⁶

September 8, 2004: Assistant Prosecutor I requests that a new prosecutor take over the case.³⁷

September 13, 2004: The Assistant Supervisor at the Public Prosecution Service decides that there will not be an administrative disciplinary proceeding regarding María Isabel's case.³⁸

October 28, 2004: A new Assistant Prosecutor is assigned to María Isabel's case.³⁹

November 2, 2004: The Ombudsman decides that Mrs. Franco Sandoval's rights to due process and certainty were violated since the Public Prosecution Service was not objective in pursuing criminal action, while the Guatemala City Agency No. 32 and Mixco Agency No. 5 prosecutors had "delayed justice" during their jurisdictional dispute.⁴⁰

November 16, 2005: The Commission grants precautionary measures for María Isabel's family members because of ongoing threats to their safety.⁴¹

35. *Id.* ¶ 118(c).

36. *Id.*

37. *Id.* ¶ 114(b).

38. *Id.*

39. *Id.*

40. *Id.* ¶ 115.

41. Veliz Franco et al. v. Guatemala, Precautionary Measures, Order of the Commission, Inter-Am. Comm'n H.R., Case No. 12.578, ¶ 25 (2005).

January 2006: The Mixco Agency No. 5 Deputy District Prosecutor requests that full-time investigators look into María Isabel's death and creates new guidelines for them to use.⁴²

October 21, 2009: The Assistant Prosecutor requests that the case be suspended because it is being reviewed by the Inter-American Commission and the Presidential Human Rights Commission ("COPREDH").⁴³

January 5, 2011: Mixco Agency No. 1 requests the trousers, towels, and socks found on the victim from the head of the Evidence Warehouse of the Public Prosecution Service.⁴⁴ He responds that the evidence was never in the warehouse.⁴⁵

January 14, 2011: Mixco Agency No. 1 orders an extensive search for the missing evidence at the Public Prosecution Service's Central Evidence Warehouse.⁴⁶

January 24, 2011: The head of the Evidence Warehouse establishes that the Technical and Scientific Sub-Directorate's pharmaceutical chemist (now "INACIF") kept the missing pieces of evidence.⁴⁷

May 16, 2011: An expert report evaluates a DNA test performed on a suspect.⁴⁸ However, the DNA comparison cannot be done on the trousers, socks, or one of the towels because they are missing, and there is no genetic material on any other piece of clothing.⁴⁹

June 10–July 11, 2011: INACIF's General Secretariat advises the Assistant Prosecutor that its crime laboratory work did not begin until November 12, 2007, so it cannot comply with the prosecutor's request to produce the evidence.⁵⁰

42. Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 114(c).

43. *Id.* ¶ 116.

44. *Id.* ¶ 117(a).

45. *Id.* ¶ 117(b).

46. *Id.* ¶ 117(c).

47. *Id.* ¶ 117(b).

48. *Id.* ¶ 112(j).

49. *Id.*

50. *Id.* ¶ 117(d).

February 8, 2012: The Mixco Court of First Instance issues an order to halt María Isabel’s case, but the Public Prosecution Service’s office asks the judge to reconsider.⁵¹

May 3, 2012: The Commission submits María Isabel’s case to the Inter-American Court of Human Rights.⁵²

May 16, 2012: Mixco Prosecutor’s Office requests that the Public Prosecution Service transfer three investigators to review the case because no one in the office was pursuing the investigation.⁵³

September 27, 2012: The judge sets a hearing date to determine whether María Isabel’s case will remain open.⁵⁴

B. Other Relevant Facts

In the last seventeen years, many organizations have expressed concern for how violence against women is handled within the State.⁵⁵ In 1999, the Commission reports a rise in the number of complaints based on rape and interfamily violence within the State, while gender-based violence is a primary cause of death and injury for women between fifteen and forty-four years of age.⁵⁶ Additionally, a culture of blaming female victims exists.⁵⁷ From 1996 until 2006, homicide in Guatemala increases 120 percent, making it one of the most dangerous countries in the world not involved in conflict.⁵⁸ By 2003, the number of women murdered in the State increases, and the majority of cases are unsolved or not properly investigated.⁵⁹ Not only has the number of women murdered increased, but the degree of violence and cruelty committed during these murders has also escalated.⁶⁰ Many bodies indi-

51. *Id.* ¶ 119(c).

52. *Veliz Franco et al. v. Guatemala*, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 12.587 (May 3, 2012).

53. *Veliz Franco et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, ¶ 119(b).

54. *Id.* ¶ 119(d).

55. *Veliz Franco et al. v. Guatemala*, Report on Merits, ¶ 58.

56. *Id.* ¶ 59.

57. *Id.* ¶ 60, n.47.

58. *Veliz Franco et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, ¶ 74.

59. *Veliz Franco et al. v. Guatemala*, Report on Merits, ¶ 60.

60. *Id.* ¶ 61.

cate severe sexual abuse or mutilation, and some women are kidnapped and held for prolonged periods of time before being killed.⁶¹ Most of the women targeted either live in low-income areas or are students.⁶² This is meant to “send a message,” leaving other women intimidated and terrified to report instances of violence, while authorities neglect to seek out and punish the perpetrators against women who do report.⁶³ In 2008, statistics show that out of the average 5,000 murder cases every year, less than five percent of cases actually make it to trial, while seventy-five percent of crimes remain unreported.⁶⁴ Specifically regarding crimes against women, State agencies report that investigations into these crimes have serious shortcomings, lacking steps to preserve and protect crime scenes and failing to check for signs of violence.⁶⁵ However, from 2000 onward, the State begins to take small steps towards recognizing the problem through various acts of legislation and enforcement regulations.⁶⁶

II. PROCEDURAL HISTORY

A. Before the Commission

January 26, 2004: The Center for Justice and International Law (“CEJIL”) and *La Red de No Violencia contra las Mujeres en Guatemala* (“REDNOVI”) present a petition on behalf of Mrs. Franco Sandoval to the Commission.⁶⁷

November 16, 2005: The Commission orders precautionary measures be put in place for María Isabel’s family members, Mr. Leonel Enrique Veliz Franco, Mr. José Roberto Sandoval, Ms. Cruz Elvira Sandoval Polanco, and Mrs. Rosa Elvira Franco Sandoval.⁶⁸ Mrs. Franco Sandoval had requested the measures after indicating her family members

61. Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 78.

62. *Id.*

63. Veliz Franco et al. v. Guatemala, Report on Merits, ¶ 61.

64. Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 86–87.

65. *Id.* ¶ 89.

66. Veliz Franco et al. v. Guatemala, Report on Merits, ¶ 65.

67. Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 2(a).

68. Veliz Franco et al. v. Guatemala, Precautionary Measures, Order of the Commission, ¶ 25.

were “harassed, persecuted and threatened” by anonymous armed assailants.⁶⁹ The Commission requests that the State investigate the situation and provide the family with protection.⁷⁰

October 21, 2006: The Commission issues Admissibility Report No. 92/06.⁷¹

November 3, 2011: The Commission issues Report on Merits No. 170/11.⁷² It concludes that the State violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), and 19 (Rights of the Child) of the American Convention and Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Convention of Belém do Pará in relation to Articles 1(1) and 24 (Right to Equal Protection) of the American Convention to the detriment of María Isabel, and Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and 25 (Right to Judicial Protection) of the American Convention to the detriment of Mrs. Franco Sandoval and the rest of the Franco family.⁷³

The Commission recommends that the State complete a “timely, immediate, serious and impartial investigation” into María Isabel’s death so that those responsible may be brought to justice, as well as make reparations to María Isabel’s family.⁷⁴ To prevent this from happening in the future, the Commission recommends that the State fund a multi-faceted policy to guarantee effective prevention and management of cases involving violence against women.⁷⁵ Further, the State should incorporate early education programs on equal rights for women, especially regarding their rights to non-violence and non-discrimination.⁷⁶ As for the legal system, the Commission recommends the State investigate the missteps taken during the case and punish those responsible, while increasing the State’s ability to prevent violence against women

69. Veliz Franco et al. v. Guatemala, Report on Merits, ¶ 10.

70. Veliz Franco et al. v. Guatemala, Precautionary Measures, Order of the Commission, ¶ 25.

71. Veliz Franco et al. v. Guatemala, Admissibility Report.

72. Veliz Franco et al. v. Guatemala, Report on Merits.

73. Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 2(c)(i).

74. *Id.* ¶ 2(c)(ii)(1)–(2).

75. *Id.* ¶ 2(c)(ii).

76. *Id.*

through greater judicial oversight during criminal investigations.⁷⁷ Finally, the State should create campaigns to increase public awareness on respecting children's human rights, along with promoting a public policy of stopping discriminatory gender stereotypes and "socio-cultural patterns" so that women have better access to justice.⁷⁸

B. Before the Court

May 3, 2012: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁷⁹

1. Violations Alleged by Commission⁸⁰

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 19 (Rights of the Child) of the American Convention *and*

Article 7(b) (Duty to Prevent, Investigate, and Punish Violence) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women ("Convention of Belém do Pará").

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 24 (Right to Equal Protection)

Article 25(1) (Right to Recourse Before a Competent Court)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article (2) (Obligation to Give Domestic Legal Effect to Rights) of the American Convention *and*

Article 7(b) (Duty to Prevent, Investigate, and Punish Violence)

Article 7(c) (Duty to Adopt Administrative Measures to Prevent, Punish, and Eradicate Violence) of the Convention of Belém do Pará.

77. *Id.*

78. *Id.*

79. Veliz Franco et al. v. Guatemala, Petition to the Court.

80. Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs,

¶ 2(c)(i).

2. Violations Alleged by Representatives of the Victims⁸¹

Same Violations Alleged by Commission.

December 18, 2012: The State submits two preliminary objections.⁸² It first argues that the petitioners have not exhausted all domestic remedies.⁸³ It also challenges competency of the Court regarding Article 7 of the Convention of Belém do Pará, and questions whether all “victims” asserted by the Commission should be analyzed under this Article.⁸⁴ Finally, the State rejects the requested forms of reparation.⁸⁵

January 8, 2013: The President of the Court grants provisional measures allowing the victims access to the Court’s Assistance Fund through their representatives.⁸⁶

May 30, 2013: The Court receives two amici curiae briefs from Notre Dame Law School.⁸⁷

May 19, 2014: The Court rejects the State’s preliminary objections regarding lack of competence and failure to exhaust domestic remedies.⁸⁸ First, the Court establishes that unwarranted delays in María Isabel’s case constituted an exception to the exhaustion of domestic remedies requirement pursuant to Article 46(2)(c) of the American Convention.⁸⁹ Second, the Court asserts that the State ratified the Convention of Belém do Pará without reservation and the Court has found violations of the Convention in the past without objection from the State.⁹⁰

81. *Id.* ¶ 7. REDNOVI serves as representative of María Isabel and Mrs. Franco Sandoval.

82. *Id.* ¶ 8.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Veliz Franco et al. v. Guatemala, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) “Resuelve” ¶ 1 (Jan. 8, 2013) (Available only in Spanish).*

87. From Sorina Macricini, Cristian González Chacó, and Bruno Rodríguez Reveggió of Notre Dame Law School, and from Christine M. Venter, Ana-Paolo Calpado, and Daniella Palmiotto of Notre Dame Law School. *Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 12.*

88. *Id.* ¶¶ 38, 45.

89. *Id.* ¶ 43.

90. *Id.* ¶¶ 36–37.

III. MERITS

A. Composition of the Court

Humberto Antonio Sierra Porto, President
Roberto F. Caldas, Vice President
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

May 19, 2014: The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.⁹¹

The Court found unanimously that Guatemala had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), and Article 5(1) (Right to Physical, Mental, and Moral Integrity) in relation to Article 1(1) (Obligation of Non-Discrimination) and Article 19 (Rights of the Child) of the Convention, as well as Article 7(b) (Duty to Prevent, Investigate, and Punish Violence) of the Convention of Belém do Pará to the detriment of María Isabel,⁹² because:

The Court determined that the State had a positive obligation to protect in this case, which arises when a State is aware of an imminently dangerous situation for a particular individual or group of individuals.⁹³ Here, the State had been aware since 2001 that girls and women were “particularly vulnerable to violence” and thus required special protection.⁹⁴ This implicated both Article 19 (Rights of the Child) of the Convention, since human rights violations against children are particularly

91. Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs.

92. *Id.* “Declares” ¶ 1.

93. *Id.* ¶ 137.

94. *Id.* ¶¶ 134, 136.

*deplorable and require heightened protection, and Article 7 (Duty to Prevent, Investigate, and Punish Violence) of the Convention of Belém do Pará, since the State has a duty to stop violence against women.*⁹⁵

*The State's obligation of prevention occurred (1) before María Isabel's disappearance, and (2) before her body was discovered.*⁹⁶ *The Court did not find the State at fault for the steps taken before María Isabel's disappearance since the State had taken prior action to help prevent violence against women.*⁹⁷ *However, it did find the State violated its obligation of prevention before María Isabel's body was discovered. The Court's analysis looked at the State's awareness of the "immediate and real danger" to María Isabel, whether the State could have stopped the crime, and if due diligence was taken to protect the rights of the child.*⁹⁸ *The Court determined that, based on the facts presented, it was reasonable that María Isabel was in serious danger after her mother could not find her, and that there was a very real possibility María Isabel's rights as a child were being violated based on the history of violence against women and girls in the State.*⁹⁹ *Further, the Court determined that the State had an obligation to collect necessary information on the rights of girls and violence against women to comply with its obligations under the American Convention and Convention of Belém do Pará.*¹⁰⁰ *Finally, the Court asserted that the State did not exercise due diligence in investigating María Isabel's disappearance, effectively denying her access to justice.*¹⁰¹ *Therefore, the State violated María Isabel's rights under Article 4(1) (Prohibition of Arbitrary Deprivation of Life) and Article 5(1) (Right to Physical, Mental, and Moral Integrity), especially when considering the rights of the child enshrined in Article 19.*¹⁰²

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), Article 25(1) (Right to Recourse Before a Competent Court), and Article 24 (Right to Equal Protection) in relation to Article 1(1) (Obligation of Non-Discrimination) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Con-

95. *Id.* ¶ 133.

96. *Id.* ¶ 138.

97. *Id.* ¶ 139.

98. *Id.* ¶ 142.

99. *Id.* ¶¶ 147–48.

100. *Id.* ¶ 151.

101. *Id.* ¶ 156.

102. *Id.* ¶ 158.

vention, as well as Article 7(b) (Duty to Prevent, Investigate, and Punish Violence) and Article 7(c) (Duty to Adopt Administrative Measures to Prevent, Punish, and Eradicate Violence) of the Convention of Belém do Pará to the detriment of Mrs. Franco Sandoval, Leonel Enrique Veliz Franco, José Roberto Franco, Mrs. Sandoval Polanco, and Mr. Pérez,¹⁰³ because:

In general, there are greater expectations under the duty to investigate when the crime involves female victims of violence and when there are signs the victims have been held against their will.¹⁰⁴ The Court highlighted the important of preserving a crime scene and laid out principles authorities should follow in investigating this type of crime.¹⁰⁵ The Court next identified the egregious irregularities that occurred in María Isabel's case. These included (1) failing to preserve the crime scene, (2) exhibiting a "lack of rigor" in inspecting the site, (3) inadequately preparing the record regarding the recovery of María Isabel's body, (4) improperly transporting the body, (5) shortcomings in collecting and handling evidence, (6) failing to protect the evidence chain of custody, and (7) discrepancies in performing the autopsy.¹⁰⁶

The investigation as a whole took far beyond a reasonable amount of time, as evidenced by the fact that the case is still in the preliminary stages after twelve years.¹⁰⁷ Specifically, the State was not prompt in conducting its search to clarify information received about the case, which took eighteen months, or analyzing pertinent phone calls, which took three years.¹⁰⁸ Part of this can be attributed to the fact that the State did not have established norms or protocols for investigating this category of crime.¹⁰⁹ María Isabel's murder was not investigated from the perspective that gender was a motive, showing a lack of due diligence and discriminatory action by the State.¹¹⁰ State law enforcement did not try to determine if María Isabel was a victim of sexual violence, while some officials made prejudicial and stereotypical statements

103. Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, "Declares" ¶ 2.

104. *Id.* ¶ 186.

105. *Id.* ¶ 191.

106. *Id.* ¶ 198.

107. *Id.* ¶¶ 222, 225.

108. *Id.* ¶ 201.

109. *Id.* ¶ 225.

110. *Id.*

about María Isabel.¹¹¹ This implicated both Article 24 (Right to Equal Protection) and Article 1(1) (Obligation of Non-Discrimination).¹¹² As a result, María Isabel's family was deprived of their rights to judicial guarantees and protection, along with access to justice under Articles 8(1) (Right to a Hearing within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection).¹¹³

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mrs. Franco Sandoval,¹¹⁴ because:

Based on the experiences of María Isabel's family during the investigation into her death, the Court determined that the "lack of prevention" and failure to diligently investigate made Mrs. Franco Sandoval suffer.¹¹⁵ Further, authorities throughout the investigation disrespected Mrs. Franco Sandoval and her daughter, violating their right to personal integrity guaranteed by Article 5(1) (Right to Physical, Mental, and Moral Integrity).¹¹⁶

The Court did not rule on:

Article 7 (Right to Personal Liberty) or Article 19 (Rights of the Child),¹¹⁷ because:

The Court decided that there was insufficient evidence to determine if María Isabel was deprived of liberty before she suffered the specific injuries detailed in her autopsy.¹¹⁸ The Court declined to rule on Article 19 (Rights of the Child) because it previously addressed Article 19 arguments in its analysis of the other violated articles.¹¹⁹

111. *Id.* ¶ 210.

112. *Id.* ¶ 215.

113. *Id.* ¶ 225.

114. *Id.* "Declares" ¶ 3.

115. *Id.* ¶ 239.

116. *Id.*

117. *Id.* "Declares" ¶ 4.

118. *Id.* ¶ 145.

119. *Id.* ¶ 226.

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Judgment as a Form of Reparation

The Court indicated that the Judgment itself should be considered a *per se* reparation.¹²⁰

2. Investigate the Facts and Identify and Punish those Responsible

The Court ordered the State to properly investigate the case and conduct criminal or other proceedings to find and punish those responsible for María Isabel's death.¹²¹ During the investigation, the authorities should keep gender-perspective in mind, look into sexual violence, update María Isabel's family on progress made in the case, and make sure they are involved in any criminal proceedings.¹²² Finally, those participating in the investigation and proceedings should be guaranteed safety.¹²³

3. Publish the Judgment

The State must publish a summary of the Judgment in the State's Official Gazette, in a nationally-circulated newspaper, and on the official websites of the Judiciary, Public Prosecution Service, and National Civil Police.¹²⁴

120. *Id.* "And Establishes" ¶ 6.

121. *Id.* ¶ 251.

122. *Id.*

123. *Id.*

124. *Id.* ¶ 256.

4. Issue a Public Apology

The State must make a public apology at a ceremony regarding María Isabel's case and the human rights violations involved.¹²⁵ María Isabel's family and their representatives should be invited to participate in the ceremony.¹²⁶

5. Reinforce INACIF

Regarding INACIF, the State must develop a timeline detailing the allocation of resources to increase INACIF activities in different areas throughout the State.¹²⁷

6. Create Specialized Jurisdictional Organs

The Court ordered the State to put into effect throughout the country the "specialized jurisdictional organs" referred to in article 15 of the State's Law against Femicide.¹²⁸ The State must additionally create Offices for Offenses against the Life and Physical Integrity of Women as envisioned in article 14 of the Law against Femicide.¹²⁹ Finally, the Court ordered the State to support INACIF's efforts in investigating violence against women and children.¹³⁰

7. Implement Educational Programs and Courses

The State must create educational training programs for officials in the Judiciary, Public Prosecution Service, and National Civil Police working on female homicide cases.¹³¹ These courses should include information on prevention, punishment, and eradication of violence against women, as well as how to apply the law and regulations.¹³²

8. Provide Medical and Psychological Treatment

125. *Id.* ¶ 257.

126. *Id.*

127. *Id.* ¶ 268.

128. *Id.* ¶¶ 269–70.

129. *Id.*

130. *Id.* ¶ 267.

131. *Id.* ¶ 275.

132. *Id.*

The Court required the State to give free and accessible medical and psychological treatment to Mrs. Franco Sandoval in a specialized medical center with competent professionals.¹³³ This should be provided as long as needed and must include any necessary medications.¹³⁴

B. Compensation

The Court awarded the following amounts:

1. Pecuniary and Non-Pecuniary Damages

Based on the provided facts, the Court required the State to pay a total of \$220,000 for pecuniary and non-pecuniary damages.¹³⁵ Out of this sum, \$120,000 should be given to Mrs. Franco Sandoval and \$50,000 each to Leonel Enrique Veliz Franco and José Roberto Franco.¹³⁶

2. Costs and Expenses

The Court ordered that the State compensate REDNOVI \$10,000.00 for the proceedings before the Inter-American system.¹³⁷ The State must additionally reimburse the Victims' Legal Assistance Fund \$2,117.99 for expenses.¹³⁸

3. Total Compensation (including Costs and Expenses ordered):

\$ 232,117.99

C. Deadlines

The State must publish the Judgment summary in the Official Gazette, in a national newspaper, and on the official websites within six months.¹³⁹ The official websites should keep the Judgment available for

133. *Id.* ¶ 280.

134. *Id.*

135. *Id.* ¶ 300.

136. *Id.*

137. *Id.* ¶ 307.

138. *Id.* ¶ 315.

139. *Id.* "And Establishes" ¶ 8.

one year.¹⁴⁰

Within one year from the Judgment, the State should issue its public apology regarding the case.¹⁴¹

The State must create a detailed timeline for resource allocation to INACIF within a reasonable period of time.¹⁴²

The “specialized jurisdictional organs” should be implemented within a reasonable period of time.¹⁴³

The State must create programs and classes for State officials within the Judiciary, Public Prosecution Service, and National Civil Police on female homicide investigations within a reasonable period of time.¹⁴⁴

The described medical and psychological treatment for Mrs. Franco Sandoval should be provided immediately upon her request.¹⁴⁵

The State must provide the required compensation and reimbursements within a year of the Judgment.¹⁴⁶

The State should give the Court a report on compliance measures within one year of the Judgment.¹⁴⁷

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

March 2016: As of March 2016, the Court has not yet monitored the State’s compliance.

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Repa-](#)

140. *Id.*

141. *Id.* “And Establishes” ¶ 9.

142. *Id.* “And Establishes” ¶ 10.

143. *Id.* “And Establishes” ¶ 11.

144. *Id.* “And Establishes” ¶ 12.

145. *Id.* “And Establishes” ¶ 13.

146. *Id.* “And Establishes” ¶ 14.

147. *Id.* “And Establishes” ¶ 15.

[rations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 277 \(May 19, 2014\).](#)

2. Decisions on Merits, Reparations and Costs

[Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 277 \(May 19, 2014\).](#)

3. Provisional Measures

[Veliz Franco et al. v. Guatemala, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Jan. 8, 2013\) \(Available only in Spanish\).](#)

[Veliz Franco et al. v. Guatemala, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Apr. 10, 2013\).](#)

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Veliz Franco et al. v. Guatemala, Admissibility Report, Report No. 92/06, Inter-Am. Comm'n H.R., Case No. 12.578 \(Oct. 21, 2006\).](#)

3. Provisional Measures

[Veliz Franco et al. v. Guatemala, Precautionary Measures, Order of the](#)

[Commission, Inter-Am. Comm'n H.R., Case No. 12.578 \(2005\).](#)

4. Report on Merits

[Veliz Franco et al. v. Guatemala, Report on Merits, Report No. 170/11, Inter-Am. Comm'n H.R., Case No. 12.587 \(Nov. 3, 2011\).](#)

5. Application to the Court

[Veliz Franco et al. v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.587 \(May 3, 2012\).](#)

VIII. BIBLIOGRAPHY

First Guatemalan Femicide Case Reaches Inter-American Court of Human Rights, CEJIL (May 10, 2012), <https://cejil.org/en/comunicados/first-guatemalan-femicide-case-reaches-inter-american-court-human-rights>.

Julieta Lemaitre, *Chapter 6: Violence*, in *GENDER AND SEXUALITY IN LATIN AMERICA – CASES AND DECISIONS* 177 (Christina Motta & Macaerna Sáez eds., 2013).