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## **REPORT No. 61/19**

### **CASE 12.229**

MERITS

RELATIVES OF DIGNA OCHOA Y PLÁCIDO  
MEXICO

Approved by the Commission at its session No. 2150 held on May 4, 2019 in its 172 period of sessions

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## I. INTRODUCTION<sup>1</sup>

1. On November 2, 1999, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition presented by the National Network of Civil Human Rights Organizations "Todos los derechos para todos" (all rights for all) and the Center for Justice and International Law (CEJIL) (hereinafter "the petitioner")<sup>2</sup> alleging the United Mexican States (hereinafter "the Mexican State," "the State," or "Mexico") was internationally responsible to the detriment of Digna Ochoa y Plácido and her family for the alleged failure to diligently and effectively investigate the threats and attacks against her life and personal integrity and her subsequent death.

2. The Commission approved its admissibility report number 57/13 on July 16, 2013.<sup>3</sup> On August 5, 2013, the Commission notified the parties of the report and made itself available to help them reach a friendly settlement, but the conditions were not met for launching that process. 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>4</sup>

## II. POSITIONS OF THE PARTIES

### A. Petitioner:

3. The petitioner stated that Digna Ochoa y Plácido (hereinafter "Ms. Ochoa" or "Digna Ochoa") was found dead on October 19, 2001, with her body showing indications of violence and that her death was caused by gunshot wounds, one of them to her head. According to the petitioner, her death correlated to a series of attacks on her that were not investigated in the years prior to her death. It also indicated that the investigations into her death dismissed any theory involving criminality and erroneously concluded that she had committed suicide. The petitioner also alleged that the attacks on Digna Ochoa and her death were part of a context of violence against human rights defenders in Mexico that had been ongoing since the 90s. It also indicated that the context is also characterized by a failure to investigate and punish the perpetrators of crimes against human rights defenders.

4. Regarding the rights to a fair trial and judicial protection, the petitioner alleged that the State failed to comply with its duty to diligently investigate the death of Digna Ochoa, in view of the failures in the investigation that made its pursuit difficult and led to an incoherent decision—adopted in violation of the requirement of a reasonable period of time—in the framework of a process in which the family's right to participate was not respected. This situation violated the right of her relatives and of society as a whole to learn the truth of what happened to Digna Ochoa.

5. Regarding the lack of due diligence, the petitioner provided a detailed description of the errors in the chain of custody for the evidence, as well as the insufficient procedures with respect to the body and the fatal wound in terms of photographic evidence, the brevity of the autopsy, and the use of inadequate methodologies for taking samples, among other problems. There are also inconsistencies and conflicting accounts regarding the gunpowder residue tests of from Ms. Ochoa's hands, as well as an incomplete analysis of the indications of a struggle and violence at the crime scene and the failure to properly examine the dynamics of the facts as regards lines of investigation into suspicious deaths in accordance with applicable international standards on the subject.

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<sup>1</sup> Pursuant to Article 17(2) of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not take part in the discussion or the decision-making process of the instant case.

<sup>2</sup> Later, the Asociación Nacional de Abogados Democráticos, A.C. joined the case as a petitioner.

<sup>3</sup> IACHR. Report No. 57/13. PETITION 12.229 Admissibility. Digna Ochoa et al. (Mexico). July 16, 2013. The Commission found that articles 5, 8, and 25 of the American Convention were admissible, while article 2, 4, 7, and 11 of the same instrument were inadmissible, as were articles 1, 2, and 3 of the Inter-American Convention to Prevent and Punish Torture.

<sup>4</sup> On September 9, 1999, the IACHR granted precautionary measures to the benefit of Digna Ochoa and Edgar Cortez because of the grave risk to their lives and integrity after they received threats at work and experienced other attacks. The measures were closed on August 20, 2015. Following the worsening of the situation described, on November 11, 1999, the IACHR asked the Inter-American Court to grant provisional measures, which it did on November 17, 1999. The measures were lifted by a resolution issued August 28, 2001.

6. Regarding the right to humane treatment, the petitioner stated that Digna Ochoa's death and the failure to diligently resolve the circumstances surrounding it caused pain and suffering to her relatives, violating their physical and mental integrity.

## **B. State**

7. The State denied it was responsible for the violation of the rights to judicial guarantees and judicial protection, and said it acted with great diligence to resolve what happened. Lines of investigation were explored, the corresponding documentary and forensic evidence was gathered, and expert examinations were conducted without delay and before reaching the rational conclusion that Digna Ochoa had committed suicide, while also ensuring the participation of her relatives.

8. In addition, starting in 1995, the threats and acts of harassment committed against Digna Ochoa were investigated, with different inquiries launched into crimes of theft, torture, threats, attempted murder, kidnapping, and other charges, with the risk even warranting the assignment of bodyguards. The State also indicated that it complied with the international protection ordered by the bodies of the Inter-American system while it was in force. The investigations prior to the death of Digna Ochoa looked at both private third parties and public officials of the Secretary of Interior Affairs.

9. Regarding the death of Digna Ochoa, the State said the investigating agency took all actions pertinent to resolving the facts. The lines and sublines of investigation chosen followed the clues found during the inquiries and, by law, they cannot be determined based only on the suspicions of or accusations made by the family. Thus, after exhausting the lines of investigations, it was determined not to bring a criminal action after settling on the theory of suicide in July 2003, a conclusion which has not changed.

10. Regarding the lines of investigation exhausted, the State details the steps taken regarding the accusations that Digna Ochoa's death was the result of actions by soldiers from infantry battalions; that it was the result of her work defending environmentalists in the State of Guerrero; and that it may have involved someone in her social, family, work, or religious orbit. It also argued that the relatives took part in the process as an "intervenor" in the action (*coadyuvancia*) by offering evidence and by challenging, without interference, the 2003 decision not to bring a criminal action. The discrepancies between the studies submitted by the intervenor and the expert reports from the prosecutor were duly addressed, especially the discrepancies with the expert witness reports on the residue left from firing the gun that killed Digna Ochoa, the reconstruction of the facts, the bullet wounds, the body, and others.

11. The State also indicated that the existence of shortcomings does not mean that an investigation has violated the Convention as long as the shortcomings do not have a decisive impact on solving a case. Therefore, the mistakes regarding the custody of the firearm, the positioning of Digna Ochoa's body, or the location of the facts were duly corrected and are not decisive for establishing State responsibility for the lack of investigation.

12. Lastly, the State said that because the alleged suffering of the relatives is dependent on the ruled-out violation of the rights of judicial guarantees and judicial protection, it could not be responsible for a violation of the right to integrity to the detriment of these individuals.

## **III. ESTABLISHED FACTS**

### **A. Context**

13. The petitioner has indicated that the death of Digna Ochoa took place in a context of "harassment of and attacks against human rights defenders in Mexico." The petitioner pointed to information from that time period from international civil society organizations like Amnesty International, which, according to its 2001 report "Mexico: Daring to raise their voices," attacks including torture, mistreatment, attempted murders, and threats involve the participation of public officials at all levels.

14. Likewise, the IACHR notes the United Nations Office of the High Commissioner of Human Rights' reference in its Diagnosis of the Human Rights Situation in Mexico,<sup>5</sup> which reads as follows:

However, the trends observed by the Special Representative of the Secretary General of the United Nations on the issue of human rights defenders in 2000 indicate that violations of their human rights persist. The majority of the reports involve limits to legal and institutional protection and guarantee of human rights; armed conflicts or the presence of the military in some areas of the country; and lastly, failure to comply with existing guarantees and protections on this issue.

15. On the same matter, the IACHR notes that, also around the time of the facts, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions expressed deep concern in her report at the constant reports "of death threats against or extrajudicial killings of human rights activists, lawyers, community workers, teachers, journalists, and other persons engaged in activities aimed at promoting human rights or publicizing human rights violations," and stated that during her mandate, she made two urgent calls to the Mexican State to protect people performing peaceful work to defend human rights. Along the same lines, the Special Rapporteur observed that "there was a particular reluctance among the competent Mexican authorities to hold members of the armed forces accountable for extrajudicial killings and other grave human rights violations."<sup>6</sup>

16. The Special Rapporteur on the independence of judges and lawyers found likewise, reporting in April 2001 that the previous year, he made contact with the Mexican State regarding the threats against Digna Ochoa and the Miguel Agustín Pro Juárez Human Rights Center (Centro de Derechos Humanos "Miguel Agustín Pro Juárez," hereinafter "the Centro Pro").<sup>7</sup> The following year, the same Special Rapporteur reported that "The harassment of human rights defenders is a continuous problem in Mexico," including the state of Guerrero on a list of places where people live in constant insecurity. He also took note of the death of Digna Ochoa y Plácido, describing it as taking place "after years of harassment and a series of death threats since 1995." The same report describes a concerning situation in Mexico during the period in which the facts of this case occurred, noting that "Other attacks on human rights defenders during President Fox's administration include breaking in and setting fire to the home of members of the "Fray Pedro Lorenzo de la Nada" Human Rights Centre in Chiapas; the attempt to hit another member of the same Centre with a car; and death threats to Abel Barrera Hernández, director of the "Tlachinollan" Human Rights Centre of the Mountain, in Guerrero."<sup>8</sup>

17. For its part, in a report from 1998, the IACHR noted it had received "various complaints regarding acts of intimidation committed in Mexico against members of human rights organizations and community groups. The report of the national network of human rights NGOs refers to a campaign under way to curb and restrict legal activities on the part of numerous institutions and individuals." It also expressed concern at the grave incidents of harassment and violence against human rights defenders and social organizations in Mexico.<sup>9</sup> Likewise, the IACHR notes that this situation persists and has worsened in Mexico, as reported in 2006<sup>10</sup> and 2017.<sup>11</sup>

18. In these terms, based on the information submitted by civil society organizations and confirmed by the United Nations Special Rapporteurs, as well as the precautionary measures granted by the IACHR, the

<sup>5</sup> OHCHR. *Report on the Human Rights Situation in Mexico*, 2003

<sup>6</sup> ECOSOC. E/CN.4/2000/3. Report of the special rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1999/35. January 25, 2000, para. 85-91.

<sup>7</sup> ECOSOC. E/CN.4/2001/65. Report of the Special Rapporteur on the independence of judges and lawyers Dato'Param Cumaraswamy, submitted in accordance with Commission on Human Rights resolution 2000/42 of February 1, 2001, para. 157

<sup>8</sup> ECOSOC. E/CN.4/2002/72/Add.1. Report of the Special Rapporteur on the independence of judges and lawyers, Dato'Param Cumaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/39 of January 24, 2002, para. 109-116.

<sup>9</sup> IACHR. Report on situation of human rights in Mexico. OEA/Ser.L/V/II.100 Doc. 7 rev. 1, September 24, 1998. Paras. 658 - 668.

<sup>10</sup> IACHR. Situation of human rights in Mexico. OEA/Ser.L/V/II.Doc. 44/15 of December 31, 2015, para. 353

<sup>11</sup> IACHR. Basic guidelines for investigating the violations of the rights of human rights defenders in the Americas. OEA/SER.L/V/II. Doc. 211 of December 31, 2017, para. 8: "(...) the IACHR observes with great concern that the general situation of violence against human rights defenders in the region has worsened in recent years (...)."

provisional measures granted by the Inter-American Court (which will be discussed in more detail later), and the information produced by the Commission itself, it can be concluded that at the time of the facts of this case, there was a context of threats and attacks on human rights defenders; that the Mexican State was fully aware of the case of Digna Ochoa y Plácido; and that both the occurrence of this situation in the state of Guerrero and the high rates of impunity in cases involving soldiers formed part of this context. The IACHR will take these elements into account when conducting its analysis of the merits.

## **B. Information on Digna Ochoa as a human rights defender and regarding her relatives.**

19. It is well known—and the parties agree—that Digna Ochoa y Plácido was a human rights defender whose work had an impact both nationally and internationally. The petitioner stated that Digna Ochoa worked on human rights from 1988 until prior to her death in 2001. She was a member of the team of the Centro Pro and "participated in defending several landmark cases in Mexico, including defending alleged members of the Zapatista National Liberation Army (EZNL), the investigation of the Aguas Blancas and El Charco massacres carried out as part of the Mexican government's counterinsurgency strategy, and the defense of the Universidad Nacional students accused of belonging to insurgent groups."<sup>12</sup>

20. The Mexican State expressed its most sincere recognition for Digna Ochoa's work, indicating that it has been fundamental for strengthening human rights promotion and protection in Mexico. The State categorically rejected any attack that would limit or endanger the work of human rights defenders.<sup>13</sup>

21. Additionally, the IACHR notes Ms. Ochoa's participation in the case of Guerrero environmentalists Teodoro Cabrera García and Rodolfo Montiel Flores in the inter-American system, before the Commission (Case 12.449) and the Court (Cabrera García y Montiel Flores v. Mexico, Judgment of November 26, 2010).

22. The petitioner has stated that the actions of State authorities caused the aforementioned violations "to the relatives of Digna Ochoa," referring to them as a group. The IACHR observes that the case file identifies the following relatives individually: Eusebio Ochoa y López, Irene Plácido Evangelista, Jesús Ochoa y Plácido, Ignacio Ochoa Plácido, Estela Ochoa Plácido, Elia Ochoa y Plácido, Carmen Ochoa y Plácido, Agustín Ochoa Plácido, Guadalupe Ochoa Plácido, Luz María Ochoa y Plácido, and Ismael Ochoa Plácido.

## **C. Facts of the case**

### **1. Background**

23. In 1999, the IACHR received a request for precautionary measures (September 7, 1999) and a petition (November 2, 1999) over incidents of harassment and attacks on the personal integrity against Digna Ochoa and other members of the Centro Pro's team.<sup>14</sup> The death of Ms. Ochoa occurred during the processing of both requests on October 19, 2001, and thus the petition was expanded to also cover the incidents related to her death. The Commission will describe these proceedings in the framework of the timeline of the facts narrated hereinafter.

### **2. Incidents and complaints prior to the death of Digna Ochoa y Plácido**

24. The petitioner stated that in 1999, Digna Ochoa y Plácido and other members of the Center were the victims of a variety of acts of intimidation. In response to these acts of intimidation, a number of complaints were filed, as listed hereinafter. Also, both parties described other situations and complaints from 1995<sup>15</sup> and

<sup>12</sup> Brief of the petitioner of March 17, 2013.

<sup>13</sup> Brief of the State, August 2, 2018.

<sup>14</sup> Request for precautionary measures of November 7, 1999, and initial petition of November 2, 1999.

<sup>15</sup> Initial inquiry No. 50/ACI/584/95-08 of August 18, 1995, brought by David Fernandez for the crime of threats against him for his work with the Centro Pro.

1996<sup>16</sup> that were combined with the initial inquiries 50/ACI/1282/96-08 and 50/ACI/1301/96-08 involving members of the Centro Pro.

25. The Commission observes that on September 6, 1999, Ms. Ochoa reported that on August 9, 1999, she was kidnapped for four hours, with her backpack and files containing personal documents stolen. The parties indicated that the stolen documents included her business cards and government identification card. On September 20, 1999, Ms. Ochoa added to her statement to indicate that the receptionist of the Centro Pro found two blank envelopes containing threats against Centro Pro members.<sup>17</sup> These incidents led to the launch of preliminary inquiry 50/1313-/99-10.

26. Also, the parties both stated that on October 13, 1999, Ms. Ochoa filed a complaint over the incidents of October 5, 1999. In her statement, she indicated that she found her ID on the door, the same one that she had reported stolen in the theft on August 9, 1999. These incidents were combined with the previous preliminary inquiry.

27. Both parties also stated that Ms. Ochoa also reported on October 29, 1999, that, the previous day, at around 10 p.m., she was kidnapped and held in her home, knocked unconscious, and when she awoke, she was sitting in a chair blindfolded. The complaint indicates that she was interrogated throughout the night regarding her contacts in the states of Guerrero, Oaxaca, Chiapas, Veracruz, Puebla, and Hidalgo, as well as on her alleged connections with the Zapatista National Liberation Army, the People's Revolutionary Army, and the Insurgent People's Revolutionary Army. She said that at one point, her blindfold was removed and she was shown photographs of people she did not recognize, and she was able to see that one of her captors was writing down everything she said on a laptop. Finally, she stated that her captors left her house, leaving her tied to the bed. Ms. Ochoa said she was able to free herself and close the gas tank that had been deliberately left open. That same day, the Centro Pro workers found that their offices had been searched and tossed. They also found new anonymous threats. In addition, they found Ms. Ochoa's portfolio that had been taken on August 9, 1999. This situation led to the launch of preliminary inquiry 50/1389-/99-10.

28. The Commission observes that in the framework of these preliminary inquiries, investigative steps were taken and evidence gathered. The case file indicates that on September 5, 2000, the preliminary inquiries were transferred from the Office of the Public Prosecutor of the Federal District to the Office of the Attorney General of the Republic (PGR).

29. Meanwhile, on September 27, 2000, preliminary inquiry 50/ACI/584/95-08 was opened by the Office of the Special Prosecutor on crimes committed by public servants as provided for in special PGR laws, under the new number 1206/FESP/2000. There were no indications of further movement, and the PGR requested the inquiry be sealed which was authorized on November 8, 2000. On March 22, 2001, the sealed inquiry was reopened, but given the lack of new evidence, it was once again requested that the inquiry be sealed on May 10, 2001. The IACHR notes for the record that the procedural elements of the preliminary inquiries described in this paragraph are not included in the case file.

30. The IACHR granted precautionary measures on September 9, 1999.<sup>18</sup> On September 21, 1999, the State reported that the National Human Rights Commission (CNDH) had adopted measures of protection to the benefit of these individuals; that the Office of the Attorney General of Justice of the Federal District had launched preliminary inquiries; and that the Commission on Human Rights of the Federal District had also intervened. The case file indicates that the government protection of Digna Ochoa began in November 1999, and for reasons of security, between August 28, 2000, and March 4, 2001, Digna Ochoa left Mexico to stay in Washington, DC.

<sup>16</sup> Initial inquiry No. 50/1642/96-10 of October 22, 1996, brought by Juan Salgado Ibarra, with the Centro Pro, for the crime of theft committed against him in connection with his work for the Center.

<sup>17</sup> The threats included the following messages: "today's the day, why not? or do you want us to wait until tomorrow? or the day after? Or the weekend?" and "come on, tough guys! you think you can take us! pretty soon we're going to show you what we're capable of, we're going to fuck you up unless you drop your little defense project."

<sup>18</sup> IACHR. Precautionary Measure 65-99. The precautionary measure was closed on August 20, 2015.

31. On November 11, 1999, the IACHR requested provisional measures from the Inter-American Court, which were granted on November 17, 1999.<sup>19</sup> On May 31, 2001, the State asked that the provisional measures be lifted; it reiterated its request on August 14, 2001. On August 21, 2001, the representatives of the beneficiaries agreed with the lifting of the provisional measures, given that in recent months, "the acts of harassment and threats leading to the provisional measures" had ceased. For its part, the IACHR reported on August 22, 2001, that because the measures had fulfilled their objective, and with the consent of the representatives of the beneficiaries, there were no objections to lifting the provisional measures. On August 28, 2001, the Inter-American Court lifted the provisional measures.

32. Lastly, the case file indicates that, weeks before her death, Digna Ochoa traveled to the state of Guerrero, to the Petatlán Mountain Range, to visit a number of communities with a German citizen and member of a civil society organization who was interested in Digna Ochoa's work defending environmentalists.

33. On October 19, 2001, Digna Ochoa was found dead with two gunshots, one in her head and the other in her thigh, was wearing a pair of real latex gloves, and over her body, the furniture and the floor a white powder was spread. Her body was found at Zacatecas 31-A, Colonia Roma, Mexico, Federal District (hereinafter "the Zacatecas Street building"), launching the corresponding preliminary inquiry.

### **3. The investigation into the death of Digna Ochoa during the preliminary inquiry FDCUAUHT/03/USD04/02576/2001-10**

#### **3.1. *Notitia criminis* and formation of the investigation team**

34. On October 19, 2001, at 19:39 hours, the Office of the Public Prosecutor received a phone call informing it of the discovery of the body of Digna Ochoa, leading to the launch of preliminary inquiry FDCUAUHT/03/USD04/02576/2001-10 (hereinafter "AP-2576"). In response to that call, officials from the Office of the Public Prosecutor, the Judicial Police, and forensics experts went to the location.<sup>20</sup> The description of the facts reads as follows:

Observed was a dead body, female, slumped to the left with the head propped up on a brown armchair with red strips. Another chair of the same color was against the north wall, and on the left armrest was white powder, seemingly talcum, and on the left side of the seat, a blood stain (...) and on the floor was a piece of chewed gum and a blood stain (...) between the feet of the deceased was a spent shell casing, apparently a .22 caliber. On the opposite side of the chair from where the deceased's head was resting was white powder, seeming to be talcum (...) with white powder also appearing on the floor at the entryway to the room. Upon lifting the body, a firearm was discovered, apparently .22 caliber (...) Also, the body was wearing red plastic gloves, with the right glove not fully on and the left one with only the thumb out (...)

35. The homicide was reported by Gerardo González Pedraza, who found Digna Ochoa's body at the Zacatecas Street building. According to his report, the building was the office of civil society organization Servicios Legales de Investigación y Estudios Jurídicos A.C., of which Digna Ochoa was not a member. He stated that Ms. Ochoa was close to several of its members, and therefore had keys to the property and visited it sporadically. On the day of the facts, at around 1800 hours, Mr. González opened the door, which had the deadbolt drawn, and entered the group's property without trouble. On entering, he saw fall several pieces of mail that had been against the door and noticed a white powder spread about the room, a maroon-colored headband, and, after turning on the light, saw a person's body. On brushing aside the hair covering the face, he recognized Digna Ochoa.<sup>21</sup>

<sup>19</sup> Inter-American Court. Resolution of November 17, 1999 on Provisional Measures requested by the IACHR regarding the United Mexican States. Case of Digna Ochoa y Plácido et al.

<sup>20</sup> Annex 1. Decentralized Office of the Public Prosecutor of Cuauhtémoc. AG. INV. M.P.:03. Investigative Unit No. 04. Evidence. Annex to the brief of the State, August 2, 2018.

<sup>21</sup> Annex 2. Resolution to not bring a criminal action of July 18, 2003. Annex to the brief of the State of July 25, 2003.

36. The case file also indicates that Miguel Cortez Morales, the legal representative of the Centro Pro, amended its complaint on October 29, 2001, after an anonymous note was found at the Zacatecas Street building with the message “Pros, sons of bitches, if you keep going you’ll also get fucked up Don’t say we didn’t warn you” (hereinafter “the ‘Pros sons of bitches’ anonymous note”) In his brief, Mr. Cortez also asked to be included as an intervenor, although the case file indicates that he later declined that role.

37. During the hearings before the IACHR,<sup>22</sup> as well as in its briefs,<sup>23</sup> the petitioner has indicated that AP-2576 was initially the responsibility of Álvaro Arceo Corcuera,<sup>24</sup> of the Office of the Attorney General of Justice of the Federal District (hereinafter “the PGJDF”). According to the petitioner, as the investigation moved forward, and with the forensic report on the reconstruction of the facts of February 4, 2002, which will be described later on, the first theory emerged that Digna Ochoa’s death was a homicide. After this reconstruction of the facts, “the experts who produced it were removed from their positions and another group of investigators was appointed to replace them, led by a new person in charge, Renato Sales Heredia,” and the Attorney General of Justice of the Federal District told the media that Digna Ochoa’s death was likely the result of a simulated suicide [suicide disguised as homicide], pointing the rest of the investigation in that direction.”<sup>25</sup>

38. The petitioner also stated that Mr. Sales and his aide “continued, with no evidence, trying to convince opinion leaders and national and international civil society and human rights organizations that Digna Ochoa’s death was the result of what they began calling ‘simulated suicide’ [suicide disguised as homicide].” Digna Ochoa’s relatives complained about this to the head of the government of what at the time was the Federal District, arguing that it was a political stunt. Finally, Mr. Sales resigned from his position on June 20, 2002.<sup>26</sup>

39. Starting on August 1, 2002, the investigation was carried forward by the Specialized Agency of the Office of the Public Prosecutor in charge of investigating facts related to the death of Digna Ochoa y Plácido (hereinafter “the Special Prosecutor”), led by Ms. Margarita Guerra y Tejada, pursuant to resolution A/006/02 of the PGJDF.

40. According to the case file, during the initial phase of the investigation, 1,370 investigative steps were taken, as follows: 282 statements, 247 ministerial procedures, 269 expert reports, 572 official letters received and reports from the now-defunct Judicial Police.<sup>27</sup> Hereinafter, the IACHR will examine the central evidence considered during the investigation that was included in the case file, along with the evidence included in the first resolution to not bring a criminal action.

### 3.2. Expert reports and evidence from AP-2576

41. The IACHR observes that a number of medical, forensic medicine, and DNA test reports are included in the case file. The most important include the following:

**i. Medical examination and addendums:** according to the medical examination from October 19, 2001, at 2300 hours, the body had a “contusion wound from a projectile from a firearm with irregular, starred edges and an area of 4x5 centimeters, located on the left temple (...) with a smoke ring on the epicranium.” It also notes the injury on the thigh, entry and exit wounds, and an ecchymosis in the same area, with another one on the eyelids.<sup>28</sup> The case file also includes a forensic medical report of February 22, 2002, which

<sup>22</sup> IACHR. Public hearings of October 18, 2002 and October 20, 2003.

<sup>23</sup> Brief of the petitioner of March 18, 2011.

<sup>24</sup> The investigation was initially headed by agents of the Office of the Public Prosecutor, head of Investigation Unit 4, of the Office of the Attorney General of Justice of the Federal District. Then on December 13, 2001, the investigation was transferred to Investigation Unit 1 of the Office of the Adjunct Attorney General of Justice and Human Rights of the Office of the Public Prosecutor.

<sup>25</sup> Brief of the petitioner of March 18, 2011.

<sup>26</sup> Brief of the petitioner of March 18, 2011.

<sup>27</sup> Brief of the State, August 2, 2018.

<sup>28</sup> Annex 3. PGJDF. Medical examination of October 19, 2001. Annex to the brief of the State, August 2, 2018.

concluded based on analysis of the blood stains on her underwear, pants, and the chair, and on the angle of the blood flow, that Digna Ochoa was seated when the bullet struck her thigh and remained in that position for between 5 and 10 minutes before changing position.<sup>29</sup>

**ii. Autopsy report:** conducted on October 20, 2001, confirming that Digna Ochoa was shot two times. States that the gunshot wound to the left temple, with star-shaped laceration, with no exit wound, “traveled from left to right, in an upward direction, and from front to back.” It concludes that “Digna Ochoa y Plácido died from the aforementioned visceral and tissue damage as a result of the projectile from a firearm penetrating the cranium, as described in the first part; the [wounds] described in the second part are not life-threatening and would take less than 15 days to heal.”<sup>30</sup> The follow-up to the autopsy came to the same conclusion.<sup>31</sup>

**iii. Forensic medical report of January 9, 2002:**<sup>32</sup> The case file indicates that Dr. Reyes Jiménez answered a list of questions from the Special Prosecutor. Thus, the report indicates that an ecchymosis perceptible in the photographic records on Digna Ochoa's thigh would have been from prior to the date of the facts. Likewise, it dismisses the existence of any palpebral (eyelid) ecchymosis. The report also states that the spasmodic position of the hands (claw-like) was likely the result of “tonic-clonic contractions” from a seizure likely resulting from the brain injury. The report next established that, based on the condition of the food in Digna Ochoa's stomach, she had eaten 2 to 3 hours before her death.

**iv. Statements of March 20, 2002, explaining the autopsy:**<sup>33</sup> The doctors who conducted the autopsy gave a number of statements to clarify certain aspects of the procedure carried out. The record indicates that both Dr. Martínez and Dr. Ubando stated, in identical language, that the trajectory of the fatal bullet wound was erroneously described as left to right, when in reality it was right to left. Also, regarding the ecchymosis on the thigh that was not described, they stated that due to its coloration, the injury took place at least six days prior to death. Regarding the ecchymosis on her eyelid, they stated it was not there.

**v. Forensic DNA report:** The case file contains two reports—from October 30, 2001,<sup>34</sup> and March 19, 2002,<sup>35</sup>—concluding that the samples taken from stains (“drips”) on a book found at the scene of the facts, from a bureau at the scene, and from chewing gum found there contain Digna Ochoa’s DNA. The IACHR also notes the mention of other DNA tests in other documents found in the case file. Thus, a February 12, 2002 report concluded that the DNA on the envelopes used to send the anonymous threats to Digna Ochoa is not from Juan José Vera, her partner at the time of the facts.<sup>36</sup> The same conclusion was reached with regard to Juan Carlos Cruz Plácido.<sup>37</sup>

42. Likewise, the IACHR notes the following expert witness testimony and specialized reports on ballistics, dust traces, and gunshots:

**i. Atomic absorption analysis, sodium rhodizonate test, and Walker test:** On October 20, 2001, an atomic absorption analysis was conducted on a pair of red latex gloves that Digna Ochoa was wearing on her hands when she was found dead. The test sought to identify lead, barium, and antimony, elements found in cartridges. The results of the analysis was that “the elements found in cartridges and tested for were not found on the pair of gloves (...).”<sup>38</sup> The same day, the same test was conducted on Gerardo González (who found the body), José González, and Arturo de León, with negative results. Also that day, the sodium

<sup>29</sup> Annex 4. PGJDF. Official letter I-3362. Forensic medical report of February 22, 2002. Annex to the brief of the State.

<sup>30</sup> Annex 5. Case file SE.ME.FO. No. 4486-01. Autopsy report of October 20, 2001. Annex to the brief of the State, August 2, 2018.

<sup>31</sup> Annex 6. PGJDF. Called S.C. 32922. Follow-up to the autopsy report of October 20, 2001. Annex to the brief of the State, August 2, 2018.

<sup>32</sup> Annex 7. PGJDF. Forensic medical report of January 9, 2002. Annex to the brief of the State, August 2, 2018.

<sup>33</sup> Annex 8. PGJDF. Statements of March 20, 2002. Annex to the brief of the State, August 2, 2018.

<sup>34</sup> Annex 9. PGJDF. Official letter 231-I-1-D-I-18369. Forensic DNA test of October 30, 2001. Annex to the brief of the State, August 2, 2018.

<sup>35</sup> Annex 10. PGJDF. Official letter 231-I-1-D-I-2826. Forensic DNA test of March 19, 2002. Annex to the brief of the State, August 2, 2018.

<sup>36</sup> Annex 2. Resolution to not bring a criminal action of July 18, 2003. Annex to the brief of the State of July 25, 2003.

<sup>37</sup> Annex 2. Resolution to not bring a criminal action of July 18, 2003. Annex to the brief of the State of July 25, 2003.

<sup>38</sup> Annex 2. Resolution to not bring a criminal action of July 18, 2003. Annex to the brief of the State of July 25, 2003.

rhodizonate test was conducted on Digna Ochoa's hands, and the result was negative. As for the Walker test, applied to the blouse cuffs and the bullet holes in Digna Ochoa's trousers, the result was positive for the trouser and negative for the blouse.

**ii. Ballistics report:** The case file contains several ballistics tests conducted on October 20, 2001, on the bullet fragments found, the shell casings, and the M-1371 firearm owned by Digna Ochoa. Two of the fragments analyzed, aside from their identification as bullet fragments and determination of the caliber (.22) were not useful for these tests. Regarding the remaining fragment, also .22 caliber, the test was able to confirm that the bullet came from the weapon in custody.<sup>39</sup> The test determined that the firearm had been fired, without establishing the date or number of times on which it was fired, concluding that the shell casings found in the house on Zacatecas Street came from the weapon in question.<sup>40</sup> The gun was also subjected to another test, which concluded on April 1, 2002, that the weapon would not leave a residue on the hand that fired it due to a problem with the chamber that allowed part of the gases to escape.<sup>41</sup> The case file also describes a report from November 28, 2001, on an investigative procedure in which three shots were fired in the house on Zacatecas Street to determine if they would be heard from outside, from nearby, or from other apartments, concluding that the three shots could have been heard from outside.<sup>42</sup>

43. The IACHR likewise notes the following chemical, organic, fingerprint, documentary, forensic document, and other reports and analyses conducted on the evidence found at the location of the facts and associated context via visual inspections:

**i. Visual inspections:** the IACHR observes that during the first stage of the investigation, a number of visual inspections were conducted at the location of the facts. Thus, the case file indicates that on October 27, 2001, the "Amendment of the Technical Forensic Visual Inspection" was carried out by technicians Laureles, Álvarez, and Colin. The report documents in writing and photographically the characteristics of the Zacatecas Street building—its interior and exterior, and objects in and around it—and a list was made of evidence found for subsequent chemical, forensic, or other analysis.<sup>43</sup> The case file also includes another expansion of the visual inspection, of July 5, 2002, which photographically establishes the return of several items of furniture and objects to the Zacatecas Street house.<sup>44</sup> Later, the Special Prosecutor ordered an "evidence audit report," in which technicians Flores Niño de Rivera and Zariñán Alcántara were to determine if certain evidence collected at the location of the facts was noted in the visual inspections. The IACHR notes that the report of May 27, 2003, concluded that all the elements sent for corroboration effectively were photographically documented (except for one political pamphlet), with special emphasis on the evidence described as a "transparent polyethylene bag" containing a white powder.<sup>45</sup>

**ii. Forensic chemical report:** The report of January 26, 2002, indicates that an analysis of the gloves used for a forensic examination with the aim of determining whether after the shooting, gloves similar to the ones on the hands of Digna Ochoa would contain chemical traces. It concluded that "cartridge elements were not identified" on three pairs of gloves used in the test.<sup>46</sup>

**iii. Forensic chemical report on the white powder:** On October 20, 2001, an analysis was conducted of the samples of white powder found at the scene of the crime. The white powder was found on the hands of the body, on the red gloves, on the bookshelf, on the armchairs, and on the black sport coat found next to the body, among other places. The analysis found that it contained "starches" characteristic of flour.<sup>47</sup>

<sup>39</sup> Annex 11. PGJDF. Of. 231-I-B-1-I-18392. Ballistics test of October 20, 2001 and Annex 12. Of. 231-I-B-1-I-18393. Ballistics test of October 20, 2001. Annexed to the brief of the State.

<sup>40</sup> Annex 13. PGJDF. Of. 231-I-B-1-I-18373. Ballistics test of October 20, 2001. Annex to the brief of the State.

<sup>41</sup> Annex 14. Of. 231-I-1-B-I-5742. Ballistics report of April 1, 2002. Annex to the brief of the State.

<sup>42</sup> Annex 15. Report of November 26, 2001. Annex to the brief of the State.

<sup>43</sup> Annex 16. PGJDF. Expansion of visual inspection of October 27, 2001. Annex to the brief of the State, August 2, 2018.

<sup>44</sup> Annex 17. PGJDF. Visual inspection of July 5, 2003. Annex to the brief of the State, August 2, 2018.

<sup>45</sup> Annex 18. PGDDF. Evidence audit of May 27, 2003. Annex to the brief of the State, August 2, 2018.

<sup>46</sup> Annex 2. Resolution to not bring a criminal action of July 18, 2003. Annex to the brief of the State of July 25, 2003.

<sup>47</sup> Annex 2. Resolution to not bring a criminal action of July 18, 2003. Annex to the brief of the State of July 25, 2003.

**iv. Fingerprint reports:** Several objects collected at the scene of the crime were analyzed for fingerprints. The case file indicates that on October 19, 2001, a fingerprint examination was conducted of a notebook found at the scene of the crime, but that the fingerprints found were not usable.<sup>48</sup> Likewise, on October 19, an analysis was done of the “Pros sons of bitches” anonymous note, but the results were also negative.<sup>49</sup> The case file also indicates an analysis of other fingerprints found at the home of Digna Ochoa on November 9, 2001, which found that they were not usable due to poor quality.<sup>50</sup>

**v. Forensic document examination reports:** The case file indicates a number of document analyses conducted on different written or printed items found in Digna Ochoa’s home. Regarding the handwritten pieces analyzed, it found that they were all written by her.<sup>51</sup> This contrasts with the analyses conducted on the “Pros sons of bitches” anonymous letter, which reached no conclusion regarding its authorship.<sup>52</sup> The evidence also includes a report from February 11, 2002, which finds the anonymous letters “have similarities, the same ink used in each of the anonymous letters in question dated August 7 and 10, October 16, and found at the place of the facts,” although “the four printed anonymous items contain no defects that would enable us to identify or specify the printer used to produce them.”<sup>53</sup>

**vi. Lock examination:** The opinion of December 5, 2001, on the home of Ms. Ochoa, concluded that “neither of the two locks analyzed have fingerprints or indications of having been forced open by outside instruments, and thus far, these two locks have been activated using their own elements (keys).”<sup>54</sup>

**vii. Reports on sketch portrait and identification:** The casefile includes reports on a sketch portrait and on identification. Several of the reports included determined that the information provided by the witnesses was not useful for drawing a sketch portrait.<sup>55</sup> Without prejudice to this, they added two more pieces showing a police sketch of someone “who supposedly answers to the name of Faustino Rodríguez.”<sup>56</sup> Also, according to another element found in the case file, a manual search of photo albums was able to identify one of the two police sketches as a man named “Humberto Hernández Cano,” and the witness who provided the testimony for the sketch stated that “he saw them pass by [the Zacatecas Street building] and thought they looked suspicious,”<sup>57</sup> while another witness said he “saw him standing in front of his house.”<sup>58</sup>

**viii. Document analysis reports:** Documents were attached to the case file on the analysis of documents found in the house on Zacatecas Street, as well as in Digna Ochoa’s house. One report analyzed whether the red pens found at the location of the facts were used to write the death threats, obtaining negative and inconclusive results, respectively.<sup>59</sup> The case file also indicates other opinions indicating that the paper from the threats reported and the paper found at the scene of the crime were not the same,<sup>60</sup> and that they were also different from the official paper found at the location of the facts.<sup>61</sup>

**ix. Cytological reports:** The case file describes the cytological exams conducted on the latex red glove that was found on the left hand of the body of Digna Ochoa. According to the reports, a substance was found

<sup>48</sup> Annex 19. PGJDF. Order No. CUAUH – No number. Report of October 19, 2001. Annex to the brief of the State.

<sup>49</sup> Annex 20. PGJDF. Order No. CUAUH – No number. Opinion of October 19, 2001. Annex to the brief of the State.

<sup>50</sup> Annex 21. PGJDF. Order No. CUAUH – No number, Fingerprint report of October 19, 2001. Annex to the brief of the State.

<sup>51</sup> Annex 22. PGJDF. Official letter I-1775. Forensic document examination report of February 12, 2002; Annex 23. PGJDF. Official letter I-5197. Forensic document examination report of March 20, 2002; Annex 24. PGJDF. Official letter I-5661. Forensic document examination report of March 26, 2002; Annex 25. PGJDF. Official letter I-7582. Forensic document examination opinion of April 22, 2002. Annexed to the brief of the State.

<sup>52</sup> Annex 26. PGJDF. Official letter I-18517. Forensic document examination report of October 23, 2001. Annex to the brief of the State.

<sup>53</sup> Annex 27. PGJDF. Forensic document examination report of February 11, 2002. Annex to the brief of the State.

<sup>54</sup> Annex 28. PGJDF. Of. 200-207-100-I-22825. Report on lock analysis of December 5, 2002. Annex to the brief of the State.

<sup>55</sup> Annex 29. PGJDF. Subdirectorato of Traditional Identification Systems, Letter of November 7, 2001; Annex 30. PGJDF. Subdirectorato of Traditional Identification Systems, Letter of November 13, 2001. Annexed to the brief of the State.

<sup>56</sup> Annex 59. PGJ. Police sketch of November 13, 2001. Annex to the brief of the State.

<sup>57</sup> Annex 58. PGJDF. SAC NUM. 627. Document on process of elimination for police sketch of December 28, 2001. Annex to the brief of the State.

<sup>58</sup> Annex 57. PGJDF. Police sketch of December 4, 2001. Annex to the brief of the State.

<sup>59</sup> Annex 31. PGJDF. Of. I-18517. Document analysis report of December 5, 2001. Annex to the brief of the State.

<sup>60</sup> Annex 32. PGJDF. Of. I-22753. Document analysis report of January 2, 2002. Annex to the brief of the State.

<sup>61</sup> Annex 33. PGJDF. Of. I-1773. Document analysis report of February 11, 2002. Annex to the brief of the State.

stuck on the inside of the glove, which was analyzed. It was determined, following an initial misstep,<sup>62</sup> that the material found was "fibrous connective tissue" whose genotype correspondent to that of Digna Ochoa.<sup>63</sup>

### 3.3. Psychological profiles

44. The IACHR notes that at this early stage of the investigation, a variety of psychological analyses were conducted and reports issued. They are described hereinafter, taking into consideration that the one on the perpetrators of the threats is not found in the case file but referenced in another document:

#### 3.3.1. Psychological profile of the perpetrators of the threats of December 12, 2001.<sup>64</sup>

45. According to the information available, the psychological profile found that the anonymous messages were related to each other and came from the same person, very likely a man, although more than one person may have been involved. Also, based on the content of the messages, the logical structure, the vocabulary, and other factors, it found that the individual had a certain amount of education and acculturation, and did not appear to suffer from psychological issues.

46. Additionally, the report also finds that the messages involved a good degree of planning and organization, to the degree that the printed documents were processed so as to avoid leaving evidence of the authorship (passing feathers over the printed messages to eliminate printer marks that could help identify the origin of the threats). The forensic psychologist stated that, taking into consideration other evidence described in the reconstruction of the facts, "leads us to believe the criminal conduct was planned ahead of time."

#### 3.3.2. Psychological report of June 28, 2002:<sup>65</sup>

47. The objective of the report, issued by psychologist Mendoza Vega, was to draw up a psychological profile of Digna Ochoa. The study used personal letters, diaries, e-mails, and other private and public documents (for examples, previous reports on harassment) to draw up a psychological profile for Ms. Ochoa.

48. The analysis mentions aspects of Ms. Ochoa's life including her trip to the United States, when she left the Centro Pro, her work as a MacArthur Foundation fellow, and the fact that the deadline for submitting her report on her activities during the fellowship (a report on environmental law in the state of Guerrero) had been October 18, 2001. The analysis also indicates that on July 16, 1999, Digna Ochoa signed a life insurance policy for US\$40,000 naming her sisters (Esthela and Elia) as beneficiaries, and on July 23-24, 2001, she changed the beneficiaries of the policy to Esthela and her partner, Juan José Vera. The analysis points to this as evidence that she was thinking about her death.

49. The analysis concluded as follows:

Based on her background, the description of her personality dynamics, and the above highlighted elements, the conclusion is that Digna Ochoa y Placido can be diagnosed with the following: 1. Schizophrenic personality disorder, with distinct indications of paranoia. 2. Obsessive-compulsive personality disorder. 3. Chronic depression. 5. Digna experienced periods of severe tension at different points in her life, in which fear, stress, and emotional suffering were present to different degrees. At times, she experienced threats to her physical and psychological integrity, experiencing emotional states in which her tendency toward suffering was also a factor, along with her tendency and commitment to giving her life to fight anything she thought violated human rights. Therefore, the emotional burden she was carrying was intense, and although she was strong, and religion had helped her bear the suffering, **Digna needed psychological treatment.** People close to her had suggested she seek the help of a psychotherapist and even she indicates having received psychological treatment. Given that the documentation indicates that she sought psychological treatment at least three different times, it is essential

<sup>62</sup> Annex 34. PGJDF. Of. I-3826. Cytological report of March 4, 2002 and Annex 56: PGJDF. Of. I-4375. Report of March 12, 2002. Annexed to the brief of the State.

<sup>63</sup> Annex 35. PGJDF. Of. I-6258. Amendment of the report of April 10, 2002. Annex to the brief of the State.

<sup>64</sup> Annex 2. Resolution to not bring a criminal action of July 18, 2003. Annex to the brief of the State of July 25, 2003.

<sup>65</sup> Annex 36. Psychological report of June 28, 2002. Annex to the brief of the State, August 2, 2018.

to point out that these treatments perhaps were not in depth or perhaps she did not commit to them, such that she did not experience progress in addressing her symptoms. On the contrary, they had very likely worsened, or at least the others had detected them (...)

### 3.3.3. Expert psychological report of January 2, 2003.<sup>66</sup>

50. The analysis, written by Dr. Matrajt Karsemboin and Levi Hembra, was structured based on the psychoanalytical methodology revolving around three potential hypotheses: suicide disguised as homicide, depressive suicide due to romantic and professional life crises, or no such conclusion possible. In terms of her personal life, the expert analysis established that although there was testimony that "calls into question her ethics and mental health," other testimony "contradicted this."

51. Also, regarding her professional life, the report establishes that "we observe very centered and mature reactions, with no indications of mental illness." Additionally, regarding the matter of the MacArthur Foundation fellowship, the report concludes that the evidence conflicts as to whether Digna Ochoa fulfilled her obligations as a fellow, with the documents showing that although her financial report had been rejected, she had submitted the substantive report on her activities, and therefore, there was no evidence that she would have been aware that her fellowship was not going to be renewed due to a failure to comply with her deliverables.

52. The report concludes by stating that "the suicide hypotheses are highly improbable" and offers the following:

(...) Both from a psychiatric point of view and from a psychoanalytical perspective, we find a normal, healthy personality, involved in her life and her surroundings, capable of resolving the various conflicts that arise without psychiatric symptoms, with a fully developed personality on multiple existential planes, satisfied with herself and with her actions, with a slight tendency toward an obsessive neurosis (...)

### 3.3.4. Psychodynamic analysis of the personality of Digna Ochoa y Plácido of May 2003<sup>67</sup>

53. This analysis, conducted by Dr. Ayala Villareal and Dr. Juárez Vargas, found that her personality was that of a woman "who was said to be very attached to the Catholic faith, and without hesitation or any evident guilt, had an abortion, considered and attempted suicide, and did not restrain herself from accusing innocent people, even her own friends, of aggressive actions that she herself had committed. She ended up acknowledging these false statements." According to the analysis, Digna Ochoa had a "borderline personality disorder [301.83], which Otto Kernberg classifies within the borderline personality organization as 'low-level.'"

### 3.3.5. Assessment opinions of March 27, 2003:<sup>68</sup>

54. The evaluation of Dr. Sandra Yadeum Angulo, provided at the request of the Special Prosecutor, reviewed the reports presented by Dr. Matrajt and Dr. Mendoza. She concludes that the analysis by Dr. Matrajt "is missing the clinical history, which is the core of any psychological and/or psychiatric expert report," and that "the conclusions are incoherent, illogical, lack weight and force, are neither conclusive nor essential, and the resulting opinion is far from solid, opens the door to conflicting and substantiated opinions, and can consequently be extensively criticized."

55. Also, regarding the analysis by Dr. Mendoza, she stated that "the report (...) consists of a number of sections, and each one contributes necessary and sufficient information. It is consequently able to substantiate its final conclusions." In the second report, the evaluator detected "several excessive deductions" that needed to be demonstrated and theoretically underpinned.

<sup>66</sup> Annex 37. Expert report of January 2, 2003. Annex to the brief of the State, August 2, 2018.

<sup>67</sup> Annex 38. Psychodynamic analysis of the personality of Digna Ochoa y Plácido of May 2003. Annex to the brief of the State, August 2, 2018.

<sup>68</sup> Annex 39. Assessment opinions of Dr. Sandra Yadeum of March 27, 2003, Annex H to the Independent Report.

### 3.4. Forensic reports

56. The case file also includes forensic reports showing the different readings that specialists offered over the course of the investigation with regard the reconstruction of the facts.

#### 3.4.1. Forensic report of October 20, 2001<sup>69</sup>

57. The report was submitted by expert witnesses Balderrama, Hernández, and Barajas (hereinafter “the Balderrama opinion”) and concluded the following regarding the reconstruction of the facts:

(...) The deceased enters the building and goes to the office, taking with her the bag and the coat observed in the upper right corner, entering the office, closing its door, and walking down the hallway to the armchairs located against the western wall of the reception, leaving the bag on the seat of one of the chairs. Next, someone knocks at the door, she opens it, and she is surprised by the attacker, who threatens her with the firearm, taking her to the reception area where, in an act of intimidation, the attacker fires into the seat of the armchair against the south wall, placing the opening of the gun barrel against the surface of the seat to muffle the sound of the gunshot. Next, and while still threatening the deceased, the attacker seats the victim in the chair against the north wall on the far west, putting the attacker to the left of the victim. The attacker points the mouth of the gun barrel at her left thigh (a distance of no more than 1 cm) and causes the injury. This is based on the blood flow and the hole in this chair, as well as the bullet that was recovered; next, the attacker places the victim in the center of the waiting room and stands to her left, pressing the barrel of the gun against her left temple and firing it, causing the injury. The victim was very likely leaning slightly forward, and when the attacker let go of the victim, she fell toward the carpeted floor, with her head injured on the right side (due to the dry blood stains). The attacker places the firearm in the spot where it was discovered and begins the process of taking steps to distort what happened, such as spreading around the white powder, which the attacker likely brought with. This includes the latex gloves, and the white powder was scattered when putting it in the gloves in order to place them on the hands of the deceased and place her over the firearm and rest her head against the corner of the chair on the south side. This done, the attacker went to the reception to leave a sheet of white paper with the text described in the corresponding chapter and left by the main entryways of the office and the building.

#### 3.4.2. Field forensic report of January 4, 2002<sup>70</sup>

58. The case file includes the forensic report of January 4, 2002, from expert witnesses Laureles, Álvarez, and Colín (hereinafter “the Laureles opinion”). The document includes extensive testimony from a neighbor who stated that starting in May, an individual “with a beak nose” and another “skinny” individual stopped in front of the Zacatecas Street building for no apparent reason, and that once he saw someone looking at the building from the rooftop, and that all these incidents stopped after Digna Ochoa's death.

59. The document also indicates that “each and every one of the pieces of evidence studied and analyzed, from both before, during, and after the facts, conclusively and categorically prove that the murder of DIGNA OCHOA Y PLACIDO was planned out before hand, carried out by a group of people who understand and used logistics to perpetrate the killing.” The same report also states that for the perpetrator of Digna Ochoa's death, it was not difficult to physically and psychologically overcome the victim, as this individual had a certain degree of training and preparation for executing it.” In the same terms, the report states that the location was selected beforehand, as Digna Ochoa would be alone and in a building where there were few people at that time, as a neighbor heard the door open and close a single time, meaning that the perpetrator likely entered the Zacatecas Street building with her.

60. According to this amendment of the reconstruction of the facts:

the evidence found after the execution of Ms. DIGNA OCHOA includes: the flour scattered on the floor, chairs, coat, trousers, pistol, hands, gloves; the message found on the desk in the reception area, a place where it could be found, the red latex gloves placed on the hands of the deceased, and also the placement of the black coat,

<sup>69</sup> Annex 55. PGJDF. CUAU 4469. Report on violent death by projectile fired from a gun, October 20, 2001. Annex to the brief of the State.

<sup>70</sup> Annex 54. PGJDF. Expanded report on reconstruction of the facts, January 4, 2002. Annex to the brief of the State.

embraced by the deceased, clearly indicates that the murderer left them in order to obstruct the investigation at the scene of the facts and erase any traces or evidence that could lead to full identification.

### 3.4.3. Forensic report of June 28, 2002:<sup>71</sup>

61. The opinion of expert witnesses Apodaca, León, and Dimas (hereinafter “the Apodaca report”) disagrees with the assessment of the reports described above. In its view, the Balderrama report is speculative, contains omissions and methodological errors, such as, for example, referring to an ecchymosis on the eyelid that did not exist and to a missing button on the blouse as an indication of a struggle, even though the button is not found at the scene, among other inconsistencies.

62. According to the report, Digna Ochoa's body was not manipulated, as can be concluded from the bloodstains and the way the blood flowed and dried. Rather, the place where she was found was the original location of her death. The report also states that the scene of the facts was prepared in a premeditated fashion based on the presence of the dust, the gloves, and the anonymity of the threats. Likewise, “in the absence of any indications of disorder at the location—which is very minor—disorder in her clothing, injuries indicating a struggle, and the absence of violence at the entry to the location, the participation of one or more people as assailants is ruled out.”

63. In this line of thinking, Digna Ochoa went to the Zacatecas Street building and left the “Pros sons of bitches” message as a posthumous expression of her frustration. The three shots fired at the location of the facts were fired in the following order: first, the test shot into the chair; second, with the right hand, against the left thigh, with the aim of causing a femoral injury; third, with the left hand, in the left temple. The dynamic of the facts indicates that after the second shot, because of the position of the blood in her trousers, on the chair, and in her underwear, Digna Ochoa remained seated for around five minutes before firing the final lethal shot.

64. The expert witness report concludes with the following opinion:

Given the uncommon characteristics of the incident under investigation, and as assessment of the evidence led to the result that, as of the completion of this report, there is not enough meaningful evidence to assume the presence of one or more attackers, it is suggested that the corresponding criminology and psychology units evaluate the very important circumstantial evidence that has been collected in the case file, as there is evidence believed by some authors who are experts on the subject to indicate a predisposition to suicide. These include, for example: emails, one of which indicates the existence of an insurance policy and states that she could die soon and suggests how her property could be divided up. Others indicate depression, sadness, and pain at having lost her job. Her writings show resentment against people she thought she could trust, a history of suicide attempts, faked kidnappings and anonymous threats, attempting to direct the line of investigation to those likely responsible.

### 3.4.4. Forensic and ballistics report of July 2, 2003.<sup>72</sup>

65. This report, from expert witnesses Corona Méndez and Lozano Andrade (hereinafter “the Corona opinion”) was requested to determine which, from among the Balderrama, Laureles, or Apodaca reports, was the most correct and had the most certain evidence. The IACHR notes that the request made by the Special Prosecutor was worded as follows: “the [Apodaca] report includes the most evidence in its analysis and hews closest to the facts, in contrast to the other reports.”

66. The report, of July 2, 2003, found the following to be “irrefutable facts:” that “the location of the facts offers no signs of violence or struggle,” that “the dust that appears on the door handle of the entryway door was likely the result of removing the body from the location,” that “the body is in its original location and position,” that “the body shows no signs of a struggle,” that “the body's clothing shows no signs of a struggle,”

<sup>71</sup> Annex 53. PGJDF. Forensic analysis of the violent death of Ms. Digna Ochoa y Plácido of June 28, 2002. Annex to the brief of the State, August 2, 2018.

<sup>72</sup> Annex 40. PGJDF. Forensic and ballistics report of July 2, 2003. Annex to the brief of the State, August 2, 2018.

that "the firearm does not leave a residue on the hand of a person firing it," among other factors. Regarding the firearm, the report found it had been settled that it did not leave a residue due to its design characteristics, that it functioned properly, and that it belonged to Digna Ochoa. Regarding the white powder, the report also accepted that Ms. Ochoa spread it around herself, and that the powder on the floor, clothing, and chairs was the result of transfer and contact from her own movements.

67. Based on these elements, the lack of evidence from the clothing of a struggle, the lack of signs of self-defense on the body and the point blank gunshots, and despite the fact that the gun was held with the nondominant hand (right) and the fact of the gunshot wound to the extremity prior to the fatal gunshot wound, they concluded that "it is very probable that Digna Ochoa y Plácido took her own life and attempted to make the suicide appeared to be homicide."

### **3.4.5. Technical expert witness opinion of July 11, 2003<sup>73</sup>**

68. The analysis, conducted by forensic expert Flores Niño de Rivera, was in response to a request from the Office of the Public Prosecutor asking him to give his opinion how Digna Ochoa's fatal wounding came about. The analysis looked at four possible recreations of the facts describing how the bullet could have struck Digna Ochoa.

69. First, the expert report dismiss the possibility of an assailant to the left and in front of the victim, as the bullet would have had a downward trajectory, which it did not in this case (the trajectory was upward). Second, if the attacker was to the victim's left, the final position of the body would have been on the carpet, not in the arm chair where she was found. Third, if the attacker had been to the left and behind the victim, the body's final position would have been in the space between the wooden furniture and the south sofa, not on the armchair where was found. Fourth, the expert witness report addresses the hypothesis of suicide and concludes that the trajectory of the bullet and the final position of the body match with the facts of the case.

70. The report includes the following conclusion: "the hypothesis of homicide is rejected or improbable based on the facts. It is very likely that Digna Ochoa y Plácido took her own life and tried to make her death appear to be a homicide, based on the other circumstances surrounding her death."

### **3.5. Lines of investigation addressed during the first stage of AP-2576**

71. The case file indicates that the Special Prosecutor proposed three main lines of investigation, described hereinafter. The Commission also notes for the record that 15 statements from soldiers and 14 statements from relatives, neighbors, and former collaborators of Ms. Ochoa were taken between January 23, 2002, and April 17, 2002, and added to the case file.<sup>74</sup>

#### **3.5.1. Line of investigation into possibility of "soldier" perpetrators<sup>75</sup>**

72. The case file indicates that the Special Prosecutor pursued this line of investigation based on testimony related to two incidents. The first involves the detention of environmentalists Rodolfo Montiel and Teodoro Cabrera on May 2, 1999, by the 40th Infantry Battalion. The second involves the presence of Digna Ochoa on October 1 and 2, 2001, in the Petatlán Mountain Range, also in Guerrero, during which her

<sup>73</sup> Annex 41. PGJDF. Technical expert witness opinion of July 11, 2003. Annex to the brief of the State, August 2, 2018.

<sup>74</sup> The following people gave statements: Infantryman Calixto Rodríguez Salmerón, Infantryman Pedro Basurto Jaimes, Infantryman Raymundo García Piña, Infantryman Baltazar Morales Pino, First Infantryman Virgilio García, communications soldier José Mario Hernández Tórrez, equipment Corporal Ramiro Manzanares Campos, driver and Second Sargent Epifanio Bautista Barrera, Infantryman Marcos Cortez Padilla, Second Infantry Captain Willivaldo Galván Ramos, driver and Second Sargent Raúl Santos Camacho, Second Infantry Sargent Filogonio Nieto Nazario, Infantryman José Jaramillo Angulo, Lieutenant Coronel José Pedro Arciniega Gómez, Second Captain of Artillery Artemio Nazario Carballo, José Lamberto Ruiz, Gonzalo Mejía, Modesta Aguilera Mejía, Juan José Vera Mendoza, Jesús Ochoa y Plácido, José Miguel Edgar Cortés Morales, Silvia Mariñelarena Estrella, Adriana Vidal Millán, Silvia Sánchez Camacho, Jorge Arturo León Rodríguez, Fernando Silva Barroso, Humberto Ávila Peña, Luis Román Mendoza, Ismael Ochoa Plácido.

<sup>75</sup> All the information in this section is contained in: Annex 42. Resolution from AP-2576 of July 18, 2003. Annex to the brief of the State of July 25, 2003.

companion came into contact with members of the 19th Infantry Battalion deployed in the area. Along these lines, the Commission observes that the investigators collected the corresponding evidence and sent official letters to various military and judicial bodies in the state of Guerrero to collect information, as well as to potential witnesses, as indicated in the case file.

73. On October 31, 2002, María del Pilar Noriega stated that it was her understanding that the matter endangering Digna Ochoa was the issue involving "two environmentalists, because everyone knows how the Army feels about criticism over human rights violations, and I have seen that the Office of the Attorney General of the Republic has refused to provide a real solution." The case file also contains testimony from Juan José Vera, Jesús Ochoa, María del Rocío Zamora, and several more people stating that during their last trip to the Petatlán Mountain Range, Digna Ochoa told him that she had been followed and intercepted by military personnel. On March 27, 2003, Félix Arrega, who accompanied Digna Ochoa during her visit to villages in the Petatlán Mountain Range, said he observed a quick interaction between Ms. Ochoa and several soldiers who were in one of the towns. Also, José Miguel Moralez stated on October 16, 2002, that although cases involving the state of Guerrero put the attorneys of the Centro Pro at risk, they did not do so for Digna Ochoa. Lastly, the case file indicates that Eva Alarcon, Secretary of the Organización Ecologista de la Sierra de Petatlán y Coyuca de Catalán, testified on December 13, 2001, that on September 21, 2001, she witnessed a meeting in which Digna Ochoa participated where they told her the organization's problems with members of the military, and it was decided she would return to visit these places where the military was present.

74. The case file includes a statement from Mr. Harald Ihmig, a German citizen, who accompanied Digna Ochoa during her trek through the Petatlán Mountain Range during a visit made prior to her death. Mr. Ihmig said he was a representative of the human rights organization FIAN and that the visit was an exploratory trip for professional purposes. He said he was a visual witness of the contact with soldiers and described a moment when they were "surrounded" by patrol cars, to the point that Digna Ochoa took note of the license plate of one of them.<sup>76</sup>

75. On the other hand, the statements from soldiers indicate that the presence of troops in the Petatlán Mountain Range was a coincidence. For example, driver and Second Sergeant Epifanio Bautista stated on March 13, 2002, that he was there to resupply the military base called "Castillo." Likewise, regarding the relationship of the soldiers interviewed with regard to the case of Cabrera and Montiel, the testimony indicates their awareness of Digna Ochoa was circumstantial and connected to the case in question, which involved the 40th Infantry Battalion stopping these two individuals. For example, as stated by Second Infantry Captain Artemio Nazario, on February 28, 2002, in response to whether he knew Digna Ochoa, he stated "I saw her, but I didn't know what her name was...."

76. Regarding the 40th Infantry Battalion and the torture and injury committed by its members against environmentalists Cabrera and Montiel, the Special Prosecutor found that "the inquiries made along this line of investigation in no way led to the conclusion or even the supposition of the existence of any problem, altercation, argument, or even action that could indicate hostility on the part of the soldiers involved" toward Digna Ochoa. Along these lines, the Special Prosecutor found that in reality, Digna Ochoa only actually participated in the criminal process brought against environmentalists Cabrera and Montiel during cross-examination, when she was in charge of questioning the members of the Mexican Army. The rest of the legal representation was shared by other members of the Centro Pro, and the Special Prosecutor concluded that this intermittent participation could not be considered "sufficient motive for any type of animosity" toward Digna Ochoa. It also noted that cross-examination is normal work during a criminal trial, that questioning soldiers is also not unusual to the point that it could lead to her death, and that the testimonies that sought to link Digna Ochoa's death with the military never went beyond subjective conjecture, emphasizing that even in the trial of the soldiers for torture, no one was convicted.

77. Regarding the 19th Infantry Battalion, the Special Prosecutor determined that during visits to the Petatlán Mountain Range on October 1 and 2, 2001, Digna Ochoa interacted minimally and coincidentally

<sup>76</sup> Annex 43. Statement by Mr. Harald Ihmig of April 15, 2002, given at the Embassy of Mexico in the German Federal Republic. Annex to the brief of the State, August 2, 2018.

with several soldiers only on October 2, and that "what they were doing was nothing more than traveling through that community to complete a task they were assigned: resupplying the 'Castillo' base of operations." It also established that "none of the members of the 19TH INFANTRY BATTALION was directly or indirectly involved in any of the activities carried out by DIGNA OCHOA Y PLÁCIDO during her work as a lawyer. That is, at no time were their interests affected by the work she was doing to the point that it could give rise to animosity so severe that they would want to take her life."

78. Lastly, the IACHR notes that the Special Prosecutor dismissed any connection offered in the testimony, calling it conjecture, indicating that any perception that Digna Ochoa and Mr. Ihmig were in danger or being followed, surrounded by patrol cars, and watched during their trip to the Petatlán Mountain Range was only subjective, calling them "statements with no objective basis and the result of perceptions skewed by the human rights work each one of them does."

### 3.5.2. The "Guerrero" line of investigation<sup>77</sup>

79. The "Guerrero" line of investigation explores the possibility of criminal acts by third parties attributed by witnesses and the media as causing the death of Digna Ochoa. The case file indicates that Ms. Ochoa's activities to defend environmentalist groups and individuals in Guerrero created certain tensions with so-called "chiefs" who do lumbering, causing harm to the environment there, deforestation, and water shortages.

80. The IACHR finds that along these lines, the investigation rapidly came to focus on Mr. Faustino Rodríguez Sánchez, Mr. Bernardino Bautista Valle, and Mr. Rogaciano Alba Álvarez, who were identified as the "chiefs" of the Petatlán Mountain Range. Based on investigative steps taken in December 2001, investigators determined through interviews and an appearance by Mr. Bautista himself that he no longer lived in the Petatlán Mountain Range.

81. The Commission also observes that the Special Prosecutor next focused this line of investigation on reports by journalist Maribel Gutiérrez that, in response to alleged impact on his economic interests from Digna Ochoa's work defending environmentalist groups, Mr. Rogaciano Alba had ordered her murder. Two people were allegedly involved in the operation, who have since passed away: Mr. Nicolás Martínez and Mr. Gustaviano Zárate (uncle and nephew, respectively). The news article presents the facts as follows:

A gunman from the Petatlán Mountain Range, Nicolás Martínez Sánchez, killed attorney Digna Ochoa in Mexico City on October 19, 2001, together with an accomplice from the same region, Gustavo Zárate Martínez, according to a witness who asked to remain anonymous. Both were executed, the accomplice on November 1 and the gunman on March 4 of this year. According to witnesses with which he spoke, they took their orders from a rancher named Rogaciano Alba Álvarez, a powerful man with connections to the Army, police agencies, drug traffickers, and the PRI political machine. In the region, it is suspected that he himself could be responsible for executing the gunman and his accomplice.

82. The journalist stated that "after the initial visits to Guerrero by PGJE investigators, members of the Organización de Campesinos Ecologistas of the Petatlán Mountain Range and Coyuca de Catalán stated publicly that conditions did not allow them to speak freely." The Special Prosecutor described the newspaper report as follows: "according to a number of newspaper reports, the information (...) was provided by '... a witness who asked to remain anonymous...'; This immediately raised certain doubts as to the authenticity of the information provided, as none of it could be considered trustworthy or confirmed and it was entirely based on supposed statements made."

83. Mr. Rogaciano Alba stated, "I am not personally a lumberjack and I don't cut down trees. DIGNA OCHOA never bothered me about anything at all, and I never had the pleasure of meeting her or having met her." The declarant contradicted the newspapers version, saying that everyone who point to him as the

<sup>77</sup> All the information in this section is contained in: Annex 42. Resolution from AP-2576 of July 18, 2003. Annex to the brief of the State of July 25, 2003.

murder of Digna Ochoa actually have personal or political problems with him or his family. He consistently denied the newspapers version, stating that in reality, "for me, the journalists claim lacks a legal basis, (...) I don't have any connections of any kind with the Army, (...) I don't have any connections with police agencies, and the same with drug trafficking, I would like the (...) journalist to tell me if I have ever been caught with any kind of narcotics or tell me if I have ever been arrested for drug trafficking. I am demanding, with the respect that I deserve, to be shown the proof of this charge." Lastly, the declarant also stated that he knew Mr. Martínez and Mr. Zárate, but only circumstantially through his work as the president of the rancher's association.

84. The IACHR observes that the narrative presented by the Special Prosecutor sought to corroborate the newspaper report. First, Gutiérrez was asked to reveal the names of her sources, which she refused to do. According to the Special Prosecutor this "calls into doubt everything with regard to the content of the newspaper reports." Comparing the information with several statements found in the case file, investigators concluded that the newspaper report was doubtful, "especialmente when, considering the whole of its primarily transcribed content, we note it is simply subjective accusations without an evidentiary basis to confirm or corroborate it. In some places, it describes a 'witness,' but then makes reference to several witnesses or even sources, without specifying which they are or where they come from, while of course also recalling that at other ambiguous or imprecise moments, it stated: '...it is publicly known...'"

85. Second, it includes analysis of the statements from the individuals speculating on whether Digna Ochoa's death was the result of her visit to the Petatlán Mountain Range days prior. According to investigators, the declarants can be divided into two groups: the first,<sup>78</sup> people who were present during Digna Ochoa's trip; and the second, people who were not.<sup>79</sup> Thus, the conclusion regarding both groups is that their statements show that Digna Ochoa's visit did not lead to anything specific that could have provided a motive for her persecution and murder by the so-called "chiefs," that "there is no indication that she was followed or surveilled during her trip, and in fact, they were not harassed or attacked by any specific individual or authority." It dismissed the only two testimonies that insinuated that the "chiefs" participated in Digna Ochoa's death.

86. Third, another hypothesis was examined that involved the participation of another alleged hitman hired by Mr. Rogaciano Alba to murder Digna Ochoa. The testimony of Rogelio Pineda stated that he had an uncle who was spreading a story according to which Fernando Téllez Alvarado, alias "El Bigotes," was the one who went to Mexico City "to kill a lady," but the Specialized Prosecutor rejected his testimony for not containing objective information. According to its reasoning, "El Bigotes" had effectively been deprived of liberty for murdering a woman, establishing that the story in question referred in reality to this crime.

87. Fourth, regarding this, the Special Prosecutor established that Digna Ochoa's brother was also focused on the hypothesis of "El Bigotes" and that he even told the media that he was aware of two witnesses who could help solve the crime. However, "when he appeared formally before [the Special Prosecutor] on the date the news articles were published (January 22, 2003), he maliciously [...] stated that 'I will not testify until Thursday, January 30, 2003.'" The Special Prosecutor describes the attitude as follows: "this, far from showing spontaneity and impartiality, demonstrates reflection and preparation for giving the testimony." The information indicates that Jesús Ochoa y Plácido finally testified on February 4, 2003, during which he accused the individuals identified in this section of this report. His statement was taken by the Special Prosecutor as follows:

As shown, again the origin of the information provided was journalist "MARIBEL GUTIÉRREZ," who JESÚS OCHOA Y PLÁCIDO says was the person who told him about the individuals wishing to testify in the case, with two standing out: inmates ALFREDO GARCÍA TORRES and ROGELIO GARCÍA PINEDA—who, in point of fact, had already given statements—and two relatives of the latter; in other words, once more there is a stubborn

<sup>78</sup> Includes: Felipe Arreaga Sánchez, Eva Alarcón Ortiz, Roberto Cabrera Torres, Filiberto Gómez Bueno, Perfecto Bautista Martínez, Fidel Bahena Ortiz, Santiago Sánchez Ayala, Juan Bautista Valle, Alberto Peñalosa Domínguez, Franco Peñalosa Alonso, and Dominga Mendoza Martínez

<sup>79</sup> Includes: Teodoro Cabrera García, Rodolfo Montiel Flores, Jesús Sánchez Uriostegui, Jesús Cortes Santana, Miguel Ángel Martínez Uriostegui, and Pedro Rojas Félix

insistence on ROGACIANO ALBA ÁLVAREZ. There is no other way to describe it, as first they stated that he ordered NICOLÁS MARTÍNEZ SÁNCHEZ alias “EL CUARTERÓN” and OCTAVIANO ZARATE MARTÍNEZ alias “EL TAVO” to perpetrate the crime; and later, with the same source of information, they argue there were several people, but insist that the same person ordered it, that person being ROGACIANO ALBA ÁLVAREZ.

88. Fifth and lastly, the IACHR notes that the brother of Digna Ochoa, as an intervenor in the case, also called as a witness José Esteban García Castro, who, because he did not have identification, did not give his statement, saying: “regarding the motive of my appearance, I am here before this Prosecutor at the request of citizen JESÚS OCHOA Y PLÁCIDO; however, I commit to appearing later, once I have my identification documents with me.” The case file states that at this stage in the investigation, no testimony was taken regarding “El Bigotes” involvement in the death of Digna Ochoa, though the Special Prosecutor made every effort toward securing it.

### 3.5.3. Line of investigation into the “family, social, and work environment”<sup>80</sup>

89. The Special Prosecutor took into consideration the statements of the relatives, friends, partner, and colleagues of Digna Ochoa in analyzing this line of investigation. The IACHR also observes that it used information from emails received and sent by Digna Ochoa, as well as her diaries and personal notes. The Commission observes that at this stage in the investigation, three independent sublines of investigation were pursued: “family environment,” “social environment,” and “labor environment.”

90. Regarding the subline of investigation into the “family environment,” the Special Prosecutor found that “it cannot be concluded and there is no indication that any of the blood relatives surrounding DIGNA OCHOA Y PLACIDO throughout her life had any connection to her death—that is, none of them directly or indirectly sought or caused her death.” In its reasoning, the Special Prosecutor reached this conclusion based on the testimony of blood relatives, consistent with testimony from other people close to Ms. Ochoa.

91. As regards her “social environment,” the Special Prosecutor divided its reasoning into “romantic life,” “religious life,” and “close friends.” Regarding her “romantic life,” the prosecutor’s conclusion focused on her current partner, Mr. Vera, and found, although the relationship appears to be recent, that it was described by testimony as “a good relationship” or “loving,” corroborating his alibi with witnesses and his testimony on how he learned of the death of Ms. Ochoa. Likewise, the IACHR observes that the investigation concluded that Digna Ochoa named Mr. Vera as a 20% beneficiary of her insurance policy in July of the year of her death, concluding that this decision was her own and that Mr. Vera did not intervene. This fact was dismissed as a possible motive, as he had not even collected on the policy as of the time of the investigation.

92. On the “religious life” aspect, the investigation found that her departure from the religious congregation where she had done her novitiate did not take place in the context of any altercation, dispute, or quarrel. Likewise, regarding the “close friends” aspect, the Prosecutor identified Digna Ochoa’s friends through the testimony on the record, concluding that “we do not note the existence of any conflict or reason for anger among them especially not with third persons; on the contrary, they state that they had a good relationship—and some say friendship—with DIGNA OCHOA Y PLACIDO.”

93. Regarding the “labor environment,” the IACHR finds that the Special Prosecutor traced Digna Ochoa’s career with an emphasis on her work with the Centro Pro and her departure from it. The investigation found that her resignation from the Centro Pro had two key moments: The first was framed by her need to leave Mexico and travel to Washington DC. The second was pieced together through testimony and documents left behind by Digna Ochoa in which in her interpretation, the true reason for her travel to the United States was as a pretext for her resignation and dismissal from the Centro Pro, which caused pain and resentment. The director of the Centro Pro at the time, Mr. Cortez Morales, testified to the Special Prosecutor that the resignation was proposed by Digna Ochoa, and that the disagreement was surrounding the proposed security

<sup>80</sup> All the information in this section is contained in: Annex 42. Resolution from AP-2576 of July 18, 2003. Annex to the brief of the State of July 25, 2003.

conditions, under which Digna Ochoa would not be allowed to speak on behalf of the Centro Pro or give public statements.

94. Along these lines, the IACHR observes that the Special Prosecutor lists all the cases that Digna Ochoa handled as a lawyer with the Centro Pro.<sup>81</sup> She participated two different degrees, in some cases taking charge of pursuing cases before the Inter-American Court, and in others participating as a private defense attorney, handling evidence, advisory services, etc.<sup>82</sup> Of her participation examined, the Commission notes the following conclusion: "it is evident that although in several of [the cases] she was named as an individual defender, her participation was minimal and in some cases negligible, and does not appear to substantially participate in the defense (...) There is no evidence of any element to indicate that her participation in legal matters would have caused or helped cause harm to any individual or authority involved in those cases, especially in the absence of sufficiently believable elements establishing some connection to her death."

### 3.5.4. Other minor lines of investigation into her social environment.

95. The IACHR notes that other subjects of investigation were explored by the Special Prosecutor, although without the depth of the lines of investigation, as confirmed by the investigators themselves. The subjects of investigation included: "the stay in the city of Washington; the matter of the 'UNAM Parents,'<sup>83</sup> matters related to 'Marisol Rodríguez,'<sup>84</sup> 'Modesta Aguilera Mejía,'<sup>85</sup> 'Humberto Ávila Peña and Luis Román Mendoza,' and 'Martín Gerardo Moreno Pérez,'<sup>86</sup> her life insurance<sup>87</sup> and bank accounts;<sup>88</sup> the 'phone tag';<sup>89</sup>

<sup>81</sup> A total of 23 cases is listed: Criminal case 61/99, defendants RODOLFO MONTIEL and TEODORO CABRERA, brought before the Fifth District Judge in the City of Iguala Guerrero; Case 11.520, TOMAS PORFIRIO RONDÍN (Agua Blanca), before the Inter-American Court of Human Rights; Case 11.411, SEVERINO AND HERMELINDO SANTIZ GÓMEZ (Ejido Morelia), before the Inter-American Court of Human Rights; Case 11.543, ROLANDO HERNÁNDEZ HERNANDEZ (Ixhuatlán de Madero), before the Inter-American Court of Human Rights; Case 11.509, MANUEL MANRÍQUEZ before the Inter-American Court of Human Rights; Case 11.613 RICARDO HERNÁNDEZ LÓPEZ and HILARIO MARTÍNEZ HERNÁNDEZ, (prisoners of Yanga, Veracruz), before the Inter-American Court of Human Rights; Complaint against Paramilitaries, before the Attorney General's Office, Complainant GILBERTO LOPEZ Y RIVAS; Preliminary inquiry 443/DAFMJ/99, on alleged violations committed by the Secretary of National Defense against ALBERTO ENRÍQUEZ DEL VALLE; Criminal case 18/95, defendant JAVIER ELORRIEGA BERDEGUE, alias "Vicente" et al., arraigned before the First District Court on Criminal Matters in the State of Chiapas; Criminal case 30/95, Defendants FERNANDO DOMINGUEZ PAREDES et al., (Prisoners of Cacalomacán), before the First District Court on Criminal Matters in the State of Mexico; Criminal Case 63/95, defendant FRANCISCO ALEJANDRO GARCÍA SANTIAGO, arraigned before the Eighth District Court in the State of Veracruz, with residence in the city of Cuatzacoalcos; Case file 1200/95, Minor defendant GONZALO SÁNCHEZ NAVARRETE, (Prisoners of Cacalomacán), before the Center for the Comprehensive Development of Minors of the Federal District; Criminal Case 17/95, Defendant MARÍA GLORIA BENAVIDES GUEVARA, OR, ELISA BENAVIDES ALCOCER, brought before the Sixth District Criminal Court of the Federal District; Criminal cases 188/98 and 189/98, defendant SEBASTIAN GOMEZ DÍAZ et al., (El Bosque) brought before the Third Criminal Court in Tuxtla Gutiérrez, Chiapas; Criminal Case 94/99 against JACOBO SILVA NOGALES, GLORIA ARENAS AGIS, brought before the First District Court of Federal Criminal Proceedings in the State of Mexico; Criminal case 120/2001 against DE ALEJANDRO HÉCTOR AND ANTONIO CEREZO CONTRERAS, brought before the Third District Court of Federal Criminal Proceedings in the State of Mexico; Criminal case 113/2001-A, against JOSE LUIS PERALTA CHAVEZ AND SILVIA MARIÑELARENA, (parents of UNAM students), brought before the Ninth District Court of Federal Criminal Proceedings in the Federal District; Criminal case 172/97, against JUAN GARCIA CRUZ AND SANTIAGO SÁNCHEZ SILVESTRE, brought before the Third Criminal Court of First Instance in Nezahualcoyotl, State of Mexico; Criminal case 82/96, against DE SERGIO BAUTISTA MARTINEZ OR ALFREDO SANDOVAL MONROY, brought before the Second District Court of Criminal Proceedings in the State of Mexico; File number 27CVE8829/92, which resulted in petition 151/2001, extradition 2/99-II, defendant BASSAM AL TAHER, filed before the Seventh District Court of Criminal Procedures; Criminal Case 11/96, defendant ENRIQUE AND ADRIAN ARANDA OCHOA, brought before the Fifth Criminal Court in the Federal District; FIOZ Case (Independent Front of Zapatista Organizations); and Cases of Jerónimo Sánchez.

<sup>82</sup> According to the information on some of the cases, no tangible evidence was found of her participation in the cases, or she participated collectively with other professionals of the Centro Pro.

<sup>83</sup> Case involving the defense of two UNAM students in their prosecution for protesting in the Rectory. Digna Ochoa met with the parents of the defendants on the day before her death in the same location of the facts.

<sup>84</sup> Digna Ochoa's agenda includes the note "09:30 C/SRA. MARISOL RODRÍGUEZ" written in the calendar on the date of her death. The Special Prosecutor determined there was no one in Digna Ochoa's life by that name.

<sup>85</sup> Neighbor of the Zacatecas Street building. She gave several statements providing information on the noises she heard and on having seen an individual at the door of the building on the day of the facts. The information she provided was dismissed. It was determined that the individual she saw was serving a judicial notice.

<sup>86</sup> Author of an anonymous threat against journalist Germán Dehesa reading "we are going to do to you what we did to (...) Digna Ochoa." DNA tests are ruled out Mr. Pérez's participation in the death of Digna Ochoa, who said his comments and death threats "were intended as a joke."

<sup>87</sup> The Special Prosecutor concluded there was no evidence after analyzing the purchase and amendment of Digna Ochoa's insurance policies.

<sup>88</sup> The Special Prosecutor concluded there was no evidence after analyzing the calls from Digna Ochoa's cellular phone and landline.

<sup>89</sup> The Special Prosecutor concluded there was no evidence after analyzing Digna Ochoa's banking transactions.

and the investigation into a vehicle with Veracruz plate number YDC-4553,"<sup>90</sup> as well as the threat against the Centro Pro from October 27, 2002.<sup>91</sup>

96. Thus, the Special Prosecutor found that for none of these events or related individuals was it able to find any implication in or connection to the cause of Digna Ochoa y Plácido's death. That being said, the Commission does take note of the information provided in the testimony by Mr. Humberto Ávila Peña and Mr. Luis Román Mendoza. Both these individuals stated they saw suspicious-looking people near the Zacatecas Street building. However, their testimony was found legally invalid. In the case of Mr. Ávila, the Special Prosecutor found that "it is illogical and not believable that this witness could remember all those details with such clarity, especially considering the time passed between the events he describes (March or April) and the moment he gave his statement to this office (December 4, 2001)—that is, more than seven months after having witnessed the details he describes," among several other inconsistencies in his multiple statements. Regarding the statements of Mr. Román, they were dismissed as imprecise and conflicting with other statements.

#### **4. Technical independent verification of the investigation of the Special Prosecutor of the Office of the Attorney General of Justice of the Federal District of Mexico**

91. With the management of the IACHR and the State's consent, between 2002 and 2003, a group of independent experts was mobilized to conduct a review of "whether the technical evidence collected [during the investigation into the death of Digna Ochoa] in the areas of forensic pathology, ballistics, and forensics meets international standards." On March 12, 2002, consultant Pedro Díaz Romero issued a preliminary report that was forwarded to the State on March 26, 2002,<sup>92</sup> and concluded that "the material circumstances surrounding the death (...) were intended by the perpetrator to cause confusion and mislead the investigation." The consultant's preliminary conclusion was that although the evidence was properly preserved, certain of the investigative steps taken were apparently unrelated to the facts investigated, and the statements collected had inconsistencies. The preliminary report also recommended amending a group of inconsistent statements and extending some lines of investigation into her partner, her participation in the Montiel and Cabrera case, and her visit to the Petatlán Mountain Range in the state of Guerrero.

92. On June 16, 2003, the IACHR forwarded to the State the "Report of verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido, conducted by the Office of the Special Prosecuting Attorney of the Office of the Attorney General of the Federal District of Mexico" (hereinafter the "independent report").<sup>93</sup> Regarding the ballistics tests, the independent report finds the following: "my review of the forensic ballistics tests concludes that it is clear that most of the technical work was performed competently and correctly, in adherence to accepted international standards." At the same time, it suggested improvements, including: "a more prudent interpretation of the results by the criminologists, the use of a more trustworthy method for handling evidence, a reduction in the number of lab employees working on a single case, and requiring laboratory staff to take notes." Along these lines, it stated that "it is clearly impossible to determine whether Digna Ochoa's death was the result of a homicide or suicide based only on the ballistics tests."<sup>94</sup> Mr. Voth, a ballistics specialist on the team, agreed that the firearm did not leave residue, and that the test finding that it did should be discarded.<sup>95</sup>

<sup>90</sup> The Special Prosecutor found that the mere presence of the vehicle near the house of Digna Ochoa's parents around the dates of her novena was not incriminating, and they dismissed the possibility that the owner might have had anything to do with Ms. Ochoa's death.

<sup>91</sup> The newspaper *Reforma* described the discovery of a lengthy letter that claimed to be a "death sentence" for five Centro Pro lawyers and demanded a ransom for their lives (30 million Mexican pesos) or they would be executed like Digna Ochoa. However, the Special Prosecutor found no connection between this threat and the situation under investigation, as the threat was not similar to others that were related to the crime scene. In contrast, this threat "was motivated only by the financial interests of the author."

<sup>92</sup> Preliminary report of March 26, 2002.

<sup>93</sup> The independent report was drafted by Pedro Díaz Romero, with the participation of Mr. Alan John Voth on ballistics and Dr. María Dolores Morcillo on forensic medicine.

<sup>94</sup> Independent report of May 27, 2003.

<sup>95</sup> Annex 44. Technical evaluation of the ballistics tests related to the death of Digna Ochoa on October 19, 2001. Alan J. Voth. February 6, 2003. Annex to the brief of the State, August 2, 2018.

93. The independent report also addressed the handling of evidence in the medical-forensic area, based on the analysis led by Dr. Morcillo. In her opinion, although all the procedures one would expect from these types of investigations were carried out, the information and the procedures had shortcomings.<sup>96</sup> In this regard, the independent report stated that the report on the collection of the body suffered from a lack of important information "to orient the procedure. It also prevents adequate technical verification" due to its sparse description "of the corpse's condition and temperature, necessary information to determine whether the body was moved from its original position and associated with information on other factors determined during the autopsy, and to determine the likely time of death." Along the same lines, the medical report on the cadaver, although accompanied by photographs, "does not include a complete description of the presence or absence of gunshot residue on the orifices indicated as entry wounds," as expected in these types of investigations. Along the same lines, it also noted that an insufficient description of the findings in the medical exam and the autopsy report prevents a categorical conclusion as to the bullet wound in Digna Ochoa's thigh. This lack of information, "from a purely medical point of view could indicate injuries from self-defense, a quarrel, a fight, or a struggle, as well as the time of development of the injury observed."

94. Along these same lines, the independent report calls attention to the lack of basic information in the autopsy report, such as the date and length of the autopsy, although this latter error was corrected with an amendment to the autopsy report of August 20, 2002, which states that the autopsy was conducted between 2:30 p.m. and 4:00 p.m. on October 20, 2001. Additionally, the report again notes the lack of description of cadaveric phenomenon and the characteristics of the wounds. Dr. Morcillo concluded that this investigative procedure did not provide enough information to establish the origin of the nonfatal injury to Digna Ochoa's thigh. Other issues with the forensic evidence include the lack of information in the reports on the methodologies used, the procedures employed to take samples, the laboratories where the samples were sent, and the chain of custody of the evidence. Despite this and despite the errors detected and the unfounded value judgments, the forensic reports include the information most important or relevant for these types of cases.

95. Next, the independent report also analyzed the forensic document examination report, the document analysis reports, the fingerprint analysis, the DNA testing, the forensic psychological examination, the testimony, and the lines of investigation. Regarding the forensic document examination and the document analysis, the independent report finds that the papers and booklets with notes found at the location of the facts were properly studied and compared with the handwriting of Digna Ochoa, her colleagues, and her partner. In this regard, although the analysis was correct, it was not able to provide any evidence to cast light on the death of Digna Ochoa from the written documents found at the scene of the crime. Along the same lines, the independent report describes the expert fingerprint analysis, which found that the fingerprints found at the scene of the crime were analyzed pursuant to standard practice and did not shed light on Digna Ochoa's death. However, it was noteworthy the failure to describe how the evidence was collected to discharge any suspicion of contamination or interference. It also found that the results of the analysis of the eight fingerprints lifted in September 2002 is not trustworthy, as around 10 months had passed since the death of Ms. Ochoa.<sup>97</sup>

96. Regarding the DNA tests, the independent report noted a number of contradictions, especially regarding the test results on the adhesive tabs on the envelopes that contained the threats sent on August 7, 10, and 16, 2001. Although the tests ruled out the presence of Digna Ochoa's DNA and the DNA of the individuals in her orbit, the various reports on the three samples could not agree on the sex of the DNA found on the envelopes. The report of December 18, 2001, found that the DNA of the three samples came from a male. The report of November 26, 2002, found that the DNA of the three samples came from a female. A third test to determine the sex of the three samples in question found that two of them contained the DNA of the same man. However, it found that the envelope from August 16, 2001, contained no material for comparison. The fourth test, conducted jointly by the DNA experts, confirmed the presence of DNA from a man, but could not study the sample in dispute because the material had been used up. Regarding the interpretation of these

<sup>96</sup> Annex 45. Report on the technical verification of the evidence in the case of Digna Ochoa y Plácido, signed by Dr. Maria Dolores Morcillo Méndez, January 2003. Annex to the brief of the State, August 2, 2018.

<sup>97</sup> Independent report of May 27, 2003. Paras. 97-120

divergent results, the report stated that the opinions "do not provide adequate grounds for the conclusions they issue" and that non-technical errors were committed with the evidence, while in one case, a methodology was used that is no longer appropriate for these types of investigations ("electrophoresis") due to its high margin of error, among other technical deficiencies.

97. The independent report also addressed the three expert psychological profiles included in evidence. The analysis found that only the first expert psychological profile is "the most complete, detailed, and documented," with the second being somewhat less well-founded but equally reaching a conclusion that is acceptable. The consultant found that the third report "seeks to provide a psychoanalytical study of the victim's personality without managing to do so," as it fails to support itself and concludes, without grounds, that the suicide hypothesis was "improbable," a final conclusion that is unwarranted. The first and second reports both conclude that Digna Ochoa suffers from a personality disorder. The first report concludes that Digna Ochoa suffered from a schizotypal disorder characterized by paranoia, obsessive compulsions, and chronic depression. The second report only concluded that she had a low-level borderline personality disorder.

98. Regarding the testimony, the independent report recognizes that the evidence collection is abundant and covers all the necessary aspects of Digna Ochoa's professional life and her final movements in her field of work. However, it highlights that the procedures to collect testimony from campesinos in the region did not take into consideration their vulnerability to the criminal dynamics of the area, treating them instead as ordinary interrogations, with standard, preestablished questions, contrary to the recommendations of the preliminary report. This was denounced during a hearing before the IACHR on February 26, 2003, by witness testimony indicating having felt coerced during the taking of the testimony. Lastly, the report also noted the specific case of Esteban García Castro, who said he had information on the plans and actions taken to murder Digna Ochoa, and who, for bureaucratic reasons, even though he was already at the Special Prosecutor's offices, could not provide his statement.

99. In conclusion, the independent report notes that some of the evidence "was not handled (...) in adherence to normal methods and procedures" for these types of investigations, focusing its concern on sloppy chain of custody of the evidence, which is supposed to "guarantee the originality of its discovery, its preservation, and its inviolability." It also questioned the handling of the crime scene, as it was only on February 26, 2003, that the bag containing the white powder found scattered about the scene had been found. The fact that such evidence would appear after such a long time at a crime scene to which multiple people had access must be analyzed to establish why it was not found previously.<sup>98</sup>

100. The IACHR observes that the petitioner stated that the independent report found that the investigation "is flawed from the start and includes several evidentiary elements that do not follow regular methods and procedures or adhere to international standards." However, a review of the independent report did not find this quote.<sup>99</sup>

101. The IACHR notes that the independent report was taken into consideration by the Special Prosecutor. In this regard, investigators concluded the following in response to the conclusions of the independent report:

As we can see, the questions raised at the beginning of this analysis were answered. In other words, the experts in question described their reasoning in each of the investigative steps in which they were involved. They did not find, nor did they describe finding in their reports, the bag or the newspaper clippings. They stated they had only tangentially reviewed the location of the facts, without going into depth or great detail on their surroundings. Some even say it is very likely the bag in question had been at the location of the facts since the incident, one said he saw a bag like it and others. They do not rule out its existence. Obviously, as stated, this answers all the questions, and where possible, details what happened during the course of each of the investigative steps taken prior to the establishment of this Prosecutor.

<sup>98</sup> IACHR. Independent report of May 27, 2003. Paras. 158-162 and 181-194.

<sup>99</sup> Brief of the petitioner of November 21, 2008.

## 5. Approval of the agreement to not bring a criminal action of July 18, 2003 (NEAP-1)

102. Hereinafter, the IACHR will describe how, taking into consideration the expert reports provided and the lines of investigation, the Special Prosecutor adopted its first decision in the framework of AP-2576. The IACHR notes the emphasis during this first stage on aspects of Digna Ochoa's personal and family life, such as her romantic relationship with a married person, an alleged abortion, the failure to submit her report to the MacArthur Foundation,<sup>100</sup> the allegedly irregular way in which she obtained her law degree, the alleged application for a MacArthur Foundation fellowship with a fake letter of recommendation, the alleged suicide attempt following dismissal from a job in 1987, the tension in the framework of her resignation from the Centro Pro, as well as other information related to complaints filed by Ms. Ochoa over alleged physical attacks, kidnapping, and rape that took place during investigations in the 80s in which numerous contradictions were found in the accusations, discrediting them.

103. The Commission also observes that the prosecutor highlights in its reasoning the expert psychological reports of June 28, 2002, from Dr. Mendoza, who indicated that, as outlined in this report, Ms. Ochoa had schizotypal personality disorder with indications of paranoia, obsessive-compulsive personality disorder, and chronic depression, and Dr. Ayala and Dr. Juárez concluded she had a "low-level borderline personality disorder." Regarding the psychological analysis conducted by Dr. Levi and Dr. Matrajt, the Special Prosecutor dismissed its content "for failing to fulfill the proposed objectives," basing this conclusion on the results of the independent report.

104. In terms of forensics, the Special Prosecutor looked at the Corona report and validated its conclusions, finding that it was scientifically well-founded. It therefore found it proven that "the location where DIGNA OCHOA Y PLÁCIDO's body was found is the place of the facts, and the body was in its original location and position." It also found that:

The fact that the expert witnesses have reached the scientifically supported and technically proven conclusions that the deceased, DIGNA OCHOA Y PLÁCIDO, was the one who took her life while trying to make it look like a homicide should be binding for the findings of the case file obtained throughout the prosecutor's investigation in the sense that there is no evidence or even indication leading to the conclusion that another individual or group of people may have participated in her death. Also, the series of significant events in her life must be kept in mind, which, analyzed objectively, demonstrate a certain level of mendacity in her conduct. (...) All this strengthens the prior conclusion, which is that the events in which DIGNA OCHOA Y PLÁCIDO lost her life are not relevant to criminal law, as none of the conduct is included within the applicable legal code.

105. The Commission observes that the Special Prosecutor identified problems in the chain of custody of the evidence collected at the location of the facts. In this regard, it stated that "the circumstance was not so serious as to radically alter the scene nor find that the conclusions of some of the reports were not completely valid. Therefore, the location of the facts objectively constitutes a 'witness' that would have a difficult time lying." Without prejudice to this, the IACHR observes that the Special Prosecutor also found that it was proven that the firearm did not leave a residue on the hand of the person firing it; that the firearm belonged to Ms. Ochoa and that the shell casings and the projectile extracted from the cranium were fired by that firearm; and that there were no indications of a struggle or self-defense on Digna Ochoa's body or clothing, among other conclusions drawn from the Apodaca and Corona reports adopted by the Special Prosecutor.

106. Regarding the threats reported by Digna Ochoa and the Centro Pro in years prior, the Special Prosecutor found it was not possible to connect the death to AP-2576, as Digna Ochoa was found to have committed suicide. Likewise, it stated that "none of the matters in which DIGNA OCHOA Y PLÁCIDO was involved lasted so long; that is, none of them covered the period between 1995 and 2001, making it possible to implicate the actors involved in the threats, to say nothing of OCHOA's death." Likewise, the Special Prosecutor found it proven that the three anonymous threats against Digna Ochoa (dated August 7, August 10, and August 16, 2001) were shown by her to her cousin in June and July (months before they were sent), "a

<sup>100</sup> It should be noted, as indicated previously, that Digna Ochoa sent an email the day before her death indicating that she had completed her report. However, the report was not found among her physical or digital documents, according to the Special Prosecutor.

situation that, in addition to being illogical, also calls into question the veracity of the messages, regarding which she did not file the corresponding criminal complaint.”

107. Regarding third-party intervention in the action, the Special Prosecutor said participation was limited. In fact, it notes only that on May 6, 2003, the legal representative leading the third-party intervention, Mr. Becerril,<sup>101</sup> submitted a brief with forensic medicine, forensic, and forensic chemical evidence. However, the evidence was declared inadmissible because it was already part of AP-2576, listing all the evidence part of the request. The Commission also observed with regard to the family that "it appeared reticent to participate in the (...) Investigation." In this regard, the petitioner stated that the evidence offered was analyzed by government experts who had already formed an opinion on the hypothesis of suicide, leading to the rejection of the evidence offered.<sup>102</sup> In this respect, the intervenor filed for a writ of constitutional protection (*amparo*) (988/2003) asking that the evidence be added to the case file. In the framework of that procedure, the Special Prosecutor issued its “reasoned report” in response, asking that the *amparo* be dismissed or denied, based on arguments already reviewed herein.<sup>103</sup>

108. This situation was in fact confirmed by the Commission on Human Rights of the Federal District (hereinafter “the CDHDF”) in its Special Report on the Digna Ochoa case (hereinafter “the Special Report”) whose content will be detailed below. Thus, the CDHDF noted that the opinion of the expert witnesses was evidence of the failure to respect the constitutional right of the victims and offended parties to offer evidence during the inquiry stage. It also expressed concern regarding the experts’ statement that the third party contributors to the action was based on a false premise, as it indicated bias and an unobjective preference toward a particular line of investigation.<sup>104</sup> In a brief of May 27, 2003, the intervenor stated that the Special Prosecutor itself had ordered new expert witness reports despite the existence of expert witness opinions, so there was no legal reason not to admit the evidence offered.<sup>105</sup>

109. Through a resolution of July 9, 2003, the Office of the Public Prosecutor stated that the additional evidence being offered by the intervenor was unnecessary, as the analyses described in the brief offering the evidence had already been done.<sup>106</sup> The CDHDF notes that this statement is without merit, as the report of the IACHR experts stated that some of the analyses subject to verification were not conducted during the investigation in compliance with standard methods and procedures for these types of analyses, nor did they meet international standards.<sup>107</sup>

110. Based on these considerations, on July 18, 2003, the Agent of the Office of the Public Prosecutor in charge of the investigation recommended that the Office on the Coordination of Agents of the Public Prosecutor (hereinafter “the CAMP”) bring no criminal action following analysis of the body of evidence and expert reports adopted pursuant to Resolution AP-2576. This resolution concluded that “these facts are outside the realm of Criminal Law, as under the law, they do not violate the legal rights protected by society, given that criminal law concerns itself with pursuing and punishing all conduct that threatens the normal affairs of the collective, such as conduct that takes the life of a person, or conduct that disrupts peace and security,” dismissing the hypothesis of homicide and leaning toward that of suicide. On September 17, 2003 the CAMP accepted the proposed Resolution and notified the victims of its decision.

111. The case file indicates that the intervenor filed a motion challenging this resolution, appealing NEAP-1 before the CAMP. The motion was rejected in an order dated October 29, 2003.<sup>108</sup> The IACHR notes that these steps of the procedure are not included in the case file.

<sup>101</sup> Annex 46. Brief of Becerril requesting inclusion of the evidence. Annex to brief of the petitioner of May 23, 2003.

<sup>102</sup> Annex 47. Official Letter FE-263/03 of the PGJDF. Annex to the brief of the petitioner, June 19, 2003.

<sup>103</sup> Annex 48. Case file 2951/2003, *amparo* 988/2003. Reasoned Report of June 19, 2003. Annex to the brief of the State of July 2, 2003.

<sup>104</sup> Annex 49. CDHDF. Special Report. Para 97.

<sup>105</sup> Annex 50. Annex 6 to the Special Report.

<sup>106</sup> Annex 51. Annex 12 to the Special Report.

<sup>107</sup> IACHR. Report verifying the technical evidence. Pedro Díaz Romero. May 27, 2003. Paragraph 183.

<sup>108</sup> Annex 52. Indirect *amparo* hearing 2262/2003. Annex to the brief of the State, August 18, 2004.

**6. “Special report on the irregularities in the preliminary inquiry into the death of Digna Ochoa y Plácido,” prepared by the Commission on Human Rights of the Federal District<sup>109</sup>**

112. On June 21, 2004, the CDHDF sent the IACHR its special report. This agency had prepared its report based on a complaint submitted by the intervenor over the alleged irregularities during the preliminary investigation stage of the process and irregularities in some of the expert witness reports during the process, up through the adoption of NEAP-1. In addition to the information on this report contained in the above section, the CDHDF also made other findings, described hereinafter.

113. The CDHDF observed that, in some cases, the expert witness reports were conducted without methodology or testing and were based on incomplete or inexact information. The Special Report made observations with regard to the preservation of the location of the facts; the description of the location of the facts in the report and the inconsistencies between the photographs, floor plans, and other graphics in the case; and the inconsistencies in the descriptions of the injuries in the different expert witness and forensic reports.

114. The CDHDF observed with regard to the identification, position, and orientation of the body, the external examination, the condition of the body, the examination of the clothing, and the analysis of the firearms, shell casings, and projectiles that there was never a meeting between the forensic expert who wrote the report with the doctors who did the medical exam and those who did the autopsy on Digna Ochoa’s body to exchange information and support their conclusions with more information. The CDHDF also noted that most of the conclusions from the report are not supported with reasoning or tests, and an acceptable explanation is not provided on the technical basis, the operations or procedures carried out, or the analysis or interpretation of the results. In its review of the statements from prosecutors on the reconstruction of the facts, the CDHDF noted that many of them are groundless.

115. Regarding the Apodaca report, the CDHDF noted that the majority of the conclusions it reaches in the suicide/homicide comparison do not describe the steps, procedures, or tests taken to reach them, nor does it clarify how its analysis or interpretation of the results was conducted. This means that without a description of the methods used, it is not possible for another expert to reproduce the same procedure and obtain the same results. Based on the way the claims are made, the CDHDF concludes they are only opinions.

116. Regarding the autopsy conducted by the experts of the Forensic Medical Services, the CDHDF stated, among its most significant comments, that because the experts were not able to visit the scene of the facts, their conclusions were limited; that they did not provide a time of death, and that their amended calculations were not based on the body of forensic literature; that they omitted important aspects, such as the start and end time of the autopsy and the names of the people present; and they failed to take X-rays, among other information and examinations, in violation of the Minnesota Protocol. Likewise, regarding the medical analysis to follow up on the PGJDF’s autopsy, it found that the experts again failed to establish a time of death, did not visit the scene of the facts or take part in the recovery of the body; they did not indicate the time of completion of the autopsy or the names of the participants, and they failed to take X-rays, among other things; that up to 10 of the protocols on internal examinations (“Model Protocol”) were omitted in the examination of Digna Ochoa’s internal organs and systems.

117. Lastly, the IACHR observes that the special report noted that the finding of the trajectory of the projectile was not trustworthy, given the discrepancies. It also found that the autopsy report issued by the Forensic Medical Services did not describe the trajectory of the bullet through the cadaver’s thigh. Regarding the second autopsy report, its conclusions on the trajectory of the bullet are different from those of the first autopsy report, the forensic opinion of October 20, 2001, and the forensic analysis of June 28, 2002. It concludes that all this served to muddle the facts further rather than elucidate them.

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<sup>109</sup> All the information in this section is contained in: Annex 49. CDHDF. Special Report.

## 7. Actions subsequent to the adoption of NEAP-1

### 7.1. Amparo 2262/2003 against the decision to approve NEAP-1<sup>110</sup>

118. After the rejection of its motion for reconsideration of decision, the intervenor filed for an indirect writ of *amparo* against NEAP-1 on November 19, 2003. According to the ruling on it, the filing was based on 30 procedural, evidentiary, and expert pleadings. Thus, the intervenor questioned why he was not allowed to submit evidence (pursuant to the terms described in this report); the rejection of the motion for reconsideration of decision; the lack of interest in the signs of injuries caused to Ms. Ochoa before her death, the way the body was moved from its original position, and the information gleaned from the corpse; the failure to exhume the body; the failure to study the bloodstains on some related objects at the scene of the facts, the blood stains on some articles of clothing (coat, blouse) but not others (scarf, gloves), and the lack of bloodstains or brain matter on the firearm. The intervenor also found that the hypothesis of suicide was supported only by the location of the shell casings, with no explanation for why the firearm ended up under the body if the assumption is that she shot herself in the head; for her headband being found away from the body; the missing blouse button; the white powder scattered around the building; and other issues involving a lack of motive.

119. The judge hearing the *amparo* found “the concepts of the violation alleged to be inadmissible on one hand and groundless on the other.” He thus found with regard to the procedural questions surrounding officials’ failure to accept the evidence offered without competence that procedural guarantees to present evidence were not violated, as the grounds given was that the expert witness reports offered had already been conducted, and the rejection from the designated expert witnesses was an action that was ratified by the competent authority.

120. Along the same lines, regarding the failure to address injuries that could be signs of a struggle and violence committed against the body, the judge found that the expert witnesses did indeed address these issues. For example, regarding the alleged ecchymosis on the “edge of the left eyelid,” he stated that the coloring observed in the photograph was reviewed by experts and they concluded that it was a bloodstain, not from a blow. The IACHR notes that the *amparo* judge dismissed each of the injuries that were allegedly not addressed, dealing likewise with the markings on the corpse.

121. Regarding the alleged manipulation of the body from its original position, the *amparo* judge concluded that the NEAP-1 reports were sufficiently grounded on the photographic material, the autopsy, and the rigor mortis analysis. He also concluded that the exhumation of the body was not necessary, as all the required analyses of Ms. Ochoa's body had been conducted, especially those regarding the gunshot wounds, adding that even the initial mistakes and contradictions were corrected through subsequent amendments. In these same terms, the *amparo* judge stated that tests of all the blood stains found on objects were duly carried out.

122. Regarding the failure to question the absence of blood and brain material on the firearm that killed Digna Ochoa, the *amparo* judge stated that “a report of this nature is not necessary. As established by the medical forensic experts, the same ones who worked consistently with the prosecutor, in a high percentage of violent acts in which a firearm is used to fire from close range or millimeters away from the object struck by the bullet, no bloodstains or tissue are found on that weapon.”

123. Thus, addressing other additional issues such as the fact that the firearm leaves no residue on the person who fires it, and that the gloves on Digna Ochoa's hands and the white powder were studied, and that therefore, the hypothesis of homicide was indeed examined, the IACHR observes that the judge concluded on July 22, 2004 that “the Courts of the Union will not protect” the intervenor as regards the adoption of NEAP-1.

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<sup>110</sup> All the information in this section is contained in: Annex 52. Indirect *amparo* hearing 2262/2003. Annex to the brief of the State, August 18, 2004.

124. Subsequently, according to the parties, the intervenor appealed the lower judge's decision to the Second Collegiate Criminal Tribunal of the First Circuit, an appeal that was resolved on February 25, 2005. According to the case file, the Collegiate Tribunal found that the refusal to accept the evidence offered by the intervenor due to a "super abundance of evidence" sidestepped the interests constitutionally afforded to the defense, noting that the family had a right to submit its evidence if it disagreed with the official expert witness reports, as they are a party to the judicial process. Thus, the Collegiate Tribunal overturned the judgment in question and ordered the intervenor's evidence admitted. The IACHR notes that this judgment was not added to the case file.<sup>111</sup>

## **7.2. Adoption of a new agreement to not bring a criminal action of February 24, 2007 (NEAP-2)**

### **7.2.1. Offering of evidence from the intervenor**

125. The case file indicates that following the aforementioned ruling, the Special Prosecutor ordered the evidence admitted on May 6, 2003.<sup>112</sup> Regarding this, the Commission observes that the evidence offered included the preparation of expert reports on forensic medicine, forensics, and chemical analysis, for which the expert witnesses of the intervenor requested access to the physical evidence and the exhumation of Digna Ochoa's body.

### **7.2.2. Expert witness report on chemical analysis from the intervenor<sup>113</sup>**

126. The case file includes the conclusions from the report from expert witness Fernando Lara, offered by the intervenor on chemical analysis. According to this expert witness report, the prosecutor's reports were contradictory with regard to whether the firearm left a residue on the person who fired it or not, leading him to do his own experiment. He concluded that the firearm "is not hermetic and yes (positive) does leave a residue on the hand(s) of the person who fires it," among other issues based on tests he conducted.

127. In this regard, prosecutor expert witnesses Corona and Lozano responded to Lara's results by stating that his conclusions are not based on positive results but on presumptions or on the fact that many of his tests were carried out under different conditions, without due care paid to environmental factors. For this reasons, his results were described as dubious.<sup>114</sup> Specifically regarding the testing of the bullets (sodium rhodizonate), the observing expert witnesses suggested new tests be conducted "under the conditions in which the facts took place," as the person who fired the gun was not using latex gloves like the ones found on Digna Ochoa's body.<sup>115</sup>

128. The case file indicates that the agent of the Office of the Public Prosecutor ordered a new sodium rhodizonate test on May 18, 2006. However, on May 23, 2006, the intervenor expressed opposition to this new test, arguing it "exceeded compliance with the execution of the *amparo*," reiterating his request on May 31, 2006, and parallel to this, filing a motion for reconsideration of dismissal<sup>116</sup> for excessive compliance with the ruling (May 30, 2006), which was not admitted. Consequently, the intervenor filed "a motion for reconsideration of dismissal of the motion for reconsideration of dismissal" (June 5, 2006) before the Collegiate Tribunal, which finally ordered it be admitted before the same judge who had granted the *amparo* ordering the acceptance of evidence from the intervenor.<sup>117</sup>

<sup>111</sup> Annex 60. Decision of the PGJDF of November 26, 2010 approving the NEAP-3. Annex to the brief of the petitioner, January 27, 2012.

<sup>112</sup> Annex 60. Decision of the PGJDF of November 26, 2010 approving the NEAP-3. Annex to the brief of the petitioner, January 27, 2012.

<sup>113</sup> Annex 61. Conclusions of the report on forensic chemical analysis from expert Fernando Lara of February 27, 2006. Annex to the brief of the State, August 2, 2018.

<sup>114</sup> Annex 62. Comments of expert witnesses Corona and Lozano on expert witness Lara's analysis. Annex to the brief of the State, August 2, 2018.

<sup>115</sup> Annex 63. PGJDF. Observation report on the bullet tests and sampling with sodium rhodizonate of November 18, 2005. Annex to the brief of the State, August 2, 2018.

<sup>116</sup> Annex 64. Motion of reconsideration of dismissal before the First District Amparo Judge "B" in criminal matters. Annex to the brief of the petitioner.

<sup>117</sup> Annex 65. Motion for reconsideration of dismissal of appeal of complaint filed before the First District Amparo Judge "B" in criminal matters. Annex to the brief of the petitioner.

129. The case file indicates that the motion for reconsideration of dismissal of appeal was granted and notified on October 31, 2006. It was appealed by the Office of the Public Prosecutor before the Second Collegiate Criminal Tribunal of the First Circuit, and that appeal was granted on November 29, 2006. This finding of admissibility was appealed with a motion of complaint by the intervenor, which was found without merit on January 12, 2007. Lastly, the Collegiate Tribunal ruled to find the motion for reconsideration of dismissal of the motion of complaint submitted by the Ministry to be without merit.<sup>118</sup> The IACHR notes for the record the elements in this paragraph are not included in the case file.

### 7.2.3. Forensic medical report of the intervenor<sup>119</sup>

130. The case file also includes the forensic medical report of Dr. Hugo Reyes and Dr. Carlos Morales, expert witnesses from the intervenor, dated April 17, 2006. The report begins with the hypothesis that Digna Ochoa "was physically attacked inside the building where her body was found, causing the injuries from prior to her death found on her body, as well as the gunshot wounds observed on her left thigh and her head."

131. The report was presented in three parts. The first part describes the background and the issue in question. The second part answers the questions asked by the intervenor regarding the forensic medical aspects of Digna Ochoa's death, while the third part offers the report's conclusions. In this regard, the report indicates that, following the exhumation of the body, the expert witnesses found that the gunshot wound was in an area not "typical" for suicide, and that there was an unsubstantiated change to previous expert witness reports regarding the bullet's trajectory in the head and the ecchymoses on the legs. They concluded that, following an analysis of the exhumed skull, the bullet trajectory was from left to right, upward, and from back to front; and that the ecchymoses were recent, describing their coloring as dark, and therefore, following the Minnesota Protocol, "if [the ecchymosis] is dark purple in color, it is recent."

132. The expert witnesses likewise addressed the reddish ecchymosis on the upper eyelid, which was dismissed by the prosecutor's expert witnesses, who questioned whether it really existed. In this regard, they stated that, following analysis of the photographs and following up on the documentation of the investigations, this ecchymosis was observed and photographed during the investigation, which in its opinion corroborates its existence, dismissing analyses finding that the injury did not exist or that it was a bloodstain or a phenomenon known as "raccoon eyes" that can happen with these types of injuries. This narrative was also pursued regarding other possible injuries dismissed by the expert witnesses of the prosecutor as "dried blood" also located on Ms. Ochoa's face (outside edge of the left eyebrow, middle edge of the ear, around the mouth, left side of the neck).

133. Regarding the aforementioned ecchymoses, the intervenor's expert witnesses concluded that "Digna Ochoa y Plácido experienced physical abuse prior to the fatal gunshot wound."

134. Regarding the final position of Digna Ochoa's body, the intervenor's expert witnesses concluded that the seriousness of the injury in her left thigh prevented her from (...) moving on her own," as the wound cut all the way through the soft tissue, and the "contusion effect, plus the trauma and rupture of small arteries, veins, and nerves in this part of the body would cause complete impairment of this limb." In their understanding, based on the Minnesota Protocol, gunshot wounds are not methods of torture but of execution, although at times, nonfatal gunshot wounds are found to be used to immobilize a victim. Based on this, they concluded that the gunshot wound to her thigh was intended to prevent the victim from fleeing and immobilize her.

135. Regarding the victim's hands, the intervenor's expert witnesses stated that in suicides, the tendency is for the rigidity caused by the death to make the hand clamped down on the firearm that caused the death in a cadaveric spasm. In this regard, they indicated that the photographs of Digna Ochoa's hands do not show this characteristic, only "natural stiffening and retraction of the hands' muscles following death as a result of regular rigor mortis" (claw-like hand). Of particular note, the gun was not found in her hand. Likewise, the

<sup>118</sup> Annex 60. Decision of the PGJDF of November 26, 2010 approving the NEAP-3. Annex to the brief of the petitioner, January 27, 2012.

<sup>119</sup> Annex 66. Forensic medical report from the intervenor of April 17, 2006. Annex to the brief of the State, August 2, 2018.

intervenor's expert witnesses contradicted the prosecutor's expert witnesses on finding two sets of postmortem lividities, establishing that "the position in which the body was found is not the final post mortem position, meaning that Digna Ochoa y Plácido's body was moved after her death." They concluded that at the time of her death, she was face up, pointing to a series of lividities, and she was then moved to the position in which she was found, producing a second series of lividities (abdomen, left side) of a less intense color than the first group. This would explain why the body does not have "raccoon eyes."

136. Taking this into account, among other issues, the intervenor's expert witnesses concluded that the location of the suicide wound is unusual, as is her use of her left hand to shoot herself, given that she was right-handed; that the gunshot wound to the thigh would have immobilized her; that the body had premortem injuries typical of a frontal assault and indicative of physical mistreatment; that the body was moved from its original position, as demonstrated by the postmortem lividity; and that the position of the hands do not indicate the kind of cadaveric spasm that comes with suicide, but rather the normal rigor mortis that comes with death.

137. Prosecutor expert witnesses Corona and Lozano reviewed the forensic report of the intervenor and stated that its conclusions "allow for maintaining the hypothesis reached" in their reports. In their view, the report is contradictory because the expert witnesses stated that the parietal area is not commonly chosen for suicide after having stated that Digna Ochoa shot herself in the left parietal.

#### **7.2.4. Forensic report of the intervenor<sup>120</sup>**

138. The case file contains the forensic report of expert witnesses Reyes Rodríguez and Morales González. After analyzing the evidence, in their report, the expert witnesses concluded that "the deceased was attacked, resulting in a gunshot wound to her head." The intervenor's expert witnesses disagreed with the reconstruction of the facts of the Corona report, stating that in their opinion, each and every piece of material evidence related to the facts was examined—for example, each and every blood stain (...). In this regard, the report proposed a reconstruction of the facts consisting of three parts.

139. First, they determined that the chewing gum found at the scene appears to have been smashed without determination of the filamentous object that smashed it, and that the likely cause of the expulsion of the chewing gum was the blow indicated by the ecchymosis around the mouth. They also noted that the existence of smeared bloodstains covered by white powder on the throw covering the chair were not analyzed; and that the headband found on the floor is a sign of a physical attack; among other relevant information. Based on this, for the first part, the report concluded that the evidence analyzed demonstrates that Digna Ochoa was physically assaulted prior to her death; that she was never standing prior to her death, as demonstrated by the lack of blood on her socks and the fact that the white powder does not appear on the surface of her boots but only inside them.

140. Second, the report concluded the boots show signs of being dragged on the toes; that the button found at the scene of the facts was from Digna Ochoa's clothing and was ripped off; that the stitching was coming undone on the left shoulder pad of her blouse and also of the coat Ms. Ochoa was wearing on the day of her death, indicating that "physical force was used on the clothing of the deceased, in an act of struggle." The expert witnesses also took into consideration the above-mentioned issue regarding the trajectory of the bullet and added that it indicated an oblique angle in the position of the victim-assailant; the luminol, chemical, and blood trace tests finding blood and brain spatters on the walls and objects (west wall across from the bathroom, the book "Los padres y los estudios de los hijos," and the backrest of the south armchair) that are not consistent with the pattern left by a self-inflicted wound.

141. Altogether, this information led the expert witnesses to conclude the following in the second part of their report: "(...) after falling to the floor (...) she was moved violently (...) scratching the toes of her boots and ripping the button off her blouse, ripping the stitching (...) and impregnating the white powder deep in the

<sup>120</sup> Annex 67. Forensic report from the intervenor of April 17, 2006. Annex to the brief of the State, August 2, 2018.

underarm of this latter garment (...).” In this reconstruction, “after forcing her into the room, her attacker positioned him- or herself behind her and, sitting astride her, used the left hand to press on the left side of her neck, forcing the right half of her face into the seat of the armchair, causing the ecchymoses [to the face and neck].” The attacker shot her in the left parietal, causing the splatting described, without prejudice to other bloodstains from smearing that were the result of the struggle (extreme west of the seat of the south armchair, internal upper surface of the left armrest cover, left side of the seat, among others).

142. Third, the experts examined the cadaveric lividities and the absence of “raccoon eyes” and determined that the location where Ms. Ochoa’s body was found “was not her final post mortem position.” They added that given that neither the blouse cuff, nor Digna Ochoa’s hand, nor the red latex gloves tested positive in the bullet trace tests, it could be surmised that Ms. Ochoa did not shoot herself, as the residue would be evident after three shots. On this point, they disagreed with the prosecutor’s expert witnesses, finding that the conclusion that the gun did not leave a residue on the hand of the person who fired it was not correct. Instead, the finding issued by the prosecution’s expert witness, in their understand, showed results that were the opposite of what was described in that expert witness report: that is, firing the gun does leave a residue on the hand, and because “there is no such thing as a hermetically-sealed firearm.”

143. The expert witnesses also pointed to a series of indications pointing to the high probability that the scene of the facts was contaminated “to undermine” an investigation. In their understanding, these elements include the tissue inside the left glove, the cleaning and placement of the firearm, the smashed gum and the shell casing that was bent in a way that suggested outside pressure other than from its firing; the white powder scattered after Digna Ochoa’s death in locations not related to the facts; and the inconsistency between the marks from the dust on the firearm and on the latex gloves.

144. The expert witnesses next concluded a lack of technical support for the order of the shots as concluded in the Apodaca report and the lack of support for the idea of an initial “test shot” against the south armchair and a second shot in the thigh as a first failed attempt at suicide by damaging the femoral artery. They also questioned the holding of the coat and the idea that Digna Ochoa supposedly embraced it and bit it in pain, calling it speculative, and they questioned how the conclusions on the way in which the blood stained furniture and walls were reached using tests with artificial blood, but with no analysis of the form of the drops (elongated stains, drips, main drips and secondary drips, etc.). Lastly, they pointed to the conclusion regarding the final position of the body, which was accepted with incorrect analysis of lividity, blood flow, and distribution thereof.

145. They also questioned the Corona report for ruling out the presence of an assailant at the scene of the facts, as it analyzes the facts solely based on the position in which Digna Ochoa’s body was found, reaching the conclusion that it would have been impossible for someone else to have been in the room. In their understanding, the opinion did not take into consideration any of the other elements described in this part of the report.

146. Lastly, bringing together all three sections of their analysis, the expert witnesses concluded that Digna Ochoa was physically assaulted (gum, ecchymoses on face, lips, and thigh) and shot first in the leg, immobilizing her. Next, the attacker put the victim on the floor close to the north armchair (transferring blood), and it is here she loses her headband. She is then dragged (scratched boots, button ripped of, clothing comes unstitched), and her face is pressed against the seat of the south armchair (ecchymoses on the neck and right ear) and the attacker fires into the seat of the aforementioned armchair. Next, the attacker (negative results for dust on the hands, sleeves, or gloves of Digna Ochoa), shot her in the left parietal, killing Digna Ochoa (blood and brain matter splatter toward the bathroom, bloodstains on the book and west wall), then contaminated the scene of the crime with the white powder and relocated the body in the position in which it was found.

### 7.2.5. Document of comments on the release of evidence offered by the intervenor<sup>121</sup>

147. The above conclusions were reviewed by the expert witnesses for the prosecutor, Jaime Corona and Oscar Lozano. They found that the description of the position in which Digna Ochoa's body was found did not correspond to reality, making the "background" section incorrect and producing errors in the examination of the lividities, for example. The expert witnesses for the prosecutor also disagreed as to the ecchymoses on the face, saying these were blood stains, as documented, and that the color of the injuries on the leg is an indication that they took place prior to the day of her death. They stated that the conclusion that these markings indicated physical assault was therefore erroneous. In these same terms, they disagreed with regard to the alleged immobilization of Ms. Ochoa after she was shot in the thigh, arguing that the wound only affected muscle.

148. Next, the expert witnesses also indicated there was no evidence that Digna Ochoa, once fallen on the floor, was violently moved to the armchair where she was found dead, as there are no injuries resulting from struggle, indications of self defense, or marks from restraint or contusion. Again, they emphasized that all the marks identified by the expert witnesses for the intervenor as injuries were gone once the body was cleaned and that "they are not documented in any of the initial investigative steps." They also disagreed with the conclusion that the location of the gunshot wound was atypical for a suicide, citing literature in this regard.

149. The prosecutor's expert witnesses described as "incorrect" the conclusion that Digna Ochoa did not shoot herself based on the ballistics report concluding that the gun did not leave a residue. In this regard, they stated that although the report concluded that the firearm "is not hermetic," the test did not "tend to find the three elemental components of ignited powder," and the test shots were done in such a way as to not correctly reproduce the context in which the shots were fired, nor were the latex gloves taken into consideration.

### 7.3. Second proposal to not bring a criminal action (NEAP-2) and decision of the Coordinator of Agents of the Office of the Public Prosecutor

150. The Commission observes that on March 7, 2007, the intervenor submitted a brief to the agent of the Office of the Public Prosecutor under the CAMP of the PGJDF. In that document, the representatives of the relatives said the hypothesis of suicide was unfounded, based on the conclusions of the expert witness reports offered, whose information has been described in this report.<sup>122</sup>

151. With the new evidence submitted by the intervenor, the agent of the Office of the Public Prosecutor sent a proposal to the CAMP on May 12, 2007, for the NEAP-2, and with this action, requested a resolution of compliance with *amparo* 2262/2003 from the Seventh Criminal Judge on Amparo of the Federal District, which found on June 7, 2007, that the judgment had been fulfilled. In response to this ruling, the intervenor filed a motion of complain that was admitted on June 22, 2007, but declared without merit. The IACHR notes for the record that the procedural elements of this paragraph are not included in the case file.<sup>123</sup>

152. After the presentation of the NEAP-2 from the agent of the Office of the Public Prosecutor to the CAMP, the CAMP objected to the proposal on September 17, 2007, and ordered new investigative steps be taken. These investigative steps sought to obtain the cooperation of Jesús Ochoa y Plácido in securing the names of relatives who might have information on the death of their sister; obtain a statement from Javier Torres, who might have information on the participation on the involvement of the chiefs (Rogaciano Alba and Javier Valle) in the facts of the case according to newspaper reports; obtain direct statements from Javier Valle and Rogaciano Alba (amendment); and request an expert witness report on the positioning of the

<sup>121</sup> Annex 68. Document of comments on the release of evidence offered by the intervenor of expert witnesses for the prosecutor Corona Méndez and Lozano y Andrade. No date. Annex to the brief of the State, August 2, 2018.

<sup>122</sup> Annex 69. Brief from the intervenor to the agent of the Office of the Public Prosecutor under the agent coordinator of the PGJDF of March 7, 2007. Annex to the brief of the petitioner.

<sup>123</sup> Annex 60. Decision of the PGJDF of November 26, 2010 approving the NEAP-3. Annex to the brief of the petitioner, January 27, 2012.

victim-attacker. The IACHR notes for the record that the procedural elements of this paragraph are not included in the case file.<sup>124</sup>

153. The case file indicates that in his statement on February 10, 2009, Jesús Ochoa y Plácido identified Alfredo García Torres, Rogelio García Pineda, and Marisol Martínez Santiago as individuals who may have information valuable to the investigation. However, the case file indicates that the Office of the Public Prosecutor decided not to take these investigative steps. Along the same lines, on July 20, 2009, the Office of the Public Prosecutor again decided not to amend the statement by Javier Torres, as it had his statement from 2007.

154. Likewise, the Commission observes that the Red Guerrerense de Organismos Civiles de Derechos Humanos (network of Guerrero civil rights NGOs) told the Office of the Public Prosecutor on February 18, 2010, that campesino Javier Torres Cruz was detained, tortured, and interrogated as to the alleged connection of Rogaciano Alba with the death of Digna Ochoa (December 3, 2008), as he had implicated Mr. Alba and had information on that connection. They stated that since his release, Mr. Torres had remained in hiding and feared for his life, for which reason in December 2008, they requested precautionary measures from the IACHR.<sup>125</sup> According to the information analyzed, Rogaciano Alba had been detained several weeks prior in Jalisco due to his connections to drug trafficking. The signatories of the letter asked for the suspect to be interrogated for the Digna Ochoa investigation. The case file indicates that on March 3, 2010, the intervenor also demanded this interrogation.<sup>126</sup>

155. The Commission notes for the record that Mr. Torres Cruz stated on September 19, 2007, before the Office of the Public Prosecutor that on May 7, 2005, during a social visit to the home of Javier Villa Valle (alias “El Cabezón”), he was told the following:

(...) He had been told by his cousin, Modesto Acosta Ávila, from El Carrizal, that he and Mr. Nicolás Martínez, alias “el Cuarterón,” and Daniel Bautista, alias “el Mocho,” that Mr. Rogaciano Alba Álvarez had sent them to kill Digna Ochoa, and that Mr. Alfredo Acosta Ávila was also involved. The next day, it was rumored in Petatlán, Guerrero, that Javier Valle Villa told his brother-in-law Daniel Bautista, alias “el Mocho,” that he had told us this, and because of that, Mr. Rogaciano Alba Álvarez has been after us since then (...) I also ask that the state of Guerrero provide us with protection. Lastly, this document includes a newspaper clipping from *La Jornada* dated March 15, 2007, with an interview of the undersigned entitled “ROGACIANO ALVA MANDO MATAR A DIGNA OCHOA, ASEGURA CAMPESINO DE GUERRERO” (Rogaciano Alba ordered Digna Ochoa killed, says Campesino from Guerrero), which I ask be submitted for the preliminary inquiry. (...).

156. It is noted from the case file that Rogaciano Alba was interrogated on March 5, 2010. In his statement to the prosecutor, Mr. Alba said the newspaper report about him was false and that he would not comment further.

157. The Commission observes that the case file indicates that on May 4, 2010, expert witnesses Anselmo Apodaca Sánchez and Alfonso León Romo gave a new forensic expert report. This report has not been added to the case file. However, it was summarized<sup>127</sup> as follows:

Based on the inconsistencies so far found in the case file between the amendments of the autopsy and the expert report from the intervenor of June 28, 2005, describing the trajectory of the bullet fired (...) we can establish that the slight difference of only millimeters described by the forensic medical experts (of the Forensic Medical Service) and the forensic medical experts (of the intervenor) IS NOT, from the perspective of criminal enforcement, decisive and categorical enough to change the reconstruction of the facts established in the field

<sup>124</sup> Brief of the petitioner of March 17, 2013.

<sup>125</sup> IACHR. MC-344-08. The Commission notes that during the processing of the precautionary measure, the requester was murdered on April 19, 2011, and his brother was seriously injured. Environmentalist organizations from the state of Guerrero attributed the attack to Rogaciano Alba, as a result of the victim’s allegations of Mr. Alba’s connection to the death of Digna Ochoa. The IACHR granted precautionary measures on July 19, 2011, to Mr. Torres’s relatives. The representatives of the beneficiaries reported they had lost contact with the relatives. The IACHR lifted the measures on November 27, 2012.

<sup>126</sup> Annex 60. Decision of the PGJDF of November 26, 2010 approving the NEAP-3. Annex to the brief of the petitioner, January 27, 2012.

<sup>127</sup> Annex 60. Decision of the PGJDF of November 26, 2010 approving the NEAP-3. Annex to the brief of the petitioner, January 27, 2012.

forensic report prepared by the undersigned, dated June 28, 2002, which came to its conclusion based on analysis of all the evidence produced by the actions taken by Digna Ochoa y Plácido, not solely the trajectory of the bullet fired from the gun, which is indeed a piece of evidence that must be taken into account.

158. In the same circumstances as the foregoing opinion, the record shows that on July 19, 2010, expert witness Juan Bartolo Sánchez offered an expert witness report on ballistics to the Office of the Public Prosecutor in which he concluded the following: "because of their loss of material and deformation, the two problem bullets are not useful for conducting a comparative or a GRC analysis to determine the signature of the gun that likely fired them."<sup>128</sup>

159. Based on this information, the agent of the Office of the Public Prosecutor proposed a third agreement to not bring a criminal action (NEAP-3), discussed in the following section.

#### **7.4. Third proposal to not bring a criminal action (NEAP-3) and decision of the Coordinator of Agents of the Office of the Public Prosecutor<sup>129</sup>**

160. Based on the new evidence added, the case file indicates that on August 20, 2010, the agent of the Office of the Public Prosecutor proposed NEAP-3 for the consideration of the CAMP. The agent of the Office of the Public Prosecutor found that there was no more essential evidence to take into account "and that the evidence included in the case file is enough to issue the legal decision required."

161. Under these conditions, the agent of the Office of the Public prosecutor laid out the lines of investigation ("1. Soldiers; 2. Guerrero; 3. Family, social, and work environment") and the sublines of investigation (similar to those found in NEAP-1). Regarding the investigation regarding "soldiers," the Commission observes that the evidence presented and analyzed is the same as in NEAP-1. Thus, the conclusion is similar in the sense of dismissing any participation by the 40th Infantry Battalion (whose members were prosecuted for the torture and arbitrary detention of environmentalists Cabrera and Montiel) and the 19th Infantry Battalion (which was connected to Digna Ochoa's visit to the Petatlán Mountain Range two weeks prior to her death, an area in which the Battalion was located) in the death of Digna Ochoa.

162. Regarding the "Guerrero" line of investigation, the IACHR observes that as far as the evidence already analyzed in the NEAP-1, the agents of the Office of the Public prosecutor reached the same conclusions already summarized in this report. It should be noted that in the NEAP-3, the agents of the Office of the Public Prosecutor made reference to the connection to Rogaciano Alba in 2001, and he denied any connection to the situation under examination.

163. On the other hand, the Commission observes that the Office of the Public Prosecutor also added to NEAP-3 the evidence contributed by the intervenor (statements, news reporting, the statement of Torres Cruz, and other evidence) that tends toward implicating Rogaciano Alba in the death of Digna Ochoa, as indicated in this report. The NEAP-3 states that "under these circumstances, [Rogaciano Alba] said he had no friends or family within policing agencies or the Mexican army, and that he did not have friends, family members, or acquaintances in Mexico City; he likewise stated he did not know any members of the Petatlán Mountain Range environmentalist organization, much less have any problem with any of its members (...)" among other exculpatory statements. The agent to the Office of the Public prosecutor said the statements were supported by other evidence that was corroborated.

164. The NEAP-3 also included testimony from Jesús Ochoa y Plácido dated October 1, 2010, in which he stated that on January 22, 2004, journalist Feliciano Hernández and "Dr. Jiménez" gave him an information indicating that Rogaciano Alba was behind Digna Ochoa's death. The Commission observes that the NEAP-3

<sup>128</sup> Annex 60. Decision of the PGJDF of November 26, 2010 approving the NEAP-3. Annex to the brief of the petitioner, January 27, 2012.

<sup>129</sup> Annex 60. Decision of the PGJDF of November 26, 2010 approving the NEAP-3. Annex to the brief of the petitioner, January 27, 2012.

stated that on October 14, 2009, Hernández testified that the conversation with Mr. Jesús Ochoa y Plácido never took place.<sup>130</sup> The NEAP-3 indicates that "Dr. Jiménez" was never located for taking a statement.

165. Along these lines, the Commission observes that the NEAP-3 stated as follows: "(...) It is once again noted that neither the author of the newspaper report, nor the declarants obtained the information in question directly by witnessing the incident they report or the moment in which ROGACIANO ALBA ÁLVAREZ supposedly ordered the murder of the deceased; neither did they witness any crucial moment of the facts that they brought to the attention of the prosecutor." In its understanding, the information is not objective, especially taking into account that "there is objective information leading us to conclude that the violence in the area is the result of conflicts that are independent from the incident under investigation." Regarding the last statement by Rogaciano Alba, taken in 2010, the Commission observes that the NEAP-3 stated that "there was no evidence to the contrary." Thus, the conclusions of the NEAP-3 regarding this line of investigation are identical to those of the NEAP-1.

166. Lastly, with regard to the "family, social, and workplace environment" investigation, the IACHR reiterates its summary of the NEAP-1, as the evidence analyzed in the NEAP-3 and its conclusions are very similar, with no changes or elements added. The Commission notes for the record that the information on the NEAP-3 is not complete in the case file and the conclusions in this section on the lines of investigation are not included.

167. Despite this lack of information, the Commission observes that on November 26, 2010, the CAMP issued an opinion regarding the NEAP-3 sent for its review. As in the previous paragraph, the Commission notes for the record that the CAMP document is incomplete. Despite this, from the section available, the IACHR observes that the CAMP took into consideration the resolution of *amparo* 2262/2003 to establish the parts of the NEAP-1 that were not dismissed because they were studied correctly pursuant to the ruling in that *amparo* process. Thus, for example, it did review the alleged injuries to Digna Ochoa's lips, the dual set of cadaveric lividities, the final position of the body, and the claim that it had been moved, among other matters summarized in this report. The CAMP thus circumscribed its analysis around the *amparo* revoking NEAP-1 only with regard to the obligation to admit evidence offered by the intervenor.

168. Thus, the CAMP indicated that there were no premortem injuries to Digna Ochoa's body, basing this conclusion on photographic evidence and the assertion that the intervenor erroneously interpreted blood, scabs, and water buildup as injuries and signs of a struggle. The CAMP then reviewed the ecchymoses alleged by the intervenor and dismissed them, again one by one, using photographs of the corpse. Regarding the bruising on Ms. Ochoa's thigh, the CAMP found that their coloring was greenish, despite the initial discrepancies among the various expert witness reports for the prosecutor, concluding that it was not contemporaneous with her death.

169. Regarding the alleged manipulation of the body from its original position, the CAMP found that the reading of the intervenor did not match with the bloodstains found in the Zacatecas Street building, nor with the way in which blood ran from the body to stain the clothing, nor with the cadaveric lividities that also demonstrate she was not significantly moved after her death, "much less was her position changed." The CAMP stated that the largest lividities were "located on the left side of the body," demonstrating "clear correspondence between the position of the body and the location of the lividities."

170. Likewise, regarding the trajectory of the projectile, the CAMP stated that the discrepancies between the official expert witnesses and the intervenor expert witnesses were resolved by the ballistics analysis of May 4, 2010, which stated that the differences were a matter of millimeters, and therefore not significant or determinative to the degree that it would change the theory from suicide to homicide. Next, regarding the bloodstains, it found that the intervenor's reading that the splatter pattern and stains were inconsistent with suicide was incorrect, as the luminol tests were performed correctly, and even corrected following the

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<sup>130</sup> The Commission notes for the record the discrepancy in the dates in the NEAP-3 that would indicate these events were successive, even though it would be impossible for the first to have taken place in 2010 and the second in 2009.

emergence of discrepancies;<sup>131</sup> at the same time, it denied there were "analyses determining" the composition of the substance found in the hallway of the scene of the facts, in front of the bathroom door (that the intervenor said could be traces of brain matter), as demonstrated by an expert analysis of January 27, 2003. On this issue, with regard to the bloodstain that the intervenor said contradicted the supposition of suicide, the CAMP found that the stain was "the result of prior handling from standard investigative activities," and that an expert witness examination from August 30, 2002, included a microscopic analysis that found very few blood cells.

171. Regarding the fact that Digna Ochoa's scarf was not stained with blood, which had been described as an indication that her body was manipulated, the CAMP found this was because "it was added by a third party following her death," basing this inference on there being no evidence of the presence of third parties at the scene of the facts, nor than the body was moved. On this matter, the CAMP dismissed the intervenor's assertion that other bloodstains had not been studied in detail, pointing to the expert witness reports, including the Apodaca opinion. Also, regarding the issue of the absence of blood or brain matter on the firearm or the gloves, the CAMP stated that, according to a forensic pathology manual, in around 24% of suicides, the suicide weapon is not splattered, concluding that "it is not an absolute and immutable rule" that blood or brain matter will be transferred. Regarding the gloves, it stated that a gunshot wound would not necessarily have splattered them. On this latter point, the CAMP stated that also, effectively, the left glove was splattered, meaning it is not true that the gloves did not have traces of the traumatic event.

172. The IACHR also observes that the CAMP addressed the fact of the lack of gunshot residue on the hands, gloves, or blouse of Digna Ochoa, and how this was evidence for the intervenor that she could not have fired the shot herself. The CAMP reviewed the various analysis and contradictions as to whether the firearm did or did not leave a residue on the person firing it. It also notes that the tests from 2001 came up negative as to the gunshot residue (gloves and hands), that the 2002 analysis came up positive (hands) but was determined to be the result of contamination of the location where the test that came up positive was carried out ("firing box"); that same year, a third residue test was carried out (this time in the Zacatecas Street building) that came up negative, and these results were accepted by the independent report. Based on this information, the CAMP dismissed the analysis that produced a positive result as to the residue, noting that the tests were carried out in an environment that does not reproduce the conditions of the Zacatecas Street building and citing literature in support that states that a gunshot does not always leave residue on the hand of the person who pulls the trigger.

173. Regarding the gloves that were not put on all the way, the CAMP said this is explained by the phenomenon of claw hand, which rules out the gloves having been placed on the hands after her death, as there are no indications of the presence of third parties at the scene of the facts. Next, the CAMP uses forensic literature to explain the phenomenon of cadaveric spasm and immediately stated "this (...) Leads to the conclusion that there is no evidence of the presence of a third party at the scene of the facts who would have placed the plastic gloves on the hands of the deceased moments after her death."

174. Lastly, the IACHR observes that the CAMP found that the supposed "straddling" of Digna Ochoa would have led to greater disturbances at the scene of the facts, clear indications of resistance, and a much more notable trajectory of the bullet. Likewise, it found that the Apodaca report sufficiently explains the spreading and scattering of white powder around the property and on the objects (gun), contrary to the arguments of the intervenor. The Commission notes that the reports from the intervenor were added to the investigation, but their conclusions dismissed, based on the arguments summarized throughout the preceding paragraphs. It should be noted that the CAMP dismissed the questions raised as to the evidentiary value of the psychological analyses of Digna Ochoa on finding they lacked any technical basis and they were not the specialty of the intervenor's expert witnesses.

175. Based on the information in the prosecutor's expert witness reports summarized in this report, the CAMP took into consideration the personality profiles of Digna Ochoa and concluded that she suffered from

<sup>131</sup> In reference to an initial failure to record a luminol test on the north bookshelf, which was later added as a "negative result" in an amendment on November 21, 2002.

mental illnesses; her life story and a variety of previous events that were stressful and coincided with the occurrence of the facts (love life, sexual and reproductive traumas, workplace conflicts, departure from the Centro Pro, professional failure with the MacArthur Foundation, prediction of her death and change to her insurance policy); and the conclusions of the various evidence-collection procedures at the scene of the facts. The CAMP concluded that the elements typical of the crime of homicide were not present, and therefore, the proposal of the agent of the Office of the Public Prosecutor to not bring a criminal action was acceptable.

176. The case file indicates that this decision was challenged by the intervenor before the CAMP with a motion for reconsideration of decision, which was denied on March 14, 2011.<sup>132</sup> These IACHR notes for the record that these elements are not included in the case file.

#### **8. Amparo 343/2011 against the decision to accept NEAP-3<sup>133</sup>**

177. According to the *amparo* ruling by the Seventh Criminal Amparo Judge of Mexico City, on August 19, 2011, after rejection of the aforementioned motion, the intervenor filed for a writ of *amparo* against the NEAP-3 on April 5, 2011.

178. The *amparo* judge summarized the intervenor's pleadings in requesting the writ of *amparo*, according to which the ruling on the motion for reconsideration of decision was a) a repetition of the arguments for accepting the NEAP-3, as put forward by the CAMP; b) that the expert witness reports accepted as the "historic truth" were contradictory; c) that the body was moved from its original position; d) that the gloves were put on the hands once the body was experiencing rigor mortis, not "cadaveric spasm," for which reason they were bunched up; e) that the ecchymoses were improperly dismissed by the Office of the Public Prosecutor; f) that the presence of a third party at the scene of the facts was dismissed without taking into consideration the evidence of a struggle found on the body and clothing of Digna Ochoa; g) that the expert witnesses did not correctly analyze the bullet's trajectory, the brain tissue on the west wall of the scene of the facts, or the smeared bloodstains on the chair or on the book "Los padres y los estudios de los hijos;" h) that the presence of an assailant was dismissed despite the discovery of fibers at the scene of the crime that were not analyzed; i) that the gunshot wound was not in a location typical of suicide; j) that the conclusion is not well-founded, as it is simply a repetition of the prosecutor's expert witness reports and a description of the lines of investigation; k) that it sought to actively contradict the arguments of the intervenor; and l) that the gun did leave a residue on the hands.

179. The *amparo* judge found that the intervenor's pleadings were inadmissible and baseless. Regarding the procedural matter of the repetition of arguments, it found it inadmissible because it was a general statement and it would be impossible to reformulate the poor wording of the complaint *ex officio* based on whatever reasoning the applicants may have in mind.

180. Regarding the merits, the IACHR notes that the *amparo* judge found the pleadings in the motion for reconsideration of decision and the writ of *amparo* were repetitive. He therefore proceeded to dismiss argument j). He also stated that argument c) was not addressed in the motion for reconsideration of decision, and therefore could not be included in the *amparo* challenge. Regarding argument d), the *amparo* judge stated that bunching of the gloves was sufficiently explained by the CAMP as potentially from convulsions after the impact of the bullet; the white powder, from the handling of the body prior to the arrival of the Office of the Public Prosecutor, as well as the lack of evidence of a third party at the scene of the facts and the "cadaveric spasm." The IACHR observes that the *amparo* judge found that the argument on the presence of a third part at the scene of the facts was not called into question in the motion for reconsideration, and therefore remains unchallenged, without sufficient grounds to declare the argument baseless.

<sup>132</sup> Annex 70. *Amparo* resolution of the Seventh Criminal Amparo Judge of Mexico City of August 19, 2011. Annex to the brief of the petitioner, January 27, 2012.

<sup>133</sup> Annex 70. *Amparo* resolution of the Seventh Criminal Amparo Judge of Mexico City of August 19, 2011. Annex to the brief of the petitioner, January 27, 2012.

181. Regarding argument e), the *amparo* judge called it groundless in the understanding that the CAMP had sufficiently established that the ecchymoses did not exist and that the bruising on the thigh was from a previous injury. On this latter point, regarding which the prosecution's expert witnesses had changed their description of the color, the judge did not find any irregularity in the change of opinion. Regarding argument f), the judge found that the CAMP analyzed the signs of a struggle alleged by the intervenor (button ripped off, white powder in the underarm, fabric unstitched, among others reviewed in this report) and determined based on the expert witness reports that they were isolated or explainable in the context of a hypothesis of suicide and not indications of a struggle, or that the expert witnesses of the intervenor had not conducted enough "experiments" to prove their hypothesis.

182. The *amparo* judge also addressed argument g), declaring it groundless due to the abundant evidence—in the CAMP's view—used to establish the trajectory of the bullet and the bloodstains at the scene of the facts, and also, that the conflicting expert reports were in fact reconcilable. Likewise, argument h) was declared groundless because while the fiber not analyzed was a human hair, because it was a lawyer's office, it could not be analyzed do it its lack of material criminal connection to the scene in question. Regarding argument i), the judge found that the CAMP had reconciled the contradictory opinions on the trajectory of the bullet and determined that the discrepancy between the prosecutor's expert witness reports and those of the intervenor on the location of the wound were a matter of millimeters and therefore irrelevant.

183. The judge also concluded that the lines of investigation were well grounded, therefore declaring j) without merit, as the environments described in those lines were explored comprehensively. Regarding argument k), it was declared groundless after a listing of all the tests conducted under AP-2576, taking into consideration that the evidence the intervenor offered was indeed analyzed, but it was determined that they did not prove the hypothesis and were therefore discarded following proper evaluation by the prosecutor and without violating the "principle of disqualification." The judge also found that the evidence under AP-2576 was subject to analysis in the independent report.

184. Lastly, the judge found that argument l) was also groundless, as the CAMP clarified the sequence of coincidental and contradictory expert witness tests, and after doing so, concluded that the gun did not leave a residue on the hands of the person pulling the trigger. Based on this, the judge considered the opposing opinion of the intervenor and noted that the CAMP was right to dismiss it for the reasons outlined in this report.

185. Thus, the judge concluded that guarantees were not violated to the detriment of the complainants, as the essential formalities of the procedure were respected, denying *amparo* protection on the above-noted date.

186. The petitioner told the IACHR that this resolution denying the *amparo* "leaves closed the prosecutorial investigation into the facts surrounding the murder" of Digna Ochoa.<sup>134</sup> The State indicated that on September 9, 2011, the Seventh Criminal Amparo Judge of the Federal District ruled that process 343/2011 was final and ordered it closed, as "the representatives did not file any motion for review."<sup>135</sup> The IACHR notes that these procedural elements are not included in the case file.

<sup>134</sup> Brief of the petitioner, January 27, 2012.

<sup>135</sup> Brief of the State, August 2, 2018.

## IV. ANALYSIS OF LAW

### A. Right to a fair trial and judicial protection (articles 8<sup>136</sup> and 25(1)<sup>137</sup>) in conjunction with Article 1(1) of the American Convention

#### 1. Standards for investigations into the deaths of human rights defenders and violent deaths

187. The Commission<sup>138</sup> and the Court<sup>139</sup> have underscored that States have an obligation to investigate, solve, prosecute, and punish crimes committed against human rights defenders, and have underscored that the most effective means for protecting human rights defenders is to effectively investigate acts of violence against them and punish those responsible. In this regard, the Commission recalls that “[the] investigation must be conducted using all available legal means to determine the truth and to investigate, prosecute and punish all those responsible for the facts, especially when State agents are or may be involved.”<sup>140</sup> Thus, the duty to investigate must be fulfilled with all due seriousness and not as a simple formality doomed from the start to failure. It must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests.<sup>141</sup>

188. Regarding the body in charge of the investigation, the Court has found that, in cases in which the judicial process remains under the Office of the Public Prosecutor, the guarantees established in Article 8(1) of the Convention are also applicable to the work of the agents in charge of the investigation, *mutatis mutandis*, where applicable. Thus, the Court has held that “depending on the circumstances of the case, it may be necessary to analyze the procedures that relate to and constitute the grounds for judicial proceedings, particularly the investigative procedures, upon which the results of the opening and progress of these proceedings depend.”<sup>142</sup>

189. Along these lines, the Commission recalls “if the judiciary is to serve as an effective organ of control, guarantee, and protection of human rights, it must not only exist formally, but must be independent and impartial.”<sup>143</sup> For the Court, judicial independence, and therefore the independence of investigating prosecutors must include, *inter alia*, a guarantee against outside pressure so they are able to make decisions “on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”<sup>144</sup> Likewise, regarding Mexico and its specialized investigatory bodies, the Commission has already recommended that the State “Create a national, autonomous institution of forensic services with adequate

<sup>136</sup> The pertinent part of Article 8 of the American Convention establishes the following: 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>137</sup> The pertinent part of Article 25 of the American Convention establishes that: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

<sup>138</sup> IACHR. Basic guidelines for investigating the violations of the rights of human rights defenders in the Americas. OEA/SER.L/V/II. Doc. 211. December 31, 2017, para. 27. IACHR. Follow-up Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser. L/V/II. Doc. 66, of December 31, 2011, para. 233.

<sup>139</sup> Inter-American Court. Case of Luna López v. Honduras. Merits, Reparations, and Costs. Judgment of October 10, 2013. Series C No. 269, para. 153 and following.

<sup>140</sup> Inter-American Court. Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits, and Reparations. Judgment of May 14, 2013. Series C No. 260. Para. 218. Also see: Cfr. Case of Velásquez Rodríguez v. Honduras. Merits, para. 177, and Case of the Santo Domingo Massacre v. Colombia, para. 157.

<sup>141</sup> Inter-American Court. Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C, No. 6, para. 177.

<sup>142</sup> Inter-American Court. Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 283, para. 201.

<sup>143</sup> IACHR. Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II.124 Doc. 5 rev.1, of March 7, 2006. Párr.110

<sup>144</sup> Inter-American Court. Case of Reverón Trujillo v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment June 30, 2009. Series C No. 197. Para. 80.

infrastructure, sufficient financial and human resources, and standardized protocols applicable at the national level.”<sup>145</sup>

190. Likewise, regarding the aim of ensuring due diligence through an exhaustive and impartial investigation into a violent death, the Commission highlights several of the standards of the Minnesota Protocol,<sup>146</sup> adopted, applied, and incorporated into the “guidelines” on investigation by the Inter-American Court<sup>147</sup> in cases involving the investigation of such deaths, including of human rights defenders. They include, but are not limited to, the following: Identifying the victim; collecting and preserving evidence related to the death in order to help with the possible prosecution of those responsible; identifying potential witnesses and securing their statements regarding the death; determining the cause, manner, location, and time of death, as well as any pattern or practice that may have caused the death; distinguishing between natural death, suicide, and homicide; identifying and apprehending the person or persons involved in the death; and bringing the alleged perpetrators before a competent court as established by law;<sup>148</sup> as well as the exhaustive investigation of the crime scene, as failure to protect the scene of a crime properly can impair the investigation.<sup>149</sup>

191. In connection with this, regarding building a body of testimonial evidence, the Minnesota Protocol places paramount importance on the security and wellbeing of interviewees and interviewers. Risk assessments should be conducted “before engaging with any witness to help ensure that the benefit of the engagement outweighs the risk. When necessary, and subject to the consent of the individual(s) concerned, investigators should take steps to protect an interviewee and others from ill-treatment or intimidation as a consequence of providing information.”<sup>150</sup>

192. Likewise, as a general principle regarding autopsies in cases of suspicious death, the Protocol establishes that the job of clinical doctors is, among other things, to help ensure that the cause and circumstances of the death are revealed so they can present conclusions on the cause of death and the circumstances that contributed to it. Along these lines, the Protocol recognizes that cases are few in which the cause of death can be determined by an autopsy alone without additional information on the death. Thus, the autopsy report must include a list of the injuries found and offer an interpretation of them. The Protocol also underscores the particular importance in these types of autopsies of a photographic record, comprised of both photographs apt for documentation and independent review and full-body X-rays, keeping a record of the date, start and end times, the location of the autopsy, and the names of the participants.<sup>151</sup>

193. Regarding the description of firearm wounds, the Protocol calls for “not[ing] the presence or absence of marginal abrasions, lacerations or defects in the margins of the wound, foreign contents within the wound, singeing or grease marking the margins of the wound, and soot and/or gunpowder stippling or tattooing around the wound.”

194. Regarding the chain of custody, the Protocol establishes that “Every stage of evidence recovery, storage, transportation and forensic analysis, from crime scene to court and through to the end of the judicial processes, should be effectively recorded to ensure the integrity of the evidence.” This includes “the identity

<sup>145</sup> IACHR. Situation of human rights in Mexico. OEA/Ser.L/V/II.Doc. 44/15 of December 31, 2015. Recommendation 24.

<sup>146</sup> UN. Minnesota protocol on the investigation of potentially unlawful death (2016), United Nations Office of the High Commissioner of Human Rights, New York and Geneva, 2017.

<sup>147</sup> Among other sources: Inter-American Court. Case of Acosta et al. v. Nicaragua Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 25, 2017. Series C No. 334, para. 135; Inter-American Court. Case of Luna López v. Honduras. Merits, Reparations, and Costs. Judgment of October 10, 2013. Series C No. 269, para. 164

<sup>148</sup> Inter-American Court. Caso Ortiz Hernández *et al.* v. Venezuela. Merits, Reparations, and Costs. Judgment dated August 22, 2017. Series C No. 338. Para. 161.

<sup>149</sup> Inter-American Court. Case of Véliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, para. 191. See: Cfr. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations, and Costs. Judgment dated November 25, 2003. Series C No. 101, para. 166, and Case of Luna López, *supra*, para. 164.

<sup>150</sup> UN. Minnesota protocol on the investigation of potentially unlawful death (2016), United Nations Office of the High Commissioner of Human Rights, New York and Geneva, 2017, para. 86.

<sup>151</sup> UN. Minnesota protocol on the investigation of potentially unlawful death (2016), United Nations Office of the High Commissioner of Human Rights, New York and Geneva, 2017, paras. 148-182 and 253, 255, 264, and 266.

and sequence of all persons who possessed that item from the time of its acquisition by officials to its presentation in court.”<sup>152</sup> For its part, the Court has indicated that a poorly-kept chain of custody record,<sup>153</sup> the failure to properly store or secure objects found at the scene of the facts,<sup>154</sup> and the destruction of evidence in custody<sup>155</sup> represent failures of the State the act with due diligence.

195. Regarding inter-American standards on reasonable lines of investigation, the Commission has indicated that “as part of the requisite due diligence in investigating violations of the rights of human rights defenders, the investigating authority should take into account the work of the defender attacked in order to identify which interests could have been harmed in the pursuit of that work in order, thus, to establish lines of inquiry and theories for the crime.”<sup>156</sup> On this same issue, the Court has found that in response to the death of a human rights defender, the State “must take their activities into account” in the investigation and ensure “impartial and swift justice in which it takes the initiative, including an exhaustive search for all information necessary to design and execute an investigation that conducts a proper analysis of the theories of the perpetrators—by action or omission—at different levels of the crime, exploring all pertinent lines of investigation to identify those responsible” and discover whether the motive for the death is related to their work defending human rights.<sup>157</sup>

196. Regarding participation of the relatives of victims in judicial processes, the IACHR has recognized that States must permit their active participation and not prohibit collaboration, as they have an interest in securing justice and contributing to the investigations in depth, as well as in the transparency of the process surrounding a case.<sup>158</sup> For its part, the Court has indicated that, “[d]uring the investigation and the judicial proceeding, the victims of human rights violations or their relatives must have ample opportunity to participate and be heard, both in the clearing up of the facts and the punishment of those responsible, as well as with regard to just compensation for the damages suffered.”<sup>159</sup> Likewise, the Minnesota Protocol states specifically that “Family members must be enabled by the investigating authorities to make suggestions and arguments as to what investigative steps are necessary, provide evidence, and assert their interests and rights throughout the process.”<sup>160</sup>

197. Likewise, the IACHR has adopted the “Basic guidelines for investigating the violations of the rights of human rights defenders in the Americas,” which, based on the above-described standards, establishes the following in its section A:<sup>161</sup>

- Guideline 1-A: Provide simple, fast, and effective judicial remedies, available for all crimes committed against human rights defenders.
- Guideline 2-A: Publicly recognize and disseminate to public agencies that the most effective means for protecting human rights defenders is to effectively investigate acts of violence against them in order to identify and solve the cases, punish those responsible, and thereby prevent repetition.

<sup>152</sup> UN. Minnesota protocol on the investigation of potentially unlawful death (2016), United Nations Office of the High Commissioner of Human Rights, New York and Geneva, 2017, para. 65.

<sup>153</sup> Inter-American Court. Case of López Soto et al. v. Venezuela. Merits, Reparations, and Costs. Judgment of September 26, 2018. Series C No. 362. Para. 213

<sup>154</sup> Inter-American Court. Case of Véliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, paras. 193-198

<sup>155</sup> Inter-American Court. Case of Fernández Ortega et al. v. Mexico. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of May 15, 2011. Series C No. 224, para. 112

<sup>156</sup> IACHR. Report no. 22/15, Case 12.792. Merits. María Luisa Acosta et al. Nicaragua March 26, 2015, para. 84; IACHR, Report No. 56/12 Merits (Florentín Gudiel Ramos and Makrina Gudiel Álvarez et al.) Guatemala, March 21, 2012, para. 126. Also see, IACHR. Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, para. 236.

<sup>157</sup> Inter-American Court. Case of Escaleras Mejía et al. v. Honduras. Judgment of September 26, 2018. Series C No. 361, para. 47.

<sup>158</sup> IACHR. Application before the Inter-American Court in the case of Víctor Jesús Montero Aranguren et al. (Detention Center of Catia). Case 11.699 against Bolivia. Para. 221.

<sup>159</sup> Inter-American Court. Case of the “Mapiripán Massacre” v. Colombia. Judgment of September 15, 2005. Series C No. 134. Para. 219.

<sup>160</sup> UN. Minnesota protocol on the investigation of potentially unlawful death (2016), United Nations Office of the High Commissioner of Human Rights, New York and Geneva, 2017, para. 35.

<sup>161</sup> IACHR. Basic guidelines for investigating the violations of the rights of human rights defenders in the Americas. OEA/SER.L/V/II. Doc. 211 of December 31, 2017. Para. 49. The numbering is not part of the guidelines in the original document. It was added for the purposes of this report on the merits.

- Guideline 3-A: Move forward and conduct these investigations diligently and in adherence to new forensic standards to end impunity, which is an important measure of prevention and non-repetition.
- Guideline 4-A: Justice officials must ensure access to justice for human rights defenders; proper application of the law; and the search for truth regarding the incidents that took place, acting with professionalism, good faith, and procedural diligence. They must ensure that both the investigation and the prosecution are carried out pursuant to international human rights standards.
- Guideline 5-A: Draft specialized investigative protocols that take into account the risks inherent in the work of human rights defenders and enable a comprehensive investigation to unfold into the theory that the crime was committed in retaliation or to prevent the work of the human rights defender, including by searching for patterns that could lead to getting results.
- Guideline 6-A: Coordinate, unify, and document investigations into attacks on and harassment of human rights defenders and their organizations, with particular attention to repeated acts against the same people or patterns in them.
- Guideline 7-A: Consider the type of work being done by the human rights defender at the time of the attacks and which persons or interests could be opposing and affected by that work.
- Guideline 8-A: Carry out the initial investigative steps with all meticulousness and diligence required to determine if existing evidence could point to connections to the work of the human rights defender.
- Guideline 9-A: Investigations pursued must take into account the complexity of the facts, the context in which they took place, and the patterns that explain them, ensuring that nothing has been left out as evidence is collected and logical lines of investigation are followed. These investigations must be conducted within a reasonable period of time and include the circumstances that could have a bearing on the risk faced by human rights defenders; the types of threats against or attacks on them; and the degree to which they are repeated or increase in intensity.
- Guideline 10-A: Enhance institutional capacity to combat impunity in cases of attacks on human rights defenders and coordinate investigations with mechanisms of protection to remove sources of risk and identify and punish potential perpetrators.
- Guideline 11-A: Enhance measures for investigating threats made electronically so they can be investigated effectively.

198. Lastly, regarding the guarantee of a reasonable period of time established in Article 8(1) of the American Convention, the Inter-American Court has established that three elements must be taken into account to determine the reasonability of the length of time a process has taken: (a) the complexity of the matter; (b) the procedural activity of the party involved; and (c) the conduct of judicial authorities.<sup>162</sup> The Commission and the Court have also found it necessary to take the interest affected into consideration.<sup>163</sup>

## 2. Due diligence standards for the investigation of suicides

199. Regarding deaths by suicide, the Commission has established that in the event of a causal link between a person's decision to take their own life and an action taken or not prevented by a State agent, the State can be held responsible for that death.<sup>164</sup> Along these same lines, the European Court has found the State has an obligation to prevent the suicides of people in its custody—such as people deprived of liberty<sup>165</sup> and military conscripts,<sup>166</sup>—when there is a real and imminent risk of suicide that must be addressed using reasonable measures by the authorities in charge.

200. Based on this, the Commission observes that in the framework of this case law on the procedural dimension of the right to life, in the event of a suicide that could be possibly be attributable to the State, the

<sup>162</sup> Inter-American Court. Case of Vargas Areco v. Paraguay. Judgment of September 26, 2006. Series C No. 155, para. 196; Case of the Ituango Massacres v. Colombia. Judgment of July 1, 2006, Series C No. 148, para. 289, and Inter-American Court. Case of Baldeón García v. Peru. Merits, Reparations, and Costs. Judgment of April 6, 2006. Series C No. 147, para. 151.

<sup>163</sup> Inter-American Court. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 155.

<sup>164</sup> Cfr. IACHR. Informe No. 110/18, Caso 12.678 Fondo. Paola del Rosario Albarracín Guzmán y familiares. 5 de octubre de 2018

<sup>165</sup> ECHR. Case of Keenan v. the United Kingdom. Application No. 27229/95. April 3, 2001. Paras. 89-102

<sup>166</sup> ECHR. Case Of Kilinc and Others V. Turkey. Application No. 40145/98. June 7, 2005. Paras. 40-57.

minimum standard required is for the investigation to be conducted by individuals who are independent of the facts under investigation. This independence cannot simply be hierarchical or institutional but must also be practical. Thus, in these cases, the European Court has underscored the importance of competent authorities acting with exemplary diligence and promptness to launch *ex officio* investigations with the capacity, first of all, to determine the circumstances under which the incident took place and any deficiency in the regulatory system that allowed the occurrence of the facts; and second of all, to identify the State officials or authorities involved, taking into consideration that the element of public scrutiny is relevant in this context.<sup>167</sup>

201. Along with this, the Court has also found that these requirements are applicable not only to the investigative phase but also to the process in general. Thus, the Court has found, in contrast to the European Convention, that when a death is only investigated as a suicide, with the authorities assuming that theory from the start of the investigation and maintaining it throughout, without seriously considering any other alternative, it can undermine the authenticity of its conclusions and open the door to serious doubts as to the good faith and authenticity of its efforts to establish the truth, especially in circumstances in which the investigation includes gross errors and omissions.<sup>168</sup> The Court has also found that, in investigations into whether a death is a suicide or a homicide, ignoring a family's repeated complaints over the authorities' lack of rigor in their handling of the investigation must be taken into consideration in analysis of the due diligence of the investigation.<sup>169</sup>

202. As these standards have been established with regard to suicides that could possibly be attributed to the State because they took place while the individuals were in State custody, factual circumstances that are different from those of the facts in this case, the Commission will take them into account in this case, *mutatis mutandis*, as applicable.

### **3. Analysis of the case**

#### **3.1. Analysis of due diligence and seriousness of the investigation regarding the investigative steps and expert witness reports carried out as part of AP-2576**

203. The IACHR will now analyze the due diligence with regard to the body of evidence and the expert witness reports provided during investigation of AP-2576. The Commission underscores that this analysis seeks to analyze AP-2576 and the contents of its results based on the international standards applicable to these types of investigations, not to determine individual criminal liability.

##### **3.1.1. Issues related to the documentation of forensic medical information, information on cadaveric phenomena, and description of the presence of injuries on the cadaver.**

204. The Commission observes that according to the medical report, the autopsy and medical forensic report and their corresponding amendments, the information regarding the initial forensic medical examinations was changed, corrected, and amended several times over the course of investigation AP-2576, from the day the facts took place until the adoption of NEAP-1.

205. Regarding the recording of information in the forensic medical documents, the Commission observes that the independent report stated that the body collection report and the autopsy report both suffered from a lack of detailed and extensive description of cadaveric phenomena, as well as from an incomplete description of the headwound and the wound on the thigh, which could have provided information on actions of self defense or signs of a fight or struggle, as well as on whether the position in which the body was found was its true final position. The intervenor also noted that the forensic doctors who conducted the autopsy on October 20, 2001, rectified the location of the gunshot wound and the trajectory of the bullet through the

<sup>167</sup> ECHR. *Trubnikov v. Russia*. Application No. 49790/99. July 5, 2005. Paras. 86-88.

<sup>168</sup> Cfr. ECHR. *Mosendz v. Ukraine*. Application No. 52013/08. January 17, 2013. Para. 98.

<sup>169</sup> Cfr. ECHR. *Case of Masneva v. Ukraine*. Application no. 5952/07. December 20, 2011. Para. 55.

head, stating on March 20, 2002, that its direction was not front to back but rather slightly back to front. The IACHR also observes that the independent report and the special report of the CNDH pointed to the fact that the autopsy report and the autopsy follow-up omitted the start and end time of the procedure, as well as the estimated time of Digna Ochoa's death, information that was later added on August 20, 2002, with the aforementioned amendment. Without prejudice to this, the IACHR observes that the independent report also indicated that the forensic documents did contain information that was important or relevant for the case in question.

206. Regarding the cadaveric phenomena, the IACHR notes the dispute with regard to the cadaveric lividities and the clawed hands. In this regard, the IACHR observes that according to the expert witness report from the intervenor, the location of the cadaveric lividities on Digna Ochoa demonstrates that the body was first on its back, and therefore, lividities developed on the back, and it was later moved to the position in which was found, which led to weaker lividities on the left side of the body. In fact, this conclusion was litigated by the intervenor in the framework of *amparo* 2262/2003 after this argument was initially dismissed by a lower authority that found that the NEAP-1 handled this correctly. Likewise, in the framework of its decision to approve the NEAP-3, the CAMP also addressed the lividities by noting that the strongest ones were found on the left side of the body, and that the ones on the back appeared when the body was placed in that position in the operating room for the autopsy, leading to the appearance that the body had been moved. It added that this was consistent with the bloodstains and smears and noted that the matter of the dual lividities was no longer under discussion because the aforementioned *amparo* was final.

207. Regarding the position in which Digna Ochoa's hands were found on the day of her death, the IACHR notes that the first police description indicates that the gloves were not all the way on, indicating that the thumb was not in its place. The forensic medical report of January 9, 2002, indicated that the claw-like position of the hand was the result of the gunshot wound to the head that produced "tonic-clonic contractions." It stated that the position of the hands was a spasmodic position, a theory that was accepted by the Office of the Public prosecutor. For its part, the intervenor disagreed with this statement and drew a distinction between the phenomenon of claw hand and cadaveric spasm as two separate phenomena. In its understanding, in cases of suicide, there is a tendency for the cadaveric spasm to cause the individual to grip the firearm tightly. However, the clawed hand is a natural result of rigor mortis. Along these lines, the intervenor noted that the clawlike position of the hand is an indication that Digna Ochoa did not shoot herself, as no cadaveric spasm was produced, as that would have led the gun to be found in her hand, not underneath her body.

208. Likewise, in the framework of the approval of the NEAP-3, the CAMP stated that the gloves were coming off the hands due to the "cadaveric spasm." That is, the IACHR notes that the CAMP used the concept of "cadaveric spasm" in contradiction to the way it was being used by the intervenor, to justify the gloves coming halfway off and the weapon being found underneath Ms. Ochoa, even citing forensic literature with texts coinciding with the explanation provided by the intervenor. This conflict was reviewed in the framework of *amparo* 343/2011, and the IACHR observes that the *amparo* judge concluded that the Office of the Public Prosecutor was correct, using the same arguments, but also adding that Ms. Ochoa's body was manipulated, and that this could have caused the gloves to slip, even though the testimony indicating that the body was handled prior to the arrival of the authorities does not state that the body's hands were touched. Regarding this, the IACHR observes that there is no clarity as to whether the Office of the Public Prosecutor or the *amparo* judge considered the clawed hand to be a phenomenon associated with suicide, which was precisely the central question raised by the intervenor, especially as the independent report—of which the State was aware—stated that there was no evidence of a convulsive event prior to the death of Digna Ochoa.

209. Along with this, the IACHR also notes that a fragment of tissue belonging to Digna Ochoa was found on the inside of the left glove. The Commission observes that the location of the tissue on the inside of the glove was indicated by the intervenor as an additional sign that the gloves were placed on Ms. Ochoa's hands postmortem, and that the delay in recording this piece of evidence is suspicious. Along these lines, the Commission notes that this fact was addressed by the CAMP when it approved the NEAP-3, which indicated that the tissue was noted on February 28, 2001, when its presence was discovered, as indicated in the evidence log. The Commission observes that the CAMP based its decision on the photographs showing that

the gloves were found bunched up and that the uncertainty as to the animal or human origin of the tissue was also duly addressed in the expert witness reports already reviewed in this report.

210. Next, the IACHR observes that although they were identified in the initial forensic documents and can be observed by simply viewing the photographs, the description of the alleged ecchymoses and injuries on Digna Ochoa's body was erratic over the course of the investigation. In this regard, the intervenor identified six injuries (i. cut and inflammation on the outer edge of the left eyebrow; ii. ecchymosis on the upper part of the right eyelid; iii. ecchymosis on the upper edge of the right ear; iv. ecchymosis on the lips; v. ecchymosis on the neck; vi. ecchymosis on the right thigh), which were analyzed during the last phase of the judicial proceeding surrounding *amparo* 343/2011. The IACHR observes that injury i. was analyzed by the judge, who dismissed it, basing his decision on his own review of the photograph and concluding that it was residue from water after the washing and a mistake, which is why it was not described in forensic documents.

211. Regarding injury ii., the IACHR observes that it was also dismissed based on the argument that it was analyzed by the "assistant prosecutor," who concluded that the injury did not exist, using available photographic material to draw this conclusion. The judge also stated that the forensic doctors indicated that the ecchymoses were not documented in the autopsy because they simply did not exist, and that the prosecutor's expert witness, Reyes, also stated specifically that Digna Ochoa's eyelids showed no ecchymosis. In conclusion, the *amparo* judge dismissed the intervenor's argument, calling it a mistaken interpretation of the photographs.

212. Regarding injury iii., the judge said it was not recorded in any of the forensic documents and that the photographic analysis conducted by the intervenor was not conclusive. He also noted that there were other photographs that led to the conclusion that what looked like an injury was, in fact, not. Regarding injury iv., the *amparo* judge stated again that the injuries on the lips were not recorded in any forensic medical document, and that the reddish stains were because the victim's body was not properly cleaned. Lastly, he stated that due to their size (smaller than 5 mm), it was very unlikely the marks could be an indication of use of force. The IACHR also notes that the judge uses the January 9, 2002, report of expert witness Reyes to dismiss the photographic analysis of the intervenor's expert witnesses.

213. Regarding injury v., the IACHR observes that the judge also dismissed it, arguing that the marks were studied by the prosecutor's office using photographs, the information from when the body was collected, and information from the medical examination, concluding that the dorsal area showed cadaveric lividities. Based on this, the *amparo* judge also found these lividities were consistent with the position in which the body was found.

214. Regarding injury vi., on the right thigh, the IACHR observes that there is no dispute over whether Digna Ochoa had an ecchymosis on her thigh. Rather, the dispute surrounds whether the injuries are from prior to her death or contemporaneous with her death. The intervenor argued that because of their color, the injuries were contemporaneous with her death, from which it could be deduced they were signs of the use of force, thus ruling out the theory of suicide. The IACHR highlights that the medical report (October 19, 2001) notes two ecchymoses on the thigh, described as "dark" in color, but that the autopsy report (October 20, 2001) includes no information on this. The follow-up to the autopsy (October 20, 2001) again identifies the injury on the thigh, but reduces it to a single ecchymosis and describes it as violet in color. The report from expert witness Reyes stated likewise on January 9, 2002, concluding that the color was greenish blue, and therefore an injury not contemporaneous with death. Lastly, the IACHR observes that on March 20, 2002, in the amendment to the autopsy report, the forensic doctors stated, in separate statements but identical language, that the injury to the thigh was noted, but that because of its coloration, it dated from at least six days prior to death.

215. During the judicial stage, the *amparo* judge accepted the correction made by the forensic doctors. The Commission notes that the amendment by the forensic doctors is not questioned by the judge, who assumed that they would not give a false statement because it would violate their professional ethical standards and they had no apparent motive to do so. The IACHR views it as particularly grave that the autopsy report would omit this information, as the injuries had also been described in other forensic documents. The IACHR also

notes that the description of the coloration changes throughout AP-2576, but that the judge dismissed the stance of the intervenor by using the document that was specifically being called into question. The IACHR notes for the record that in his reasoning, the judge does not offer any argument other than professional ethics to lend more evidentiary weight to the interpretation of injury vi. by the prosecutor's expert witnesses as regards the evidence offered by the intervenor. Lastly, the IACHR finds that the Minnesota Protocol calls on investigators to "Note any bruises and incise them for delineation of their extent. Some, if not all of them, should be excised for microscopic examination, as this may be useful for assessing the time between injury and death."

216. In addition to this, the Commission notes that according to the Minnesota Protocol, the forensic stage of the investigation has to document the handling, dissection, and state of the body using photographs and x-ray imaging. The Commission notes for the record that although there are photographs of the body in the documents in the case file, no reason has been given for not taking x-rays. The Minnesota Protocol clearly states that a full body x-ray must be performed before removing the body from the bag; with a second full-body x-ray performed after removing the body and a third after the body is undressed.

217. The IACHR observes that under this protocol and because of the type of crime scene investigated, the autopsy needed to include a detailed external exam of the nose and eyes to look for trauma, hemorrhaging, or other anomalies.

218. In conclusion, regarding this section and the due diligence applied to forensic procedures, the IACHR observes that there were material irregularities that were adequately corrected, such as the times at which the autopsy was begun and concluded. Nevertheless, the Commission notes there was another series of irregularities that were corrected in the documents, such as for example, the description of the ecchymosis on the right thigh or the mistake in the trajectory of the gunshot wound to the head that was changed from front to back to back to front. The Commission finds that these changes, although possible, are not simply material but mean that the expert witness, without empirical evidence (as the cadaver is decomposed) has changed his or her report based only on photographs that the independent report called unclear. Because a change of this nature could be decisive in solving the facts and to the future ruling out of potential theories on how the facts occurred, based on the duty to provide proper grounds established in Article 8(1) of the Convention applicable to investigations, it had to have been justified, taking into account as well that the basis for making the changes was only documentary.

219. The IACHR also finds that several of these discrepancies were challenged in court. Thus, the Commission observes that at several points, justice officials based the reasoning in their decisions on the repetition of crosscutting elements in all the forensic documents or on their own review of the images of the body. However, other decisions dismiss the evidence offered by the intervenor by using the same expert witness reports that the intervenor was challenging in the first place, and it is not clear to the Commission what gives more evidentiary weight to one conclusion or another beyond the judge's subjective criteria. The Commission finds that this type of reasoning is not consistent with the aforementioned duty to justify.

220. Lastly, the IACHR also notes that there is no record that a number of forensic analyses recommended under international standards for these types of deaths—such as x-ray imaging and review of the nose, ears, and fingernails—were conducted, according to information from the external analysis from the autopsy.

### **3.1.2. Matters related to the residue from the firearm**

221. The Commission observes that in the framework of AP-2576, there is dispute over the residue left by the firearm. The IACHR finds that regarding tests on residue left by the firearm and the sodium rhodizonate test, the reports from the intervenor and the prosecutor are completely incompatible. The implications of this difference are extremely important for solving what happened, as finding traces of substances associated with the gunshots on the hands, gloves, or cuffs could shed light on whether Digna Ochoa fired the weapon or not.

222. The IACHR notes that this dispute was reviewed by courts in the framework of *amparo* 343/2011, in which the report from the intervenor was compared with the reports from the prosecutor. Regarding this, the Commission notes that the *amparo* judge based his decision to dismiss the expert witness report from the intervenor, finding the firearm does leave a residue, on an opinion from expert witnesses who said the tests conducted by the intervenor's expert witnesses did not replicate the conditions under which the shots were actually fired. Regarding this, the Commission notes that the *amparo* Judge based his decision rejecting the intervenors positive result on the residue tests on a technical report from the exact expert witnesses who were being called into question, without analyzing, explaining, or addressing the situation and without clarity in the justification as to the weight attributed to each of the positions.

223. Neither does the IACHR find a sufficient explanation from the State with regard to the portion of the expert report from the intervenors stating that the supposed firearm malfunction does not make it more hermetic, but on the contrary increases its capacity to leave a residue. Thus, although the judge dismisses the expert witness report from the intervenor for failing to replicate environmental conditions in the test shots, the Commission finds that the disagreement regarding the weapon malfunction is so severe it must be addressed by the court to resolve the controversy surrounding whether the firearm leaves a residue, pursuant to the duty to justify.

### **3.1.3. Regarding the expert psychological reports in the investigation**

224. The Commission finds that, in seeking to solve the facts, and as has been established in the standards, suicide is a valid theory for investigation under the American Convention. In this regard, the IACHR observes that this type of postmortem expert witness report is to be expected, and therefore finds that its inclusion in AP-2576 could help solve the facts, given the theory presented.

225. That said, the Commission notes that there are three psychological reports on Digna Ochoa in the case file and one evaluation. As can be observed from the case file, the joint opinion from the independent report, and the evaluation by Dr. Yadeum, one of the reports was excluded from the body of evidence due to its lack of rigor. Therefore, the two reports taken into consideration in the framework of AP-2576 are the report from expert witness Mendoza and the report from expert witnesses Ayala and Juárez. Although both expert witness reports agree that Digna Ochoa had certain mental health problems, their conclusions are quite different. Dr. Mendoza found that Ms. Ochoa suffered from schizophrenic personality disorder, with distinct indications of paranoia, obsessive-compulsive personality disorder, and chronic depression. The IACHR also observes that the Ayala and Juárez report found that the borderline personality disorder was low-level. The Commission could find no part of the investigation attempting to reconcile these two results. Despite this, the Commission observes that the various decisions to not bring a criminal action, including the third one, place an overwhelming amount of importance on issues of Digna Ochoa's mental health, in the sense of corroborating the theory of suicide. This is highly problematic, not only because the aforementioned expert witness reports disagree with each other, but also because no determination is made as to how the specific ailments mentioned relate to the alleged suicide. The reasoning of these decisions seems to be based rather on the assumption that any mental health problem would corroborate the theory of suicide, which is highly problematic, especially taking into account the nature and procedural implications of these decisions to not bring a criminal action.

### **3.1.4. Regarding the chain of custody**

226. The Commission finds that the independent report emphasized in its conclusions that it did not have evidence of the chain of custody of the physical elements of the investigation that would guarantee their preservation and inviolability. For its part, the Commission also could not find in the case file a clear explanation of the chain of custody—especially remarkable as this was a subject noted in the independent report in June 2003—beyond a brief mention in NEAP-1 according to which the shortcomings in the chain of custody of the evidence obtained at the scene of the facts were not insurmountable.

227. The IACHR also notes that this finding is a result of structural issues with the State's system for investigation and administration of justice that is not a result of or only applicable to the investigation into Digna Ochoa's death.

228. The inter-American system has learned of specific shortcomings in the chain of custody of the evidence that represent violations of due diligence, such as for example, improperly filling out custody logs or a failure to collect or secure evidence found at the scene of the facts, for example. In this specific case, the Commission finds that there is no clear explanation of the origin or failure to register the bag containing the white powder, which was not officially recognized until May 27, 2002. The Commission finds that this evidence was not correctly secured or recorded, even though the white powder was one of the most peculiar elements of the crime scene. The Commission finds that the time it took for investigators to identify, secure, and study the bag is a failure of due diligence as regards the duty to adequately secure the chain of custody of evidence, violating the obligation to diligently collect the evidence and consequently losing the evidentiary value and information that this element may have contributed.

### **3.1.5. Regarding other elements alleged with regard to evidence of a struggle at the scene of the facts**

229. The Commission notes that the intervenor asserted that additional evidence existed as to the location of the headband, the gum on the carpet, the torn-off button, boots scratched on their toes, unstitched clothing, and the white powder found on the boots and on only one side of the gun. Regarding this, the Commission finds that all these claims were litigated in the framework of *amparo* 343/2011. There, the Amparo judge found that, as described, the signs of a struggle were isolated or explicable under the theory of suicide, or that the intervenor's claims simply needed to be supported with tests. Regarding these elements, the IACHR does not find unaddressed discrepancies or technical shortcomings that would be relevant under the international standards described.

## **3.2. Analysis of due diligence and seriousness of the investigation regarding logical lines of investigation and the conclusions of the NEAP-3**

230. It is an uncontested fact that Digna Ochoa y Plácido was a well-known human rights defender. Therefore, under the above-described standards, the investigation into her death had to include her activity as a human rights defender as a primary and central theory. In this regard, the IACHR observes that the State did include Ms. Ochoa's work as a human rights defender in the investigation, and it was part of two of the three main lines of investigation.

231. However, the Commission notes that there is no indication that a line of investigation was designed and fully pursued into the sources of risk to which Digna Ochoa was exposed in years prior and that led to her allegations of kidnapping and other actions in the terms of the guidelines 7-A, 8-A, and 9-A. There is no indication that the investigations were connected to her work so that, beyond the two lines of investigation described hereinafter, other investigations would be designed connected to her work as a human rights defender, work that was, in Digna Ochoa's case, prominent and diverse. In these terms, the Commission notes that the State analyzed three lines of investigation, called "soldiers," "Guerrero," and "family, social, and work environment." These lines of investigation remained practically unchanged between NEAP-1 and NEAP-3, aside from several additions that did not change the course of AP-2576 regarding the "Guerrero" line of investigation, as described hereinafter.

232. Regarding the "soldiers" line of investigation, the IACHR observes that investigators established two sublines of investigation in this case, related to two different infantry battalions. The subline of investigation into the 40th Infantry Battalion was added to the investigation because this battalion was involved in the case of Cabrera and Montiel v. Mexico, in which Ms. Ochoa was involved in defending environmentalists in Guerrero. It concluded, based on interviews, that although the case was international in its scope, in real terms, Digna Ochoa's participation had not been of such an extent as to spark animus in any member of the battalion to the point of causing her death.

233. The subline into the 19th Infantry Battalion looked at Digna Ochoa's last work visit to the Petatlán Mountain Range and was aimed at establishing whether Ms. Ochoa had any altercation with the members of that Battalion stationed there. The Special Prosecutor determined based on interviews with people present during the visit and members of the battalion that the altercation never happened and dismissed the idea that the soldiers would have any motive for ending her life. The IACHR notes that the Special Prosecutor found, based on the statements from the German man who traveled with Digna Ochoa in the Petatlán Mountain Range, that their sense of danger and being surrounded were "statements with no objective basis and the result of perceptions skewed by the human rights work each one of them does." The IACHR notes that this line of investigation was concluded thusly in NEAP-1 and not amended further.

234. Regarding the "Guerrero" line of investigation, the IACHR observes that it looked at conflicts with the interests of illegal lumber mafia in Petatlán Mountain Range and its surroundings that Digna Ochoa's work defending environmentalists may have engendered. Regarding this line of investigation, the IACHR observes that testimony and newspaper reports had, at various times, identified Rogaciano Alba as central to the investigation. The IACHR notes that from prison, Mr. Alba always denied involvement in Digna Ochoa's death or in illegal lumbering and drug trafficking, and that the Special Prosecutor found that while Digna Ochoa was involved in coordination in Petatlán, she never deployed or took any specific action that could have motivated animus toward her. Likewise, in the framework of NEAP-3, the CAMP ordered amendment of a series of statements, including the statements by Javier Torres Cruz, who was found dead on April 19, 2011, supposedly because he had alleged Rogaciano Alba's connection to the death of Digna Ochoa. The Commission notes that in fact, Mr. Torres' family was the beneficiary of precautionary measures until November 27, 2012, due to fear for their lives and safety that intensified following Mr. Torres' death. The Commission notes that despite the possible link between Mr. Torres Cruz's death and his statements regarding the death of Digna Ochoa, there is no information in the case file on any investigation of his death to connect it to or examine it in the framework of the investigation of the death of Digna Ochoa.

235. Lastly, the IACHR observes that the line of investigation into the family, social, and labor environment, as well as the minor sublines under it, were not able to connect or find a motive related to the death of Digna Ochoa.

236. In this regard, the IACHR notes that in the "soldiers" and "Guerrero" lines of investigation, the body of evidence is basically testimonial. The Commission finds that in these types of cases, in which statements can be subject to influences or affected by fear, the State has an obligation to take adequate measures to identify declarants who may be afraid to testify. Accordingly, the Commission observes that in making contact with the declarants and conducting the interviews, investigators did not take into consideration that for both the soldiers who could testify against other soldiers and the locals who live and travel with their families in an area affected by organized crime, the very fact of being approached by the authorities could have put them in danger.

237. The Commission thus is not fully confident that the testimony given and included in the body of evidence is trustworthy, precisely due to the lack of foresight of the risk and fear to which the declarants may have been exposed, which should be taken into consideration and addressed by the State pursuant to international standards, as noted in the independent report.

238. The IACHR also considers it a grave problem that, following the murder of Mr. Torres Cruz allegedly carried out because he knew of Rogaciano Alba's connection to the death of Digna Ochoa, the Office of the Public Prosecutor did not reopen that line of investigation as part of its due diligence obligation into the death of human rights defenders. The Commission notes that concern over this situation should be especially clear to the State, as the IACHR adopted precautionary measures for the family of Mr. Torres family following his death, meaning that according to the IACHR, the threat was considered grave and urgent.

239. Additionally, the Commission recalls that in cases involving the use of gender stereotypes in the framework of criminal investigations, it has found that their use can be considered a violation of the right to proper justification, as well as a violation of the prohibition of discrimination. In this case, *mutatis mutandis*, the IACHR finds that the Special Prosecutor dismissed the testimony of a visual witness living in Germany—

that is, far from any local pressure—according to which during their visit to the Petatlán Mountain Range, he and Digna Ochoa experienced hostility from members of the infantry battalion, and offered as grounds for this dismissal the argument that human rights defenders are dramatic people whose perceptions are skewed by the work they do. In these terms, the Commission finds that using stereotypes to call human rights defenders biased, combative, and prone to exaggeration to dismiss their testimony, statements, or participation in investigations violates the State's obligation to conduct investigations with due diligence; calls into question its impartiality; and violates the duty to properly justify decisions.

240. Based on this, the IACHR finds that although the State launched lines of investigation related to Digna Ochoa's human rights defense work, those investigations violated its due diligence obligations in how they collected testimony, the use of stereotypes against human rights defenders, and the failure to investigate further the allegations of Mr. Torres Cruz, despite the fact that he was allegedly murdered for implicating Rogaciano Alba in the investigation, to the point that the IACHR adopted precautionary measures to protect his family after his death.

### **3.3. Analysis of the participation of Digna Ochoa's relatives in the investigation into her death**

241. The Commission notes that there are two different accounts of the intervenor's participation in the judicial process. On one hand, the State called its participation limited. The petitioner, on the other hand, stated that the intervenor was blocked by the Office of the Public Prosecutor from contributing evidence, to the point that it had to turn to the courts to enforce its right.

242. In this regard, the IACHR notes two stages in the participation of Digna Ochoa's relatives in AP-2576. In the first stage, the evidence was offered on May 6, 2003, and rejected on July 9, 2003, by the Office of the Public Prosecutor on the recommendation of its expert witnesses whose reports were already included in the NEAP-1 and had settled on the theory of suicide, violating the relatives' right to participate actively in the investigation pursuant to the provisions of the American Convention and the right to offer evidence, as it was described by the CDHDF. Despite their attempt to submit evidence, the NEAP-1 was adopted without the evidence or arguments from the petitioner.

243. The IACHR observes that during the second stage, the intervenor appealed the adoption of NEAP-1 and secured recognition of its right to submit evidence from the Collegiate Tribunal on February 25, 2005, after appealing the *amparo* ruling. Lastly, the evidence offered to the authorities on February 27, 2006, (chemical analysis expert witness report) and on April 17, 2006 (forensic medical and forensic expert witness reports).

244. The IACHR notes that despite the fact that the ruling on the motion for reconsideration of dismissal of the motion for reconsideration of dismissal ordered no new expert witness reports from the prosecutor be conducted on top of those of the intervenor, on May 4, 2010, expert witnesses Apodaca and León issued a report on the location of the gunshot wound that had been called into question by the expert witnesses of the intervenor. The Commission observes that although this was not an adversarial process, there were two competing theories that the specialists involved in the preliminary inquiry were seeking to prove, and thus investigators must strike a balance in the offering of evidence, which, in the Commission's view, did not happen in this case.

245. In conclusion, given that it took the intervenor around three years to be allowed to submit evidence, and given the conflict that arose among the different expert witnesses participating in the preliminary inquiry, motivated by the Office of the Public Prosecutor, the IACHR finds that the right of the relatives of the victims to actively participate in the investigation was violated.

### **3.4. Analysis of how the investigation was conducted**

246. The IACHR observes that from the most intense stage of evidence collecting to the adoption of the NEAP-1, leadership of the investigation changed three times. The petitioner argued that these changes were a demonstration that the aim of the investigation was to prove that Digna Ochoa's death with a suicide and not to resolve the facts.

247. In this regard, the IACHR observes that effectively, at the start of the investigation when it was being led by Mr. Arseo, the theory was of a homicide, as indicated by the Balderrama report and the Laureles report, and even the preliminary independent report. After that, and with the dissemination of the initial findings of the investigation, there is a change within the investigating agency and Mr. Sales takes over leadership of the investigation. According to the petitioner, Mr. Sales and his aide actively sought to publicly describe Ms. Ochoa's death as a suicide. Although these statements are not included in the case file, a complaint was filed before the head of the cabinet, and effectively, Mr. Sales left the investigation, leaving Ms. Guerra leading the Special Prosecutor team that investigated the facts of the case in detail.

248. Thus, the IACHR observes that although the duty to allow public scrutiny means that a reasonable amount of information must be released on the progress of investigations, this does not mean that those responsible for an investigation can publicly state or put forward conclusions, especially before the adoption of the corresponding resolution. As indicated, the elements of transparency, independence, and public scrutiny that must be in place for all legal processes are especially accentuated in the framework of investigations into suicides—and not only suicides attributable to the State—precisely because the determination that a death is a suicide closes the criminal proceeding and the investigation. Thus, when such conclusions are mistaken, it is a source of impunity. In this regard, in this case, the IACHR finds that even though there is no evidence to indicate external pressure on the investigating agency to close the investigation with a theory of suicide, the Commission observes imprudent behavior on the part of the leaders of the investigation that, during a certain period of the investigation prior to the adoption of the NEAP-1, raises serious doubts as to the authenticity of its efforts to arrive at the truth, due to the statement concluding the death was a suicide when the investigation had not yet finished. This is not the way in which public scrutiny should be exercised or the way to conduct investigations into suicides with due diligence.

249. The Commission finds that issuing advanced opinions containing conclusions regarding suicide causes mistrust with regard to the independence and impartiality of the investigating agency and suspicions that such an approach is an indication of some type of external pressure or secondary interest wishing to direct public opinion toward these types of conclusions. In this case, a different standard for behavior was necessary, as it dealt with the death of a human rights defender. In this environment of mistrust, and in addition to the violations identified of the right of the relatives to participate in the process, the IACHR also finds that the intervenor and the investigating agency were found to have an antagonistic and confrontational relationship, which is not conducive to the duty to conduct investigations with diligence in order to resolve the facts.

### **3.5. Reasonable period of time**

250. Regarding the elements on the complexity of the process, the IACHR finds that because of the geographic area it covered (Federal District, state of Guerrero, Washington DC); the number of expert witness reports involved; the configuration of a crime scene complicated with a variety of disruptive and uncommon elements such as the white powder, the latex gloves, and the other gunshots; and the number of statements taken, the investigation into the death of Digna Ochoa is considered to be a complex one. The IACHR thus notes that from the start of the investigation on October 19, 2001, to the adoption of NEAP-1 on July 18, 2003, the process unfolded over a reasonable period of time of 21 months.

251. That said, the IACHR has already determined that following this period, the State violated the right of Digna Ochoa's relatives to participate. First, the IACHR observed that the Office of the Public Prosecutor internally blocked the evidence it offered starting in May 2003. Second, it pursued litigation in the framework of *amparo* 2262/2003 that concluded in 2006, when the relatives were finally allowed to offer expert witness reports for the consideration of prosecutors. The IACHR finds this to be sufficient to conclude that the State's procedural activities delayed the admission of evidence from the intervenor by around 36 months. Once the evidence was accepted, NEAP-2 was assembled and submitted to the CAMP, the body that decided to conduct additional investigative steps on September 17, 2007. Once this was completed, the NEAP-3 was again submitted to the CAMP, which accepted it on November 26, 2010. That is, from the contribution of the evidence by the intervenor in 2006 to the acceptance of the NEAP-3 took around four additional years, to

which was later added the procedural activity involved in processing *amparo* 343/2011, in which a final decision was reached in September 2011. The IACHR finds that much of this time would not have been lost if the investigating agency, in line with its obligations under the Convention with regard to the active participation of relatives in the investigation, had allowed such participation.

252. Regarding the procedural activities of the victims, the IACHR notes no dilatory or obstructive conduct that may have negatively impacted the process. The IACHR recalls that the use of procedural remedies provided for by law cannot in itself be considered dilatory procedural conduct.

253. Based on this, the IACHR concludes that the State violated the principle of a reasonable period of time for conducting investigations, to the detriment of the relatives of Digna Ochoa, and analysis of the fourth element is not necessary.

### 3.6. Conclusion

254. The Commission concludes that the State of Mexico is responsible for the violations of the rights to judicial protection and fair trial enshrined in articles 8(1) and 25(1) of the American Convention in conjunction with the obligations established in Article 1(1) of the same instrument, to the detriment of the relatives of Digna Ochoa y Plácido.

#### **B. Right to humane treatment of the relatives of Digna Ochoa y Plácido (Article 5(1)<sup>170</sup>) in conjunction with Article 1(1) of the American Convention.**

255. With regard to the relatives of victims of certain human rights violations, the Commission and the Inter-American Court have found that the relatives of victims of certain human rights violations can themselves be considered victims.<sup>171</sup> Regarding this, the Court has found that their psychological and moral integrity can be affected as a result of the particular situation suffered by victims, as well as by subsequent actions or omissions of domestic authorities in response to such acts.<sup>172</sup>

256. In this case, the Commission has established a violation of the rights to fair trial and judicial protection of the relatives of Ms. Ochoa. These circumstances in themselves constitute a source of suffering and powerlessness for her relatives, who to this day have no certainty on the cause and circumstances of her death. Under these circumstances, the Court has found that: [...] The absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.<sup>173</sup>

257. Based on this, the Commission finds that the loss of a loved one in circumstances like those described in this report, as well as the lack of truth and justice and the delayed investigation, caused pain and suffering to the detriment of the relatives of Digna Ochoa y Plácido, in violation of their right to psychological and moral integrity established in Article 5(1) of the American Convention, in conjunction with the obligations

<sup>170</sup> Article 5 of the American Convention establishes that: 1. Every person has the right to have his physical, mental, and moral integrity respected.

<sup>171</sup> IACHR. Report no. 11/10. Case 12.488. Merits. Members of the Barrios Family. Venezuela. March 16, 2010. 91. IACHR. Report on Terrorism and Human Rights. Para. 227; Inter-American Court. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 112; and Case of Bueno Alves v. Argentina. Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C No. 164, para. 102.

<sup>172</sup> Inter-American Court. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 112; and Case Vargas Areco v. Paraguay. Judgment of September 26, 2006. Series C No. 155, para. 96.

<sup>173</sup> Inter-American Court. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 102; Case of the "La Rochela Massacre" v. Colombia. Merits, Reparations, and Costs. Judgment of May 11, 2007, Series C No. 163, para. 195; and Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment dated August 12, 2008. Series C No. 186, para. 146.

contained in Article 1(1) of the Convention. Although the death of Ms. Ochoa y Plácido is not attributable to the State, the absence of truth and justice in the case is attributable, and therefore, the State is responsible for the suffering derived from this situation.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

258. By virtue of the foregoing conclusions,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF MÉXICO,**

1. Provide full pecuniary and nonpecuniary reparations for the human rights violations declared in this report. The State must adopt measures to provide financial compensation and satisfaction.
2. Order measures to provide the necessary physical and mental health care needed by the family of Digna Ochoa y Plácido, in accordance with their desires and in coordination with them.
3. Reopen the criminal investigation diligently, effectively, and within a reasonable period of time with the goal of fully resolving the facts. This investigation must take all measures necessary to address the violations found in this report on the merits, including: i) taking the investigative steps identified in this report as lacking sufficient justification by ordering expert witness reports to resolve as much as possible the existing contradictions; ii) making adequate determinations as to whether the testimony in the lines of investigation associated with human rights defense were collected correctly, taking into consideration the potential risk faced by the declarants; iii) investigating the death of Mr. Torres Cruz and its connection to the death of Digna Ochoa; and iv) designing and fully exhausting a line of investigation into the threats and incidents of violence suffered previously by Digna Ochoa that led to her international protection.
4. Order mechanisms of nonrepetition that include enhancing capacity to investigate acts of violence against human rights defenders, pursuant to the guidelines cited in this report on the merits, which must include designing and implementing protocols, as well as measures of institution building and proper training of all officials who come into contact with these types of cases, including police, prosecutors, and judiciary officials.