

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 42/00; Case 11.103
Title/Style of Cause: Pedro Peredo Valderrama v. Mexico
Doc. Type: Report
Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Second Vice-Chairman: Juan Mendez;
Commissioners: Marta Altolaguirre, Robert Goldman, Peter Laurie, Julio Prado Vallejo
Dated: 13 April 2000
Citation: Peredo Valderrama v. Mexico, Case 11.103, Inter-Am. C.H.R., Report No. 42/00, OEA/Ser.L/V/II.106, doc. 3, rev. (1999)

Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On December 23, 1992, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”), received a complaint filed by the Fray Francisco de Vitoria Center for Human Rights (hereinafter “the petitioners”), in which the United Mexican States (hereinafter “the State,” “the Mexican State,” or “Mexico”) is charged with international responsibility in the death of citizen Pedro Peredo Valderrama, because of its failure to investigate the facts surrounding the case and the resulting impunity of the perpetrators. On November 25, 1993, the Center for Justice and International Law joined the case as a co-petitioner (CEJIL, hereinafter included with the “petitioners”); Human Rights Watch/Americas joined as a co-petitioner on October 17, 1996 (also included hereinafter with “the petitioners”). The petitioners allege the violation of several rights enshrined in the American Convention on Human Rights (hereinafter “the American Convention”); namely, the right to life (Article 4); to physical integrity (Article 5); to judicial guarantees (Article 8); to compensation (Article 10); to equal protection of the law (Article 24); and to judicial protection (Article 25).

2. The report states that Pedro Peredo Valderrama was murdered on December 20, 1986, in the locality of Xochimilco, Federal District of Mexico, after being attacked by three persons, who beat him until he became unconscious, and then shot him three times at pointblank range as he lay on the ground. When the incident occurred, Pedro Peredo Valderrama was in the company of his brothers Erick and Uriel, who reported to the Mexican authorities that the brothers Israel Roberto, Pedro Horacio, and Sergio Aguilar Díaz were the persons who actually carried out the murder, a charge that they corroborated when they clearly identified these persons during the legal proceedings. The prosecuting authority of the Federal District (hereinafter “the Office of the Public Prosecutor” or “the PGJDF”) started the investigation (preliminary) on January 26, 1987, with the judicial inspection of the body, and submitted its findings to the

criminal court judge who issued a warrant for the arrest of the Aguilar Díaz brothers, based on the available information that implicated them in the crime. These orders were not carried out until 1996, when Israel Aguilar Díaz was arrested in Switzerland pursuant to an extradition request from the Mexican State; shortly thereafter, Pedro Horacio and Sergio were arrested in Mexico. During the proceedings before the Commission, this body highlighted the importance of such actions, which were carried out within the framework of the friendly settlement procedure. At the date of approval of this report, Israel Aguilar Díaz is still in prison--although his conviction is still subject to appeal--while the other two presumed murderers are free. The petitioners allege that the impunity enjoyed by the presumed criminals is due to the political influence exerted by the Aguilar Díaz family.

3. As a result of its analysis of this report, the Commission concludes that the case meets the requirements for admissibility set forth in Articles 46 and 47 of the American Convention. With respect to the merits of the case, the IACHR concludes that the State violated, to the detriment of the relatives of Pedro Peredo Valderrama, the right to judicial guarantees and to judicial protection under Articles 8 and 25 of the American Convention, respectively, regarding the general obligation to respect and guarantee rights, set forth in Article 1(1) of this international instrument. However, the IACHR concludes that there are no elements in the record to establish in this case the responsibility of the Mexican State for violation of the right to life, to humane treatment, to compensation for the miscarriage of justice, and to equal protection of the law, as guaranteed by Articles 4, 5, 10, and 24 of the American Convention. As a result of these violations, the IACHR recommends that the State conduct a serious, impartial, and exhaustive investigation in order to determine the criminal responsibility of all those involved in the murder of Pedro Peredo Valderrama; and in order to determine whether there are other offenses that prevented a full investigation and sanctioning of those guilty of the act described above. Also, the Commission recommends that, as appropriate, the pertinent legal sanctions be imposed on those guilty of the illegal acts established. Lastly, the Commission recommends that the Mexican State adequately compensate the relatives of Pedro Peredo Valderrama for the violation of their rights.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On January 28, 1993, the Commission requested information from the State on the pertinent parts of the complaint and assigned the number 11.103 to the case. The response of the State was received on April 28, 1993, and forwarded to the petitioners, who provided their comments on July 22, 1993. On August 19, 1994, the petitioners informed that they had filed a claim with the Human Rights Commission of the Federal District, but “there was no favorable response” from that institution.

5. After the exchange of communications between the parties, whereby the respective positions on admissibility and merits were defined, the Commission made itself available to the parties on January 13, 1995 in order to begin the proceedings described in Article 48(1)(f) of the American Convention. The friendly settlement proceedings started when both parties gave their consent in July 1995, and lasted until March 1999, when the petitioners confirmed their decision to withdraw from these proceedings. During the friendly settlement proceedings, there was a constant exchange of information between the parties, and several meetings were held at the

IACHR headquarters and in Mexico. The most notable progress that occurred within the framework of these proceedings was the execution of warrants for the arrest of Israel Roberto, Pedro Horacio, and Sergio Aguilar Díaz in 1996, which resulted in the completion of the process of extradition to Mexico of Israel Roberto, who had been detained in Switzerland.

6. On April 10, 1996, the Commission asked the Mexican State to adopt precautionary measures to protect the life and physical integrity of the Peredo Valderrama family, when it was reported that they had received threats. On April 24, 1996, the State informed the IACHR that the PGJDF took steps to provide surveillance of the family's home. After the communications received from the parties, the IACHR has not received any additional information regarding threats made to the Peredo Valderrama family.

7. The National Commission on Human Rights (hereinafter "the CNDH") sent a note to the IACHR on July 2, 1996, that provides information on the actions taken to carry out the arrest warrants for the Aguilar Díaz brothers. On August 15, 1996, the CNDH sent a new communication with updated information.

8. On October 18, 1996, the Commission informed the parties that it had decided to suspend temporarily the processing of the case pending the final judicial decision in the matter. On December 16, 1996, the IACHR requested updated information on the proceedings from the Mexican State, which led to an exchange of observations between the parties.

9. On October 6, 1997, the parties went to a working meeting at the IACHR headquarters at which the status of the friendly settlement procedure was discussed. In its note of December 11, 1997, to the Mexican State, the Commission stated its interest in holding a meeting in Mexico City in order to make progress in the friendly settlement proceedings in several cases, including this one. On January 14, 1998, the State indicated that "it takes the liberty of proposing that the visit in question be postponed for the time being," yet it also noted, on that occasion, that it was interested in making headway at the Commission's subsequent regular session.

10. On February 2, 1998, the petitioners asked that the IACHR continue to take cognizance of this case until the necessary conditions attain for arriving at a solution based on respect for human rights. On February 24, 1998, another working meeting was held in Washington, D.C., with the presence of the parties and the IACHR.

11. The petitioners reported on April 21, 1998, that Pedro Horacio and Sergio Aguilar Díaz had been acquitted on April 10 by the judge in the case, and asked that the State report to the IACHR any steps taken to prevent the case from remaining in impunity. The Mexican State answered on May 29, 1998, asking that the IACHR declare that the friendly settlement agreement had been carried out with the arrest of the Aguilar Díaz brothers.

12. In their observations of August 18, 1998, the petitioners considered that the case "is still in a grave state of impunity," and so they asked the Commission to declare that the State had not carried out the commitments it took on in the friendly settlement, and to issue a report on the merits. The State submitted its observations in this regard on September 23, 1998, indicating that "the efforts of the Mexican Government to solve this case" should not be ignored.

13. On December 1, 1998, a meeting was held on Mexican cases in which friendly settlement was being sought, at the offices of the Ministry of Foreign Relations of Mexico. On that occasion, timelines were mapped out and meetings scheduled for continuing the proceedings in this case under Article 48(1)(f) of the American Convention.

14. During the hearings held on March 1, 1999, at the headquarters of the IACHR, the petitioners stated their decision to withdraw from the friendly settlement proceedings and asked the Commission to issue a statement on the merits. The petitioners forwarded their final observations on March 1 and 5, 1999. The State did the same on April 13, 1999.

III. POSITIONS OF THE PARTIES

A. The petitioners

15. The petitioners allege that the State of Mexico is responsible for violation of the right to life of Mr. Peredo Valderrama and for the impunity of the aggressors. They charge that this situation is the result of a lack of will by the police authorities, who waited for almost ten years to execute the arrest warrants, and of the violation of the right to due process that resulted in the acquittal of the brothers Pedro Horacio and Sergio Aguilar Díaz.

16. In response to the State's argument on failure to exhaust domestic remedies, the petitioners argue the following in their communication, which was received on July 22, 1993:

The assertion that not all domestic remedies (regular) have been exhausted, put forth by the representatives of the Mexican Government, is unfounded and contrary to law, if one considers that the legal representative of the victims is the Agent of the Public Ministry, who is the representative of the interests of society at large (Representante Social) and exercises a monopoly over the power to prosecute criminal offenses, as provided by Article 21 of the Constitution....

It is obvious that the Public Ministry, under the PGJDF, as representative of society, is the one who should protect the interests and rights of victims and take all steps necessary to be able to press criminal charges against the murderers, for it is irresponsible and criminal to allow one or several criminals to go free, and that merely by dint of being the children or relatives of some government official, they have the right to take the life of whoever they wish, with no fear that the Public Ministry will take any action against them.

17. As regards the State's position on reparations:

Article 339 of the Code of Criminal Procedure ... indicates as it should that reparation for damages is to be claimed with the PROCEDURE, and if not claimed there, may be claimed in a civil proceeding, but once the procedure has concluded, when the persons tried have been convicted, i.e. that they were found guilty of the charges made by the representative of society (Representación Social), for in the event that they were to press claims for reparation for damages, before the accused were given the guarantee of a hearing, to be heard and become the

losing party at trial, it would be a violation of the guarantee, and unlawful, for, while it is true that there are sufficient grounds for imposing criminal liability on the individuals who go by the names of PEDRO HORACIO, SERGIO, AND ISRAEL AGUILAR DIAZ, it is also true, according to Mexican law, that they should be subjected to criminal proceedings, for it cannot be considered that the Mexican Government is asserting that claims for reparations for damages were not made pursuant to the legal rules cited for causes imputable to the interested persons, if the criminal proceedings have not been initiated. [sic] [upper case in the original]

18. In their communication of May 11, 1994, the petitioners state:

As we have been arguing since our initial written submission, in this case, since our State is required to afford its citizens judicial protection, offering effective remedies before judges and courts, and must guarantee that the competent authorities carry out every decision where it has been considered legal to do so in the exercise of such remedies.

Such an opportunity, as has been shown, was not duly afforded by the Mexican State, due, we repeat, to the negligence of the Public Ministry Agent under the court, of the Judicial Police personnel, and of the judge in the case, who by their conduct have kept justice from being done, and in particular have violated the victims' guarantees of juridical security, depriving them of their right to have justice done in this case. [sic]

19. The position of the petitioners vis-à-vis the proposed friendly settlement was that it should "necessarily include the execution of arrest warrants for SERGIO, PEDRO HORACIO, AND ISRAEL ROBERTO, all of them with the last names AGUILAR DIAZ, so as to prevent the consummation of an act of grave impunity" (emphasis in the original). The petitioners stated in the communication of October 4, 1995, that carrying out these orders was "the first step in the friendly settlement procedure accepted by the parties." They added, on November 15, 1995, that "the negligence of the Judicial Police and of the PGJDF, together with the lack of will of the Mexican authorities, has resulted in impunity in the homicide of Pedro Peredo Valderrama almost nine years after the crime occurred."

20. On finding out through the IACHR that Israel Aguilar Díaz had been arrested in Switzerland, the petitioners said that it was an "extremely encouraging" development, but that it "is insufficient," which is why they requested specific information about the arrest and the extradition proceeding. In the course of the hearing held October 6, 1997, the petitioners argued that extradition is "the first step towards reaching a solution in the case," but they are of the view that it is not the last. In the same regard, the petitioners stated as follows in their communication of February 2, 1998:

Thanks to the intervention of the Inter-American Commission on Human Rights, the arrest warrants, neglected for years, were executed, as it was taken into account that insofar as the persons responsible for the murder of Pedro Peredo Valderrama are not punished, the Mexican government is in breach of its international obligations.

Therefore, we consider it of vital importance that this Commission continue to take cognizance of the case, so long as the following conditions, necessary for reaching a settlement of the case based on respect for human rights, do not attain:

- a. That a fair resolution be issued, in keeping with due process guarantees, and that it be administered impartially.
- b. That the Mexican authorities make a commitment to ensure that the statements issued against the Peredo Valderrama family are studied in keeping with the law, and that at the appropriate procedural moment they be declared unlawful.

21. The petitioners argue that the judgment of April 10, 1999, that acquitted Pedro Horacio and Sergio Aguilar Díaz is arbitrary, that it did not take into account the criteria for weighing the evidence provided for in Mexican legislation and case-law, and that it was issued under the pressure brought to bear by the Aguilar Díaz family. In the hearing held at IACHR headquarters on March 1, 1999, the petitioners expressed their decision to withdraw from the effort to reach a friendly settlement, as they consider the time elapsed since the underlying events to be excessive, especially in view of the impunity that has prevailed in the case. The petitioners state the following in their correspondence received on March 6, 1999:

Twelve years and three months have gone by since Pedro Peredo Valderrama was murdered, and to date the perpetrators have not been duly sanctioned and the relatives have not been fairly compensated.

Five years and eleven months have gone by since the petitioners have appeared before the Commission to report the violation of Articles 4, 5, 10, 24, and 25 of the American Convention and the influence peddling that has prevented those responsible from being punished, to request guarantees of protection for the Peredo Valderrama family, as well as ... the right to swift justice and to the payment of compensation for damages.

B. The State

22. In its initial correspondence related to the case, the State requested a declaration of inadmissibility because, in its view, there was no proof of acts that violated the American Convention, and because domestic legal remedies in Mexico had not been exhausted. The State indicated that the arrest warrant for the Aguilar Díaz brothers was not executed at first because they filed an amparo action (recurso de amparo) suspending its effect, but that "once the amparo was ruled on, the arrest warrant was modified and issued again, this time for the crime of unaggravated intentional homicide." The State adds:

As regards reparation for the damages, it should be noted that according to the Code of Criminal Procedure for the Federal District, "civil liability for reparations for damages may not be decreed other than by the offended party taking the procedural initiative..." and this must be done "... before the judge or court that has taken cognizance of the criminal action...." (Articles 533 and 532 respectively.)

The Code of Criminal Procedure provides, at Article 539, that "when the party in interest with respect to the civil liability does not file the motion ... after the ruling in the respective proceeding, it may seek to enforce it by filing a claim as per the requirements of the Code of Civil Procedure ... before the civil courts."

23. In its response to the petitioners' observations, the State reiterated its initial arguments. In addition, it reported that the CNDH had intervened in the matter and that on November 21, 1991, it communicated to Mrs. Valderrama that "no acts violative of human rights appear, based on the investigation, and, therefore, the case will be closed as a concluded matter." Nonetheless, it clarified that the CNDH "has stated that it is most willing to hear the complainant once again and, as appropriate, reopen the case and carry out the investigations needed to fully clarify the facts set forth in the complaint."

24. In response to the proposal to initiate the procedure provided for in Article 48(1)(f) of the American Convention, the State asks in its communication of May 31, 1995, that the IACHR "take into consideration the disposition of the authorities and corresponding offices to reach a friendly settlement." It further indicates that constitutional amendments have been adopted, including the possibility of challenging the decision of the Public not to press criminal charges. Another reform the State highlights is the creation of the Office of Human Rights and Community Services within the PGJDF, and it adds that "as evidence of the good faith of the Mexican authorities to solve the case, a copy of Report N° SGDH/3734/95 and its attachments shall be delivered to the Commission, which reflect the interest of the authorities in carrying out the arrest warrants in question." (sic)

25. On December 7, 1995, the State informed the IACHR:

On October 16 of this year, a Special Group of the Judicial Police was formed whose main objective is take the appropriate steps leading to execution of the arrest warrants. This Special Group has undertaken the task of collecting information that will make it possible to determine with greater certainty the whereabouts of the accused Sergio, Israel Roberto, and Pedro Horacio, all by the last names of Aguilar Díaz. In addition, the Special Group has undertaken the task of trying to determine whether these persons have changed identity. In addition, one element that will no doubt be most helpful for the work of the Special Group refers to the composites sketches that were prepared by the experts of the PGJDF, in which Professor María Concepción Valderrama widow of Peredo, the mother of the deceased, participated significantly.

26. In the same communication, the Mexican State reiterates that "it has been possible to confirm that the fugitives have not sought visas to the United States," yet even so "the Mexican authorities are remaining on the alert in this respect, for as is publicly known, there is large-scale emigration to the United States of America, and not having documents is no guarantee that one is not in the country that neighbors Mexico to the north." In addition, the State indicates that the petitioners "do not take into account the physical impossibility, recognized by the legislation and by the doctrine, of carrying out the arrest warrants when the persons named therein have not been located." (sic) It adds that "the Government of Mexico has accorded priority to executing these arrest warrants and is making every effort within its reach to achieve this."

27. Once the three Aguilar Díaz brothers had been detained and turned over to the Mexican judicial authorities, the Mexican State maintains that it made every effort to sanction the perpetrators, and, for this reason, it asked the IACHR on numerous occasions to declare the case resolved and to close it. On July 11, 1996, the State expressed that "the alleged murderers of Pedro Peredo Valderrama have been pursued for nine years with tenacity and perseverance by members of the judicial police of the PGJDF," and that the petitioners' argument on the possibility of the Aguilar Díaz brothers evading judicial action is "baseless and without support." It adds that "there should be no concern on the part of the petitioners, for the authorities, in this matter as in all cases under its jurisdiction, will apply the principle of impartiality, legality, and justice." The State argues that:

As a result of the intense inquiries made in the case of the homicide of the young man Pedro Peredo Valderrama in Xochimilco, at this time none of the arrest warrants issued against the Aguilar Díaz brothers is pending execution. Consequently, this matter is ripe for solution pursuant to Article 49 of the American Convention on Human Rights.

28. With respect to the delay in the proceedings against Israel Aguilar Díaz, the Mexican State indicated on January 3, 1997 that "if there has been a delay, it is only attributable to the defense that was presented by Mr. Aguilar Díaz, which is within due process." On September 3, 1997, he reported to the IACHR that the Swiss government granted extradition of the alleged murderer, and it considers that with this, "the mutually agreed upon bases for arriving at a friendly settlement have been carried out." Consequently, the State asks the Commission "to consider this matter to have been reached a satisfactory conclusion." This position was put forth in the following communications, as well as in the hearings and meetings held on the case.

29. On May 29, 1998, the Mexican State informed the IACHR that the case against brothers Sergio and Pedro Horacio Aguilar Díaz was dismissed by the court that took cognizance of the case on appeal. It clarified that the Ministry of Foreign Relations "does not have powers to intervene in the investigation and prosecution of crimes, nor may it urge any judge to issue his or her rulings in one or another direction," but that "it has stated its positive disposition to reach a friendly settlement in this case, in the terms agreed upon before the IACHR; it has closely followed the case, and will be awaiting the final outcome." It once again asks that the Commission "declare that each and every one of the commitments taken on by the Government of Mexico in the friendly settlement that was pursued in Case 11.103 has been carried out."

30. In response to the petitioners' position, that the agreement was not carried out because of the persistence of impunity, the State indicates that they "claim to be unaware of the efforts made by the Government of Mexico to solve this case." With respect to the role of the PGJDF, it states:

The Public Ministry, in carrying out its constitutional function as the entity entrusted with criminal indictments, with the means available to it, the responsibility of the accused, and it took recourse to the challenges afforded it by the law of criminal procedure, thanks to which, in the end, two of the accused were found guilty. From that point on, actions were undertaken to carry out the judicial warrants for them to be arrested again.

31. During the hearing held on March 1, 1999, in the course of which the petitioners requested that a report be adopted on the merits in this case, the State opposed such a measure, insisted on its good faith displayed during the effort to reach a friendly settlement, and noted that "there is good will to continue advancing." Furthermore, it argued that the conviction is a sine qua non for discussing reparations in this case.

32. In its final comments submitted on April 13, 1999, the State "expressed its regret over the decision of the petitioners to end the friendly settlement proceedings" and stated that "the process had been complex and had come up against a number of stumbling blocks." Despite this, the State noted that the persons accused of the homicide had been detained, prosecuted, and sentenced. Furthermore, it added:

It is well-established that the State was not involved in the events that led to the loss of life by Mr. Peredo Valderrama; that a serious, exhaustive, and effective investigation had been launched immediately; and that the appropriate action had been taken through the appropriate legal organs, which had led to the apprehension of the perpetrators, to their prosecution, and to their conviction.

The friendly settlement agreed to on the basis of the proposal of March 1995 cited as a main point execution of the warrants for the arrest of the alleged perpetrators, which took place in 1996. The decision regarding their guilt is one to be made exclusively by the judiciary.

IV. ANALYSIS

A. Admissibility

33. The practice of the Commission in recent years has been to rule beforehand and separately on the admissibility of petitions related to individual cases. However, the IACHR has also made exceptions to this practice in those cases, such as this one, when the charge of the violations of the right to judicial guarantees and judicial protection is linked to the analysis of the exhaustion of domestic remedies within a reasonable timeframe, as well as its effectiveness.[FN1] To that end, the Commission will analyze below compliance with the requirements set forth in Articles 46 and 47 of the American Convention.

[FN1] In this regard, see the IACHR 1996, 1997, and 1998 Annual Reports, Chapter III "The system of individual petitions and cases."

a. Competence

34. The State argued that in this case, there was no proof of human rights violations. As seen above, the allegations in this case describe acts that would constitute a violation of the rights recognized and enshrined in the American Convention, and which took place when the obligation to respect and guarantee the rights established in this instrument was in effect with

respect to Mexico.[FN2] For this reason, the IACHR has *rationae personae*, *rationae materiae*, and *ratione temporis* competence to hear the merits of the complaint.

[FN2] The Mexican State deposited its instrument of ratification of the American Convention on April 3, 1982.

b. Exhaustion of domestic remedies

35. Among the exceptions to the rule on the exhaustion of domestic remedies, Article 46(2)(c) of the American Convention makes provisions for the unjustified delay in decisions related thereto. The murder of Pedro Peredo Valderrama occurred on December 20, 1986, and after 13 years, the domestic legal bodies still have not made a definitive determination of how the incident occurred, nor has any final sentence been imposed on the killers.

36. Taking into account the time period that elapsed since the murder, the IACHR considers *prima facie* that the exception of Article 46(2)(c) applies to the instant case. The unreasonable delay in the proceedings alleged by the petitioners shall be the subject of a more complete analysis in the section of the report pertaining to the investigation into the murder of Pedro Peredo Valderrama.

c. Time period for submission

37. The State did not avail itself of the exception set forth in Article 46(1)(b) of the American Convention, nor did it analyze it in this report, since the parties agree that proceedings in the Mexican legal system have not yet been concluded.

d. Duplication of proceedings

38. The Mexican State did not avail itself of the exception provided for in Article 46(1)(d) of the American Convention, nor is it apparent based on the information contained in the case file.

e. Friendly settlement

39. The proceedings provided for in Article 48(1)(f) of the American Convention were instituted in July 1995, as soon as both parties expressed agreement on that matter. In the course of efforts to reach a friendly settlement, which lasted almost four years, several meetings and hearings were held between the parties, with the Commission present. Finally, the IACHR ended the friendly settlement stage at the express request of the petitioners, made during a hearing that took place on March 1, 1999. In view of the fact that most of the developments related to this case occurred while these friendly proceedings were taking place, details on the information received during that period will be analyzed together with the merits of the case.

B. Merits

40. After establishing that the complaint is admissible, the Commission will proceed with an analysis of the arguments on the basis of fact and law related to the merits of this complaint.

a. Right to life (Article 4)

41. Article 4(1) of the American Convention states:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

42. In the case under analysis, the petitioners have not accused State agents of being directly responsible for the murder of Pedro Peredo Valderrama. However, in their view, it results from the failure on the part of the authorities to investigate the facts. In that regard, the Inter-American Court has stated

An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.[FN3]

[FN3] Inter-American Court of Human Rights, Velásquez Rodríguez Case, July 29, 1988, para. 172. See also, in that regard, Asdrúbal Aguiar, *Derechos humanos y responsabilidad internacional del Estado* [Human rights and the international responsibility of the State]. Monte Avila Editores Latinoamericana/Universidad Católica Andrés Bello, Caracas, Venezuela, 1997, para. 359, page 202.

43. Based on the information provided in the complaint, Pedro Peredo Valderrama was killed when he was attacked by armed individuals on a public road. The information in the IACHR file does not reveal that Peredo Valderrama had been threatened before by the alleged killers or by other persons, or that his life had been in danger for any reason. For this reason, it is not possible to find that the Mexican State failed to do its duty by preventing the murder of Pedro Peredo Valderrama.

44. The IACHR does not have any basis on which to establish responsibility of the Mexican State for violation of the right to life of Pedro Peredo Valderrama. However, the question of whether the investigation into this homicide was conducted in accordance with the rules of due process and whether the right of his relatives to effective judicial protection was guaranteed will be analyzed later on.

b. Right to humane treatment (Article 5)

45. Article 5(1) of the American Convention guarantees that “every person has the right to have his physical, mental, and moral integrity respected.” The analysis of this case shows that

the petitioners reported, on various occasions, both to the Mexican courts and to the IACHR, that the family of Pedro Peredo Valderrama had been harassed from the time they accused the Aguilar Díaz brothers of his murder. For its part, the Mexican State indicated from the start of the proceedings before the IACHR, its willingness to investigate and settle this case.

46. The Commission requested precautionary measures from the Mexican State on April 10, 1996, in regard to which the State responded that it had ordered protection of the home of the Peredo Valderrama family. The petitioners disputed the effectiveness of these measures and charged that the State had not treated the matter with due seriousness.

47. The information contained in the record does not show direct responsibility on the part of State agents in events that may have jeopardized the physical, mental, or moral integrity of the Peredo Valderrama family members. In this case, it is also not possible to charge the State with violation of this right by individuals acting with the protection of government officials, or what may have happened because of their negligence. The IACHR therefore concludes that the Mexican State bears no international responsibility for violation of the right protected under Article 5 of the American Convention, which, according to the petitioners, occurred in the case of Mrs. Concepción Peredo de Valderrama and her family.

48. The foregoing notwithstanding, in the view of the Commission, there are sufficient factors to analyze, in the relevant part of this report, whether the State failed in its duty to investigate the threats made against the Peredo Valderrama family.

c. Right to equal protection of the law (Article 24)

49. Article 24 of the American Convention states:

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

50. The petitioners charge that the right of the family of Pedro Peredo Valderrama to equal protection of the law has been violated. They argue that the political power of the Aguilar Díaz family provided its members with an unfair advantage in relation to the relatives of the victims in this case. In its correspondence, the State makes no reference to this claim.

51. The Commission reiterates what it stated earlier, after analysis of the alleged violation of the right to life, regarding the ways in which States can bear international responsibility for the violation of human rights. The Inter-American Court of Human Rights has maintained the following:

Accordingly, no discrimination exists if the difference in treatment has a legitimate purpose and if it does not lead to situations which are contrary to justice, to reason or to the nature of things. It follows that there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review. These aims may not be unjust or unreasonable, that is, they may not be

arbitrary, capricious, despotic or in conflict with the essential oneness and dignity of humankind.[FN4]

[FN4] Inter-American Court of Human Rights, Advisory Opinion OC-4/84 of January 19, 1984 (Proposed Amendment to the Naturalization Provisions of the Constitution of Costa Rica), (Series A) No. 4 (1984), para 57.

52. The IACHR notes that in this case, no State agent was accused of engaging in discriminatory conduct with respect to any member of the Peredo Valderrama family, and that it is also impossible to establish that responsibility based on negligence of the authorities. Furthermore, the petitioners have not provided the most basic evidence to establish a standard for comparison[FN5] and, for this reason, the Commission concludes that there is no colorable claim of a violation of the right to equal protection of the law.

[FN5] In that regard, see the IACHR 1997 Annual Report, Report N° 8/98 (Case 11.671 – Carlos García Saccone), Argentina, OAS/Ser. L/V/II.98 Doc. 6, rev., April 13, 1998, paras. 38-43.

d. Right to compensation because of a miscarriage of justice (Article 10)

53. Article 10 of the American Convention states that every person “has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.” The Commission notes that although the petitioners in this case cited this provision, neither the facts nor the charges indicate that the victims were sentenced through a miscarriage of justice. Therefore, in the view of the IACHR, a ruling in this report on the right protected by Article 10 of the American Convention would not be appropriate.

e. Right to judicial guarantees (Article 8) and to judicial protection (Article 25) in relation to the obligation to respect and guarantee rights (Article 1(1))

54. Fulfillment of the obligations imposed under Articles 8 and 25 of the American Convention is linked to the applicability of the exceptions related to the exhaustion of domestic remedies.[FN6] This is the determination made by the Commission with respect to this case, in concluding that the application of the exception to the exhaustion of domestic remedies set forth in Article 46(2)(c) of the American Convention is admissible.

[FN6] See, for example, the IACHR 1997 Annual Report, Report N° 3/98 (Case 11.221 – Tarcisio Medina Charry), Colombia, OEA/Ser. L/V/II.98 Doc 6 rev., April 13, 1998, para 80.

55. The right to judicial guarantees and the right to judicial protection are tied to the obligation set forth in Article 1(1) of the American Convention. The following assessment made by the IACHR should be borne in mind:

The obligation contained in Article 1 (1) is a necessary corollary of the right of every individual to recourse to a tribunal to obtain judicial protection when he believes he has been a victim of violation of any of his human rights. If this were not so, the right to obtain effective recourse set forth in Article 25 would be absolutely without content.

(...)

The Commission considers that the right to a recourse set forth in Article 25, interpreted in conjunction with the obligation in Article 1(1) and the provisions of Article 8(1), must be understood as the right of every individual to go to a tribunal when any of his rights have been violated (whether a right protected by the Convention, the constitution or the domestic laws of the State concerned), to obtain a judicial investigation conducted by a competent, impartial and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation. [FN7]

[FN7] IACHR 1995 Annual Report, Report N° 5/96 (Case 10.970 – Fernando and Raquel Mejía), Peru, OEA/Ser.L/V/II.91 Doc. 7 rev., February 28, 1996.

56. The Inter-American Court, in analyzing the duty to investigate human rights violations, makes it clear that this is difficult to determine in certain circumstances. However, it is defined as a duty in terms of means or conduct, which “must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.” According to the Court, the obligation to investigate “must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.”[FN8] In a decision relevant to the analysis of the instant case, the Inter-American Court established:

[FN8] Inter-American Court of Human Rights, Velásquez Rodríguez case, Sentence of August 29, 1988, para. 177.

It is evident from Article 8 of the Convention that the victims of human rights violations or their next of kin should have substantial possibilities of being heard and acting in the respective proceedings, both in order to clarify the facts and punish those responsible, and to seek due reparation.... It is clear that those responsible have not been punished, because they have not been identified or penalized by judicial decisions that have been executed. This consideration alone is enough to conclude that the State has violated Article 1.1 of the Convention, since it has not punished the perpetrators of the corresponding crimes. In this respect, there is no point in discussing whether the defendants in the domestic proceedings should be acquitted or not. What

is important is that, independently of whether or not they were the perpetrators of the unlawful acts, the State should have identified those who were responsible, and it did not do so.[FN9]

[FN9] I-A Court, Villagrán Morales et al case (The “street children case”), Judgment of November 19, 1999, paras. 227 and 228.

57. The obligation to investigate, prosecute, and punish the persons liable for human rights violations is a non-delegable duty of the State, especially when its penal system makes it solely responsible for criminal proceedings.[FN10] This is the case of Mexico, where the execution of criminal proceedings are assigned exclusively to the State in its domestic laws.[FN11]

[FN10] See for example, IACHR 1997 Annual Report, report N° 52/97, Case 11.218 (Arges Sequeira Mangas), Nicaragua, OEA/Ser. L/V/II.98 Doc. 6 Rev., April 13, 1998, paras 96 and 97. The IACHR has also said that:

The fact that no one has been convicted in the case or that, despite the efforts made, it was impossible to establish the facts does not constitute a failure to fulfil the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive, serious, and impartial investigation.

IACHR, 1997 Annual Report, Report N° 55/97 (Juan Carlos Abella et al), Argentina, para 412, page 375.

[FN11] In this regard see the IACHR,1997 Annual report, Report N° 48/97, Case 11.411 (Severiano Santíz Gómez et al – “Ejido Morelia”), Mexico, para 50, page 647; and Report N° 49/97, Case 11.520 (Tomás Porfirio Rondin et al – “Aguas Blancas Massacre”), Mexico, para 67, page 674. Also, the IACHR 1998 Annual Report, Report N° 48/99 (Case 10.545 – Clemente Ayala Torres et al), Mexico, paras 127-130; and Report N° 50/99 (Case 11.739 – Héctor Félix Miranda,) Mexico, paras, 34 and 35.

58. The Commission will proceed with an analysis of the information available in the record regarding the investigation into the violation of the right to life of Pedro Peredo Valderrama, and of the investigation into the threats and harassment of the members of the family when they reported the homicide, in order to determine whether they meet the aforementioned requirements of the American Convention.

i. Investigation into the murder of Pedro Peredo Valderrama

59. The obligation to investigate human rights violations in a complete, independent, and impartial manner is inherent in the duty to protect human rights, recognized in the American Convention.[FN12] The investigation must meet all the requirements for due process, defined in Article 8(1) of the American Convention:

[FN12] In this regard, see IACHR Annual Report 1995, Report N° 10/95 (Case 10.580), Ecuador, OEA/Ser.L/V/II.91 Doc. 7 rev., February 28, 1995, paras 46 and 48. In that report, the Commission notes that despite the fact that the investigation by the Ecuadorean authorities lasted almost three years, all possible avenues for determining the truth had not been exhausted. Furthermore, the Commission concluded that the investigation was inadequate, which, in addition to the excessive delay, resulted in the violation of the right to justice and to determination of the truth regarding the whereabouts of the victim.

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.

60. As stated earlier, another fundamental element of an investigation is effectiveness. Under the terms of Article 25 of the American Convention: “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.” This case involves the right of the Peredo Valderrama family to ensure that the facts are investigated, the perpetrators are punished, and they are compensated for damages suffered.

61. With regard to the duration of the legal proceedings, consideration must be given to the fact that Pedro Peredo Valderrama was killed on December 20, 1986, that is, almost thirteen years as of the date of this report, and no determination has yet been made regarding how the incident occurred, the perpetrators have not been definitively identified or punished, and compensation has not been paid for the consequences of these violations. The Commission already established above, with regard to the admissibility of the case, that this time period is unreasonable. In this section, consideration will be given largely to the factors established for this purpose by the Inter-American Court: the complexity of the case; the procedural action of the interested party; and the conduct of the judicial authorities.[FN13] An analysis will be done of the effectiveness of the investigation later in this report.

[FN13] Inter-American Court of Human Rights, Case of Genie Lacayo, sentence of January 29, 1997, para. 77.

Complexity

62. It has already been seen that the facts and documentation available indicate that this case is not a complex one. There is only one victim, the events took place in a public road and in the presence of several eyewitnesses, and the persons alleged to have actually committed the crime were identified by these witnesses.

63. The complaint was filed by the Peredo Valderrama family with the PGJDF on January 2, 1987, a few days after the murder. The Office of the Public Prosecutor started preliminary investigation 27A/2343/986 after judicial inspection of the body of Pedro Peredo Valderrama. As part of the proceedings, when the alleged killers went to the PGJDF, they were protected by a writ of amparo that prevented their detention at that time.[FN14] However, when the preliminary investigation was turned over to the judiciary, the competent judge issued warrants for the arrest of the Israel Roberto, Pedro Horacio, and Sergio Aguilar Díaz, brothers, on February 4, 1987.

[FN14] In their complaint of November 16, 1992, the petitioners describe the initial phase of the proceedings as follows:

The accused appeared to provide a statement to the official in the Office of the Public Prosecutor, head of the processing unit N° 17 of the central division of the Office of the PGJDF, under the protection of the federal justice system, since they had instituted proceedings for the protection of their civil rights, and they had been granted a temporary suspension, and with that, they went to the Office of the Public Prosecutor.

On that occasion, they were accompanied by Lic. Ernesto Aguilar Apis and Dr. Ernesto Aguilar Cordero, the cousin and paternal uncle of the accused respectively, who were, at that time, federal representatives for the XXIV electoral district (at the moment, the cousin is a council member for the XXIV electoral district). Since that time, a change was noted in the behavior of the judicial authorities towards the family of the deceased, and they even went so far as to shout at them each time they went to find out how the investigation was proceeding.

64. In the view of the IACHR, one of the central issues of this case is the failure to execute the arrest warrants from early 1987 to March and June 1996 when Israel Aguilar Díaz was arrested in Switzerland, and Pedro Horacio and Sergio Aguilar Díaz were arrested in Mexico, respectively. According to the petitioners, non-execution was linked to the influence exercised by the Aguilar Díaz family over the local authorities. The State writes in its correspondence of October 12, 1993, that “thus far, it has not been possible to execute the arrest warrant because the whereabouts of the alleged perpetrators are unknown.”

Procedural activity by the Peredo Valderrama family

65. The complaint processed by the IACHR contains copious documentation, the validity or relevance of which has never been disputed by the Mexican State, regarding the procedural activity conducted by the Peredo Valderrama family to ensure execution of the arrest warrant. These documents include a large volume of correspondence and reminders to the PGJDF, to the competent judge, and to the Director General of the Investigative Police for the Federal District (entity directly responsible for executing the arrest warrant). The petitioners mention in the initial complaint that, as a result of their actions, the judge sent official reminders pertaining to execution of the arrest warrant to the Federal District Investigative Police on June 2, 1987, March 18, 1988, June 9, 1988, February 26, 1989, and May 3, 1991.

66. Mrs. Concepción Peredo de Valderrama also went to the PGJDF on many occasions to report negligent conduct on the part of the investigative police, who, according to her, had gone as far as to prepare false reports on proceedings that had never been held. For example, mention should be made of the correspondence of April 24, 1990, by Mrs. Valderrama to the PGJDF, summarizing the actions taken to date, which produced no results, and which included very specific information on the movements of the alleged killers. Mrs. Valderrama mentions in her correspondence three homes frequented by the Aguilar Díaz family, the business activities of the brothers who were fugitives from justice, and the vehicles that they were driving, with the respective tag numbers. According to her, several relatives and witnesses had seen the Aguilar Díaz brothers personally conducting activities related to these businesses.

67. The State has indicated on several occasions that Mrs. Peredo Valderrama had not cooperated with the authorities, and that the delay and ineffectiveness of the investigation was attributable to her. In the view of the Commission, not only did the victim's family refrain from obstructing the process but rather it cooperated actively with the investigation into the murder. It should not be forgotten that States cannot transfer to individuals the obligation to investigate imposed on them by the instruments of the inter-American human rights system.[FN15] Proof of this lies in the fact that the members of the Peredo Valderrama family provided important information and personally participated in the search operations, despite alleged threats from the Aguilar Díaz family.

[FN15] With regard to this obligation, the inter-American Court has stated:

An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane. Inter-American Court of Human Rights, Velásquez Rodríguez case, Sentence of July 29, 1988, para. 176.

Conduct of the judicial authorities and the PGJDF

68. It must be stressed that the Mexican State has not disputed the fact that Pedro Horacio Aguilar Díaz was identified in 1988 in the Xochimilco, Federal District area by the uncle of Pedro Peredo Valderrama, but fled with the complicity of the agents of the investigative police, who had been called to the scene to arrest him.[FN16] The seriousness of this incident, together with the failure to punish the perpetrators, are enough to establish the responsibility of the Mexican State in its failure to perform its duty to investigate the facts related to this case.

[FN16] The incident was related by the petitioners as follows:

At the eighth district headquarters, headed at that time by Commander Felix Chávez Pérez, together with the officers under his supervision, at 9 p.m. on July 26, 1988, members of the

Peredo Valderrama family provided information regarding the whereabouts of C. Pedro Aguilar Díaz, after the closing of “El Bosque” bar (owned by his father), located at N° 471 Calzada Xochimilco Tuyehualco, on one side of the Nativitas woods, in Xochimilco, Federal District, so that he could be arrested. He was in his red Volkswagen sedan vehicle, license plate 413-BRX, identified by the relatives of the deceased who asked that the individual be stopped and his identification requested. This was done, and after identifying himself, he presented identification that showed him to be one of the persons against whom charges has been made by the Peredo Valderrama family.

Despite the fact that this individual had been fully identified, since the relatives of the deceased had been persistent in their calls for justice from the investigative police, Commander Félix Chávez Pérez and his colleagues asked the uncle of the deceased, since he was the one who took them to the scene, ex profeso, so that the arrest could be made, to go to his car to get a tool to open the windows of the car, since the occupant had refused to open the car for them and had locked it. In trying to respond to the request of the investigative police, the officers let the killer escape by moving out of his way and blocking the path of the uncle of the deceased so that he could not follow him. The patrol car was gray in color, with license plate 189-DRM. This incident is contained in the documentation prepared at the internal inspection unit of the Investigative Police, under the Number 39/88, headed at that time by Commander José Garay Márquez, internal inspector, dated July 27, 1988.

Note of July 14, 19994, from Mrs. Concepción Peredo de Valderrama and the Vitoria Center to the President of the Federal District Human Rights Commission.

69. It is perhaps not surprising therefore, that several years have gone by without anything being achieved by the domestic legal system. During its on-site visit to Mexico in July 1996, the Commission was informed by the authorities of the Federal District on the advances in the extradition proceedings, as well as on the investigation and the prosecution of the alleged murderers. While the case was being processed by the Commission, particularly during the friendly settlement stage, very significant progress was made in the judicial investigation, with the arrest of the three alleged killers in 1996. In its letter of April 23, 1996, the Mexican State indicated:

Israel Roberto Díaz Aguilar (sic), for whom an arrest warrant has been issued in the murder of young Pedro Peredo Valderrama, was located and detained in Switzerland, and proceedings have been instituted for his extradition.

70. On July 11, 1996, the State informed the IACHR that:

Messrs. Sergio and Pedro Horacio Aguilar Díaz, 30 and 31 years old respectively, were detained on June 27, 1996 in Mexico, D.F. after an exhaustive investigation by members of the investigative Police of the PGJDF, pursuant to arrest warrants issued for the murder Pedro Peredo Valderrama.

71 .However, at no time did the State inform the IACHR whether the Mexican authorities had investigated certain matters that were very important in establishing the truth about this case. It did not provide any information on how the three brothers were able to elude the Mexican

justice system for such a long time. It did not provide information on how Israel Roberto Aguilar Díaz was able to travel to Switzerland when an arrest warrant had been issued for him, whether an investigation had been carried out to determine how the three brothers remained fugitives all that time, or whether an effort had been made to determine whether there had been complicity on the part of the authorities, apart from the incident already related involving Pedro Horacio Aguilar Díaz, to block execution of an arrest warrant for nine years.

72. Execution of the arrest warrants in 1996 did not lead to definitive clarification of the facts surrounding the case, let alone the punishment of those responsible, since the alleged killers were freed less than two years after their arrest. On April 21, 1998, the petitioners provided the following information:

Last April 10, the Judge of the Thirty-second Criminal Court of the Federal District, Sebastián Moreno Olin, by operation of law, handed down a ruling acquitting Pedro Horacio and Sergio Aguilar Díaz, against whom criminal proceeding 111/97 had been instituted for the aggravated homicide of Pedro Peredo Valderrama...This decision of the Mexican State, handed down through its judiciary, is yet another act of grave impunity that has come to characterize this case, since more than ten years have gone by without the imposition of any criminal sanctions on the persons responsible for the homicide of Pedro Peredo. With this decision, the fears that we, the petitioners, have expressed regarding the arbitrary acts committed by the Judge processing the case, the failure to respond to various claims, and the indifference of the Executive have been shown to be well-founded.

73. The petitioners submitted detailed information regarding irregularities allegedly committed by the first instance judge who handed down this decision, such as the fact that he confused the name of one of the witnesses (Hernández instead of Fernández); he referred to the statement of another witness (Carlos Rioja Walber) who did not appear; he referred to expert topographical evidence that had not been included in the mass of evidence entered in the proceedings; he referred to the expansion of the statement of another witness (Fidelia López Sánchez) who was already dead on the date of the alleged proceedings, and whose death certificate had been included in the case file; and he quoted from sworn statements provided by Araceli Contreras Díaz, Ernesto Aguilar Cordero, Pedro Aguilar Cordero, and Juan Manuel Peña Jiménez as if these statements had been provided for the defense of Pedro Horacio and Sergio Aguilar Díaz, when, in reality, this evidence had been provided in defense of the other person charged, namely, Israel Roberto Aguilar Díaz. The petitioners charge that all of this “suggests that the judge a quo has absolutely no knowledge of the evidence pertaining to criminal case 111/97,” “the result of which is the violation of Article 17 of the Constitution of the United Mexican States, since his conduct is hindering justice from being duly dispensed in a prompt manner.”

74. Furthermore, the petitioners allege that the judge, “in handing down a sentence for an acquittal, is flagrantly violating the guiding principles pertaining to the assessment of evidence” for the following reasons:

[The judge] is rejecting the mass of evidence contained in criminal case 111/97 that is prejudicial to those being prosecuted individually and separately; contrary to the stipulations of Article 261

of the Code of Criminal Procedure; that is, jointly and after weighing in a natural and logical manner the mass of evidence entered during the preliminary proceedings.[FN17]

[FN17] The evidence that was rejected by the judge includes, according to the petitioners, the statement by complainant Carlos Valderrama Rosas, the testimony provided by Erick Peredo Valderrama, the “deposition” from Uriel Peredo Valderrama, the testimony from José Luis Valderrama Rosas and José Encarnación Rosas, the report from investigative police officer Enrique Montes, the statements of Florencia Ramírez Barrón, Fidelia López Sánchez, Ernesto and Enrique Aguilar Najera, Carlos Rioja Walberg, Demetrio Catalán Escobar, and María García Vázquez, the medical certificate signed by Dr. Miguel Angel Molina Soriano, the identification of the body, the list of injuries and partial identification data pertaining to Pedro Peredo Valderrama prepared by the investigating entity, the chemical/forensic report issued by expert Arturo Martínez Hernández, the post-mortem certificate signed by medical forensic experts Ramón Fernández Cáceres and Roberto Cervera Aguilar, the criminal field report and photograph signed by experts Manuel León Mendoza and Mario López Reyes, the list of clothing prepared by the investigating Office of the Public Prosecutor, and the list of partial identification data of Pedro Horacio and Sergio Aguilar Diaz, prepared by the social worker.

The Examining Magistrate is giving full consideration to the evidence of the sole witness for the defense, who, in this case, is none other than the father of the defendants, namely Pedro Aguilar Cordero. Therefore, the judge assigned to the case is once again violating the guiding principles pertaining to the assessment of evidence, since, at no time has there been compliance with the provisions of Article 255(III), given the fact that Pedro Aguilar Cordero, because of his family ties to the accused, was incapable of acting with complete impartiality. Furthermore, his testimony for the defense was provided more than 10 years after the occurrence of this act. In other words, the testimony provided by the father of the persons who have now been convicted is, beyond a doubt, testimony designed to provide an alibi, the aim of which is to disassociate the defendants from the acts with which they have been charged.

75. According to the petitioners, Erick and Uriel Peredo Valderrama, “fully and fearlessly identified the individuals who have now been prosecuted for beating and killing their brother, Pedro Peredo Valderrama.” The Mexican case law provided by the petitioners to the IACHR notes, on the one hand, the evidentiary force of the statements of the relatives of victims, and reduces, on the other hand, the value of the statements by relatives of the accused. For example, it is pointed out that the Mexican Supreme Court has maintained that “the statement of the victim of a crime casts a strong presumption of responsibility on the person accused of causing the prejudice, since it is logical to assume that the person who suffered the prejudice has an interest in ensuring that the perpetrator is punished rather than a third party.”[FN18]

[FN18] Albores Jenao, Page 4603, Volume LXXX, June 30, 1994, 4 opinions.

76. Despite this, the petitioners stress that the judge acquitted Pedro Horacio and Sergio Aguilar Díaz precisely because he rejected the testimony of Erick and Uriel Peredo Valderrama because they are the victim's brothers, which he alleged makes them unable to "view the situation dispassionately."

77. The State reported on May 29, 1998 that the PGJDF had appealed the acquittal of Pedro Horacio and Sergio Aguilar Díaz before the Tenth Division of the Superior Court of the Federal District, and added:

The prosecution is fulfilling its duty by insisting on the punishment of the alleged perpetrators by referring the matter to the court above the one that handed down the first instance ruling, which means that the matter remains sub judice, thanks to the appeal filed by the Office of the Public Prosecutor.

It should be noted that if the Tenth Division determines the existence of irregularities that are established from the ruling, which means that the proceedings were not dealt with in an impartial and objective manner by the judge handling the case, this ruling will be changed or overturned.

Israel Roberto Aguilar Díaz is still at the Southern Temporary Detention Center, since proceedings 111/97, which are being handled by the thirty-second criminal court, instituted against him for the crime of homicide, is still in the preliminary investigation phase.

Furthermore, the PGJDF has started an investigation to determine the possible commission of a crime related to this case by the judge of the first instance court, the clerk of the court, and one witness, in addition to the complaint before the Federal District Judicature Council for possible administrative irregularities in the decision related to this case. The foregoing is being conducted in accordance with the mechanisms set forth by the Mexican legal system for that purpose, safeguarding at all times judicial independence.

78. With regard to the analysis and case law provided by the petitioners, the State indicates that "this information could have been added to the arguments submitted by the Office of the Public Prosecutor when the aforementioned ruling was being appealed, if it had been provided in a timely manner." The State makes it clear that "The Department of Foreign Relations does not have the authority to intervene in the investigation into and prosecution of crimes, nor can it urge a judge to hand down rulings favorable to one party or another. Thus, there is no basis for the request of the petitioners in this regard." Finally, it stresses that the accused have been detained, and, for this reason, it asks the IACHR "to rule that all the commitments assumed by the Government of Mexico in the friendly settlement that started with case N° 11.103 had been fulfilled."

79. Finally, in its correspondence of April 13, 1999, the Mexican State informed the IACHR that the Superior Court of Justice of the Federal District had overturned the acquittal sentence of Pedro Horacio and Sergio Aguilar Díaz, pursuant to which the Judge of the thirty-third criminal court issued warrants for their rearrest on June 12, 1998. These warrants were not executed due to the fact that the Aguilar Díaz brothers instituted direct amparo proceedings against the judicial decision.

80. The petitioners note that they had asked the authorities to execute the arrest warrant immediately, in light of the distinct possibility of the institution of direct amparo proceedings; however, “regrettably, although this request was filed two months after the aforementioned decision, no steps were taken to execute these warrants.” The petitioners add that Israel Aguilar Diaz was sentenced to 22 years 6 months in prison on March 3, 1999, and they claim that “although this is favorable in terms of solving the case, there is no guarantee of full compliance,” since the ruling was handed down by a court of first instance, and it may be appealed and later be the subject of direct amparo proceedings, which may lead to a delay of more than six months before an enforceable ruling is obtained. Finally, they indicate the following:

During the process, various irregularities were noted, which should have been reported. For this reason, the intervening party thought it necessary to file appeals that were not supported by the PGJDF, which was an indication of its lack of interest in maintaining the conditions necessary for a proper trial.

81. In the view of the Commission, it should be recalled that “with respect to the human rights protected by the Convention, the competence of the organs established by it pertains exclusively to international responsibility of the State rather than of individuals.[FN19] For this reason, the analysis of this report does not seek to establish whether the persons accused in Mexico of the homicide of Pedro Peredo Valderrama are guilty or innocent.

[FN19] The inter-American Court has stated repeatedly that it “has attributions, not to investigate and punish individual conduct, but to establish the international responsibility of states as a result of human rights violations” (I-A Court, Villagrán Morales et al case Judgment of November 19, 1999, para. 223. The IACHR has analogous attributions under the procedure set forth in Articles 44 to 51 of the American Convention.

82. The Commission is, however, fully competent to establish whether the Mexican State bears international responsibility for violation of the right to judicial guarantees and judicial protection, to the detriment of the relatives of Pedro Peredo Valderrama. The Inter-American Court has stated that:

Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.

(...)

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.[FN20]

[FN20] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, paras. 172 and 176.

83. In light of the foregoing, the Commission confirms its preliminary assessment with respect to the unreasonable length of the judicial proceedings. The file shows that the relatives of Pedro Peredo Valderrama did not prevent the investigation from moving forward. On the contrary, they provided very important information which they made available to the judicial entities of the Office of the Public Prosecutor for the purpose of fulfilling its duty to dispense justice. Under standards of international human rights law and the jurisprudence of the control organs, the main elements of the instant case are not very complex. However, it is not possible to establish that the conduct of the judicial authorities and the authorities of Office of the Public Prosecutor was carried out in accordance with the diligence required by an investigation such as the one under analysis. Quite the opposite: the evidence shows that the investigative police officers engaged in complicity by permitting the flight of an individual for whom an arrest warrant had been issued, and that a judge acquitted two of the alleged killers by handing down a ruling whose alleged flaws, reported by the petitioners, have not been disputed by the Mexican State. The Commission considers that that conduct has been extremely harmful to the investigation.

84. The State maintained the following in its correspondence of April 13, 1999:

Mrs. María Concepción Peredo Valderrama reported possible irregularities by officials of the thirty-second criminal court to the Office of the Public Prosecutor, related to the second instance sentence that acquitted two of the accused.

The PGJDF started preliminary investigation DGSP/075/98-05 into the clerk assigned to Judge Juan Sebastián Moreno Olin for possible responsibility in the commission of offenses affecting the administration of justice. On January 27, 1999, a decision was made to institute criminal action against that person. This decision led to criminal proceedings N° 11/99, instituted in the Twenty-eighth Federal District Criminal Court.

These proceedings represent yet another legal procedure conducted at the request of the petitioners, which is in progress and cannot be considered exhausted thus far.

85. The foregoing reveals numerous irregularities in the conduct of the judicial authorities and the PGJDF (including the investigative police, who are under the oversight of the Office of

the Public Prosecutor) in this case. A number of the irregularities which have been established in this report were never investigated, and some that occurred more recently are being reviewed by the appropriate authorities. Lastly, the conduct of the authorities has clearly had a negative effect on the outcome of the investigation into the murder of Pedro Peredo Valderrama.

Effectiveness

86. The information analyzed above also shows that the investigation has been completely ineffective, and that there is an undeniable link between the delay of justice and the lack of definitive results of the investigation. As has been reiterated throughout this report, the period taken by the authorities since Pedro Peredo Valderrama was murdered until the alleged killers were captured, is unreasonable, and the facts reveal the serious implications of impunity in this case.[FN21]

[FN21] The IACHR has expressed its concern on the problem of impunity in Mexico at the end of its on-site visit to that country:

The Commission believes that to strengthen the rule of law arbitrary acts must be condemned and their perpetrators punished. On the basis of the information it received, the IACHR was able to determine that impunity is still a serious problem despite the prosecution and dismissal of some public officials who have violated human rights...The IACHR will continue to insist that the fight against impunity is an essential component in achieving public security and is an internationally recognized obligation under Article 1 of the American Convention on Human Rights.

Press release N° 15/96 issued by the Commission on July 24, 1996. Those considerations were further developed by the IACHR in its Report on the situation of human rights in Mexico, OEA/Ser.L/V/II.100 Doc. 7 rev.1, September 24, 1998, pars. 357 to 392. In that regard, a recent report on the judicial investigation into alleged human rights violations in Mexico states:

It is clear that time plays an important role in impunity in Mexico, because the justice system's slowness in prosecuting perpetrators allows them to flee, valuable evidence is lost, or family members and human rights groups are forced to give up.

Human Rights Watch, Systemic Injustice: Torture, "Disappearance", and Extrajudicial Execution in Mexico, January 1999, page 20.

87. During the proceedings of this case, the Commission underscored the progress represented by the arrest of the presumed assassins, although it expressly stated that their capture did not, in itself, constitute the final solution to the case:

The Commission plenary has decided today to suspend temporarily the proceedings of the above mentioned case, since it considers that the arrests the presumed murderers of Pedro Peredo Valderrama pursuant to the warrants issued to that effect, constitute clear progress in the friendly settlement process, which is pending the decision of the competent judicial body in order to evaluate full compliance.[FN22]

[FN22] Communication forwarded by the Executive Secretary of the IACHR on October 18, 1996 to the Minister of Foreign Affairs of Mexico.

88. Almost thirteen years after the crime was committed, it is obvious that the arrest of the Aguilar Díaz brothers has not shed light on the murder of Pedro Peredo Valderrama. As was mentioned above, the record does not show any investigation by Mexican authorities into the facts surrounding the Aguilar Diaz brothers' escape from justice for such a long time. Despite the specific questions to that effect formulated repeatedly by the petitioners to the State,[FN23] it did not inform either if there was an investigation into the possible complicity of the authorities to frustrate the execution of the arrest warrants for nine years. The lack of effectiveness of the investigation is linked to the current status of the case in the internal jurisdiction: two of the alleged killers have been released by a Mexican court; a warrant issued for their rearrest was blocked before it could be executed by the authorities; and no final ruling has been handed down with respect to the third individual.

[FN23] In their letter dated May 1, 1996, the petitioners describe the capture of Israel Aguilar Díaz as "highly encouraging", but they requested information on the following matters:

date of the arrest;

specific place of arrest;

manner in which the Mexican authorities learned that Aguilar Díaz was in Switzerland ;

who carried out the arrest;

whether or not he was arrested for the aggravated murder of Pedro Peredo Valderrama;

place where he is currently detained;

specific actions taken toward extradition;

whether the extradition is requested for the aggravated murder of Pedro Peredo Valderrama;

whether there is an extradition treaty between Mexico and Switzerland;

who informed the Mexican authorities about the arrest.

The petitioners reiterated their request for information on the above, because they considered the State's responses insufficient.

89. The IACHR concludes that the State of Mexico has failed to perform its duty in providing simple and effective recourse, which would facilitate the investigation into the violation of Pedro Peredo Valderrama's right to life, together with the proper guarantees, within a reasonable timeframe. As a result, the Mexican State bears responsibility for violation of the right of the Peredo Valderrama family to judicial guarantees and judicial protection, provided for in Articles 8 and 25 of the American Convention, in relation to the general obligation set forth in Article 1(1) of this international instrument.

ii. Investigation into the threats made against the Peredo Valderrama family

90. The petitioners maintain in their correspondence of November 15, 1995, that:

The Peredo Valderrama family has been the victim of continuous harassment by persons linked to the Aguilar family, in regard to whom an unexecuted arrest warrant has been issued for three of its members by the PGJDF and by members of the investigative police.

The harassment, which has not ceased even during these friendly settlement proceedings, consists of a number of acts. The first is the institution of civil and criminal proceedings that are completely unfounded. The second takes the form of blatant hostility, which goes as far physical aggression by the members of the judicial police.

91. With regard to legal proceedings, the petitioners indicate that the relatives of the Aguilar Díaz brothers filed a complaint for defamation in the court of first instance N° 33, based on the public complaint of the murder and its cover-up. Also, Mr. Felipe Arenas López sought, in the civil court, compensation from Mrs. Concepción Peredo de Valderrama for damages resulting from her criminal accusation of the homicide. In the view of the petitioners, this action is designed to intimidate the mother of Pedro Peredo Valderrama and to punish her from a financial standpoint, since in Mexico criminal action falls under the exclusive jurisdiction of the Office of the Public Prosecutor. Also, an employee of the Aguilar Díaz brothers filed a complaint against Erick Peredo Valderrama for threats, and the petitioners state that the accused was in school at the time that the threats were allegedly made.

92. Insofar as physical aggression is concerned, the petitioners allege that on June 28, 1989, “three persons who appeared to be members of the investigative police” struck Uriel Peredo Valderrama, the brother of Pedro, and as a result, he had to be hospitalized. According to the petitioners, “preliminary investigation ACI/62/989-06 initiated as a result of this incident did not produce any results.” The petitioners also state that the investigative police went to the home of the Peredo Valderrama family on October 17, 1995, and acted in an arrogant manner when they requested information pertaining to the alleged killers, which they considered to be an act of intimidation. In their correspondence of December 5, 1995, the petitioners allege that “between November 17 and 21, [1995], members of the investigative police appeared unannounced at the home of the mother of victim, and asked her to accompany them in order to identify the alleged perpetrators.” The petitioners had asked the representatives of the Mexican State, within the context of the friendly settlement proceedings before the IACHR, that requests from the members of the investigative police addressed to the members of the Peredo Valderrama family be made through the Fray Vitoria Human Rights Center, in order to avoid harassment.

93. In a note sent on December 7, 1995 to the Commission, the Mexican State provided the following response:

With regard to the charge of harassment of the Peredo Valderrama family, the Government of Mexico would like to reiterate the commitment made through the PGJDF to take the actions necessary to provide the Peredo Valderrama family with the protection expressly requested by the petitioners, as indicated in the response of April 28, 1993. However, the Government of Mexico finds it unacceptable that the claimants would charge that the alleged physical aggression mentioned on page 2, paragraph 4, was carried out “three persons who appeared to be members of the investigative police,” since this claim is totally subjective and unfounded.

94. Despite the foregoing, in correspondence of March 29, 1996, the petitioners reported new acts of harassment that allegedly occurred at midnight on March 16, 1999:

Mrs. Valderrama was in her home and received a telephone call from a young male, who, in an intimidatory tone and rude manner threatened to kill Mrs. Concepción Valderrama and her family, warning them that “they would all be killed.” Mrs. Valderrama hung up the telephone. The threats were repeated when the person called twice after this, and, in the last of these calls, the person shouted that “we are ready to kill her.”

On March 21, Mrs. Valderrama, accompanied by the first visitor of the National Human Rights Commission, went to the PGJDF in order to file a complaint related to new incidents, despite the fact the PGJDF has been totally ineffective in investigating earlier complaints related to acts of intimidation that targeted the Valderrama family. Furthermore, as we have informed the Commission, many of the acts of intimidation have their origins in the Office of the Public Prosecutor.

95. On April 10, 1996, the Commission asked the Mexican State to adopt precautionary measures to protect the life and physical integrity of the Pedro Valderrama family. In its request, the IACHR states that “in addition to the serious nature information obtained is the fact that friendly settlement procedures are currently under way with respect to this case” and that “in order to achieve any kind of conciliation based on respect for human rights, a proper atmosphere of calm must exist between the parties, something that is difficult to achieve if the threats described above continue.”

96. On April 24, 1996, the Mexican State reported that the PGJDF has started “a surveillance operation of the home of the Peredo Valderrama family in order to protect the lives and safety of its members.” In that correspondence, the State asserted that no acts had been reported to the Office of the Public Prosecutor and that agents of that institution had “repeatedly tried to communicate personally with Mrs. Valderrama or some member of her household, ... but, unfortunately, they refused to see them.” It stressed the importance of cooperation on the part of the Peredo Valderrama family and reaffirmed their “desire to reach a friendly settlement” of the case.

97. The petitioners disputed the claims of the Mexican State and submitted a copy of the complaint filed by Mrs. Valderrama on March 21, 1996, which led to preliminary investigation 50/00334/9603. According to the petitioners, this complaint “was not taken seriously or treated with the urgency that it deserved.” Also, they maintain that the police officers who were allegedly guarding the Peredo Valderrama family home did not communicate with its members, and that “it is odd that a system of protection would be implemented without consulting or informing the alleged beneficiaries.” At a meeting held on March 2, 1996 with the PGJDF officials and the National Human Rights Commission (hereinafter the CNDH), five police officers who were “responsible for the operations related to the case” were introduced to the Peredo Valderrama family. However, the relatives stated that they did not see these policemen in the area where they live.

98. In its comments, the State notes that protection had been offered to Mrs. Valderrama, and that she had refused it. It asked the Commission to urge her “to keep the channels of communication with the authorities open,” and that her advisors adopt a cooperative attitude towards the proceedings.[FN24] The following communication from the petitioners, submitted on May 29, 1996, contained reports of new threats, this time allegedly made by Pedro Aguilar Cordero, the father of the persons accused of the murder of Pedro Peredo Valderrama, and even of attempted murder:

[FN24] In its correspondence of June 11, 1996, the Mexican State requested that the IACHR: In the exercise of its authority as an conciliatory entity ... stress to Mrs. Valderrama’s advisors that they should provide their assistance with a view to smooth progress of the proceedings, conduct themselves in a serious and professional manner, refrain from telling the authorities how they should perform their functions, and, in general, contribute to maintaining an atmosphere that is conducive to the friendly settlement of the case, to the benefit of the two parties concerned. The petitioners responded, among other things, that their “obligation and duty” as representatives of Mrs. Valderrama consist of seeking her interest and reporting actions on the part of the Mexican Government which, in their view, violate her human rights, such as the delay in the execution of arrest warrants and the failure to investigate the threats made against that family. (Correspondence of July 9, 1996).

On May 20, 1996, while Mrs. Valderrama was walking at Violeta and Pino streets in Xochimilco, she saw the father of the accused. Later on, at Josefa Aguilar street, he drove the car towards her suddenly with the clear intention of running her over. Mrs. Valderrama managed to flee and went to her home to seek help. However, when she went back out, the car of Aguilar Cordero was not there.

When Ms. Carmona went to the Central Office of the PGJDF seeking to add this information to the preliminary investigation being conducted into threats made against Mrs. Valderrama, the person responsible for receiving the documents indicated that the preliminary investigation was not being handled by that agency. When Ms. Carmona spoke with Mr. García Villalobos [General Supervisor for Human Rights at the PGJDF], the latter indicated that he could not find a record of the preliminary investigation.

99. In the view of the petitioners, these actions demonstrate the absence of seriousness and political will to investigate the threats made against the Peredo Valderrama family. In this regard, they indicate that the lack of trust of the family members in the investigative police stems from the fact that they witnessed “how an officer allowed the persons suspected of the murder of Pedro Peredo Valderrama to flee.” The petitioners noted that the assistance provided by Mrs. Valderrama to the PGJDF has no bearing whatsoever on the need for the authorities to adopt measures to protect the lives and safety of herself and her family.

100. Finally, the petitioners provide information in their correspondence of May 20, 1997 pertaining to another complaint filed by Pedro Aguilar Cordero against the relatives of Pedro

Peredo Valderrama, which led to a summons for several relatives of the victim to provide a statement at the Xochimilco Office of the Public Prosecutor. The petitioners stated:

It seems clear to us that this new development constitutes yet another attempt to intimidate the family, and to create financial and physical hardship for them. It should be noted that the Deputy Prosecutor for Preliminary Investigations, Mr. José Elías Apís, is a close relative of the alleged perpetrators.

101. In its subsequent correspondence to the Commission, the petitioners did not mention any other threats or acts of intimidation, nor did they reiterate their wish for the State to adopt preventive measures with respect to the members of the Peredo Valderrama family.

102. The information summarized above shows that the petitioners reported various acts of harassment since the initial phases of processing of this case. Some were attributed by the petitioners to the Aguilar Díaz brothers and their relatives, and others, to members of the investigative police of the Federal District. With regard to the judicial proceedings instituted by persons connected to the Aguilar Díaz brothers --which the petitioner view as intimidatory--, the information available in the IACHR record does not show that any ruling whatsoever was handed down, in the criminal or civil courts, against the relatives of Pedro Peredo Valderrama. In any case, the evidence is not enough to demonstrate, for example, that the persons filing the suits may have any kind of support from State agents that resulted in irregularities in these proceedings --in violation of the right to due process-- nor that this action was prejudicial to the Peredo Valderrama family.

103. However, the evidence available is sufficient to establish that the Peredo Valderrama family was subject to several threats, and that it fulfilled its duty to report them. In April 1996, the IACHR asked the Mexican State to adopt preventive measures with respect to the members of this family, since, in its view, the urgency of this had been established and the Peredo Valderrama family was subject to real danger of irreparable harm, pursuant to Article 29 of the Regulations of the Commission.

104. In light of these circumstances, the State had an obligation not only to adopt the protective measures sought by the Commission, but to conduct a serious, thorough, and impartial investigation into the serious threats and acts reported. It should be borne in mind that the Inter-American Court requested, in a decision related to provisional measures, that the State in question adopt “effective measures to investigate the acts reported, and, as appropriate, to sanction the perpetrators” as “an essential component of the right to protection” imposed by the American Convention.[FN25]

[FN25] Inter-American Court of Human Rights, Case of Vogt (Guatemala), Provisional measures, Decision of June 27 1996 (<http://corteidh.nu.or.cr/ci/>) paragraph 5 of the whereas clause. The provisional measures in this case were requested as a result of threats targeting Father Daniel Joseph Vogt, a catholic priest who was performing evangelical work in the communities in the interior of Guatemala, and who had been threatened and harassed in various ways for this activity. The Court analyzed the arguments of the government and the

Commission, and stated that, despite the fact that the government had adopted measures to protect him, they were “not sufficient or effective,” in relation to the investigation of the acts. Subsequently, the IACHR stated that the situation of extreme gravity and urgency that led to the request for provisional measures no longer existed, and, for this reason, the Court decided on November 11, 1997 “to lift and terminate” these measures

105. The State informed the Commission that it had taken steps to protect the victim’s family, “despite the lack of cooperation of Mrs. Concepción Peredo de Valderrama;” and the petitioners questioned the effectiveness and seriousness of these measures. In the view of the IACHR, an important element in the adoption of protective measures consists of consulting with the persons to receive protection in order to determine the most appropriate action in the specific case. The Commission has explicitly formulated in those terms its recent requests for precautionary measures to OAS member States. In this case, there was no evidence of this consultation, although it is not clear whether this was due to a lack of initiative on the part of the authorities of the Federal District investigative police or to the lack of trust on the part of the persons who were supposed to receive protection.

106 .It should be pointed out that the State did not provide any information on the action taken to investigate the threats, despite the repeated complaints filed by the petitioners in this regard. In one of its letters to the IACHR, the State even denied that the family had ever reported the threats in Mexico, something that was contradicted by the documents submitted by Mrs. Valderrama, and there is nothing in the record that casts doubt on the validity of these documents. With regard to the attack on Uriel Peredo Valderrama in June 1989 allegedly at the hands of the investigative police, the State did not provide any information either to indicate that the incident had been investigated. On the contrary, it merely dismissed it as being “unfounded and subjective.”

107. The Commission holds the view that, in the context of the present case, the fear and mistrust by the Peredo Valderrama family of the Federal District investigative police are reasonable. In this regard, it has been reiterated throughout this report that Pedro Horacio Aguilar Díaz was located in July 1988 by the family of the victim, when there was an outstanding warrant for his arrest, and that he managed to escape with the assistance of the very police officers who were at the scene. This serious incident took place in the area where the Aguilar Díaz family lived and had its business, one and a half years after the murder of Pedro Peredo Valderrama.

108. In light of the foregoing, in addition to the situation created by the stymied investigation into the murder of Pedro Peredo Valderrama, the IACHR thinks that the failure to investigate repeated threats against the Peredo Valderrama family is an additional violation of the rights of these persons to judicial guarantees and to judicial protection, pursuant to the duty to provide protection imposed by Article 1(1) of the American Convention.

V. ACTIONS FOLLOWING REPORT N° 92/99

109. On September 28, 1999, the Commission adopted Report N° 92/99 in this case, pursuant to Article 50 of the American Convention, and it transmitted it to the Mexican State with the corresponding recommendations. The State's comments of December 3, 1999, began as follows:

First of all, the Government of Mexico wishes to note that the petitioners appear unaware of the efforts that have been made to resolve this matter. These efforts have been constant and if reaching a final result has taken time, this is because of the very nature of the case.

110. Regarding the question of whether the delay was reasonable, the State quoted the Inter-American Court's jurisprudence in the Genie Lacayo Case[FN26] and went on to note that:

[FN26] The State's citation is the same one used in this report by the IACHR in its analysis of whether the time taken to investigate Pedro Peredo Valderrama's murder was reasonable or not. See paragraph 61 above.

The delay was thus caused by the time spent searching for the suspects, at home and abroad, arresting them, and extraditing one of them from Switzerland, the time taken by the initial criminal trial and the appeal, the time taken to process and rule on the amparo proceedings filed by the accused, together with the different obstacles placed by the accused to prevent their sentencing, the elimination of which has been complex and time-consuming.

With this in mind, the Government of Mexico rejects any and all allegations that it has voluntarily delayed the proceedings.

Going into further detail on this point, the Inter-American Court has said that:

"In addition to the examination of possible delays at the various stages of the proceeding, in determining what constitutes a reasonable time throughout the entire process, the European Court has employed what it refers to as a global analysis of the proceeding." (Genie Lacayo Case, *Ibid.*, paragraph 81.)

A global analysis shows that the time taken should not be used as an indication of the authorities' effectiveness, particularly when they have been making constant efforts to resolve the matter.

111. With regard to the Commission's recommendations in Report 92/99, the State again reported that the Aguilar Díaz brothers, Sergio and Pedro Horacio, were convicted of the murder of Pedro Peredo Valderrama in June 1998 and ordered to pay "the fine covering reparations." It also noted that under the amparo suits filed by the Aguilar Díaz brothers' lawyers on August 21, 1998, the "rearrest warrants" were suspended pending resolution of those relief proceedings. Similarly, the State repeated what it said during the processing of this case regarding the procedural situation of Israel Roberto Aguilar Díaz. It added that his conviction by the Superior Court of Justice of the Federal District was appealed against on August 13, 1999, and "is pending resolution."

112. The recommendation that the harassment suffered by the Peredo Valderrama family be investigated and punished in accordance with law was commented on by the Mexican State in the following terms:

Several national agencies, such as the National Commission on Human Rights, have at all times been available to the Peredo Valderrama family, through which they could have entreated the competent authorities to adopt precautionary measures.

113. Regarding the recommendation that any crimes committed against the administration of justice in this case be investigated and punished, the State repeated the information regarding the preparation of criminal suit 11/99[FN27] and noted that “the steps necessary to determine how the law applies are currently being taken.”

[FN27] See paragraph 84 above.

114. The IACHR’s third recommendation said that the Peredo Valderrama family should receive adequate compensation for the violations described in this report. In connection with this, the State offered its comments and conclusions:

The Mexican authorities cannot speed up proceedings to the detriment of the defendants’ rights to defense and due legal process. In addition, with full respect for the principle of an independent judiciary, neither can the State influence the substance of decisions made by the courts.

To conclude, the matter will arrive at its final stage once the amparo proceedings filed by the accused have been resolved; hence, the petitioners’ claims that make the matter out as being finalized and totally concluded are not only meaningless, but also reveal a clear bias.

From this it follows that domestic remedies are still operating and, consequently, the objections alleging a failure to exhaust said remedies are inadmissible. Hence, and on the basis of this document’s contents, the State believes that the case should be filed since there has been no violation of rights protected by the American Convention on Human Rights.

Finally, the Government of Mexico would like to point out the following:

The Inter-American Commission is perfectly aware of each and every measure and effort made by the Government of Mexico to resolve this case. The Commission is also aware of the difficulties it has entailed, together with the nature of those difficulties, the elimination of which has necessarily been very complex and time-consuming.

The Government of Mexico agreed to a friendly settlement of the case and took the necessary steps for enforcing it with good faith, transparency, and commitment. Nevertheless, in the final stages and at a time when the agreement was practically finalized, the petitioners decided to withdraw from the process and to ask the Commission to issue the report to which this is a reply. While their withdrawal is formally allowed, in the Mexican Government’s opinion it was an

nontransparent development that could well reflect a different interest or go beyond the resolution of the case in hand.

For the Government, developments of this kind are disappointing and they discourage cooperation with the Commission and the petitioners. The Mexican authorities will continue to spare no efforts, but in accordance with domestic legal procedures, pursuant to the terms and provisions set by Mexican law, and according to the decisions handed down by the judges hearing this case.

115. In this report the Commission has analyzed the scope of the jurisprudence of the Inter-American and European human rights systems to determine whether the time the investigations took to establish the details of Pedro Peredo Valderrama's murder, identify the perpetrators, and punish them in accordance with due legal process was reasonable or not.

116. Neither during the processing of this case nor in its reply to Report 92/99 did the Mexican State dispute one relevant fact that has been cited several times in this report: the complicity of the judicial police when Pedro Horacio Aguilar Díaz escaped arrest in 1988.[FN28] The Commission holds that this grave event in itself justifies a serious investigation of the possible involvement of other State agents in the failure to establish the facts of Pedro Peredo Valderrama's homicide and the resulting impunity enjoyed by his killers. However, the Mexican State provided the Commission with no information indicating whether or not such an investigation has been carried out.

[FN28] See paragraphs 68, 83, and 99.

117. In addition to omitting information about the incidents described in the previous paragraph, the Mexican State's "global analysis of the proceeding" offers no explanation of what occurred between December 1986 and early 1996, when, with only a few months separating them, the three individuals accused of Pedro Peredo Valderrama's murder were imprisoned. The "authorities' effectiveness" cannot be assessed without considering the serious crime committed by the agents of the State by thwarting the capture of one of Pedro Peredo Valderrama's suspected killers in 1988.

118. For the same reason, the IACHR does not agree with the general claim that "the authorities . . . have been making constant efforts to resolve the matter." Throughout this report the Commission has emphasized and expressed its satisfaction with the positive results attained during the friendly settlement process, including the extradition of one of the suspects from Switzerland. Nevertheless, it was precisely the global analysis of the proceedings that made the IACHR aware of the violations committed by the agents of the Mexican State in obstructing the investigation and of the unwarranted delay that ultimately gave rise to the denial of justice and the failure to compensate Pedro Peredo Valderrama's family. This situation still prevails today and, as indicated by the Mexican State's reply, the authorities have taken no steps to remedy it.

119. The State offered some specific thoughts regarding the friendly settlement procedure, which are reproduced in full above. In this regard, the Commission feels the need to note that the procedure set forth in Article 48(1)(f) of the American Convention presupposes that the mutual consent of the parties is an indispensable element therein. The petitioners in this case exercised their right to withdraw at any point in the proceedings; the other party, the Mexican State, enjoyed the same right at all times. The Commission's role in the friendly settlement process is not restricted to observing the parties' actions; instead, it is there to actively encourage them.

120. More importantly, the IACHR is obliged to ensure that the friendly settlement is reached with respect toward the human rights enshrined in the American Convention, which was not possible in the case at hand.[FN29] The Commission could not therefore consider this case settled even were the parties to agree to such a resolution, since it is clear that the positive developments brought about through the intervention of officials from the Mexican Ministry of Foreign Affairs and the good will of the petitioners have not been effective in ending the impunity, the denial of justice, and the failure to compensate those violations.

[FN29] In recent years, the IACHR has worked toward a number of friendly settlements with the Mexican State and different petitioners, including the representatives of the Peredo Valderrama family in the case at hand. In this regard, it should be noted that one agreement was recently reached, by means of which the State and the petitioners asked the Commission to conclude proceedings in one individual case. See IACHR Press Release N° 29/99, December 3, 1999. The Commission will continue to actively seek friendly settlements in individual cases with the respect due to the human rights protected by the American Convention.

VI. CONCLUSIONS

121. In this report, the IACHR has evaluated the allegations of the parties based on fact and law, linked to the investigation into the murder of Pedro Peredo Valderrama. The analysis shows that the judicial proceedings were vitiated by numerous irregularities, and that they have gone well beyond the length of time that can be considered reasonable. In fact, almost thirteen years after the perpetration of the crime, no final sentence has been imposed on the persons actually responsible for the crime, the irregularities mentioned have not been duly investigated, and the relatives of the victim have not been compensated for losses sustained. The passage of time has clearly benefited the killers of Pedro Peredo Valderrama, and has led to the denial of justice and of compensation to the relatives, who have endured additional suffering because of the failure to investigate the threats reported in connection with the case.

122. The Commission concludes that the State violated, to the detriment of the relatives of Pedro Peredo Valderrama, the right to judicial guarantees and judicial protection, protected by Articles 8 and 25 of the American Convention, with respect to its general obligation to respect and guarantee the rights provided for in Article 1(1) of this Convention. On the other hand, the IACHR record in this case contains no elements to find responsibility of the Mexican State for violation of the right to life, personal integrity, or equal protection of the law.

VII. RECOMMENDATIONS

123. Based on the analysis and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES TO THE MEXICAN STATE THE FOLLOWING RECOMMENDATIONS:

1. Conduct a complete, impartial, and effective investigation to determine the criminal responsibility of all those involved in the murder of Pedro Peredo Valderrama, and into the harassment subsequently endured by his family.
2. Conduct a complete, impartial, and effective investigation to determine whether there was any cover-up and crimes related to the administration of justice that have prevented a full investigation into the acts that led to this report; and, if necessary, impose the appropriate criminal, administrative, and/or disciplinary sanctions.
3. Provide adequate compensation to the relatives of the Pedro Peredo Valderrama family for the human rights violations established herein.

VIII. PUBLICATION

124. On February 24, 2000, the Commission sent Report N° 3/00 --the text of which is above-- to the Mexican State and to the petitioners, in keeping with Article 51(2) of the American Convention; and it set a deadline of one month for the State to comply with the foregoing recommendations. On March 24, 2000, the State sent a letter to the Commission in which it reiterated several of the considerations on the facts and the law it had expressed during the processing of this case, and which the IACHR has analyzed at the appropriate procedural stage. Pursuant to Article 51(2), at this stage the Commission must evaluate the measures adopted by the Mexican State to comply with the recommendations and to make reparations for the violations established herein.

125. With respect to the first of the recommendations above, the State makes a summary of the judicial proceedings carried out between 1986 and 1999, and it points out that the decision is still pending on the amparo writs filed by the brothers Sergio, Pedro Horacio and Israel Roberto Aguilar Díaz, in the respective trials. The State adds that “the Peredo Valderrama family still has available several remedies at the domestic level, such as the National Commission on Human Rights, to request, if appropriate, the adoption of precautionary measures” and that the General Directorate for Human Rights of the Office of the Public Prosecutor of the Federal District (PGJDF) “was instructed specifically to establish personal contact with Ms. María Concepción Peredo Viuda de Valderrama, with the purpose of taking the appropriate measures with respect to the alleged harassment”. As to the second recommendation, the State has provided no information on measures of compliance after report N° 3/00 was adopted. Finally, with respect to reparations, the State mentions that the sentence issued in the case of Sergio and Pedro Horacio Aguilar Díaz orders them to “jointly cover the amount of \$ 22,046.00 Mexican pesos for reparations”; and that for the same concept, Israel Roberto Aguilar Díaz was ordered to pay \$24,966.00 Mexican pesos. In its “final considerations” the State affirms that “the case is not closed” and that “it is necessary to wait for the Federal Judiciary to decide the writs of amparo” presented by the brothers Aguilar Díaz.[FN30]

[FN30] On March 22, 2000 the petitioners sent a letter in which they informed the IACHR that they had forwarded a copy of Report N° 3/00 to the Head of the Government of the Federal District, to the President of the Superior Court of Justice of the Federal District and to the President of the Supreme Court of the Nation, “requesting compliance with the recommendations in their respective jurisdiction”. The Secretariat of the Government of the Federal District responded:

The Head of the Government of the Federal District shall accept the above mentioned recommendation for all legal effects...we shall immediately proceed to analyze the contents of Report N° 3/00 which you have kindly sent us in order to implement the pertinent measures within our legal framework, and we will notify you about it in due course.

126. The information available to the IACHR shows that the recommendations set forth in Report N° 3/00 have not yet been complied with. Accordingly, and pursuant to Articles 51(3) of the American Convention and 48 of the Commission’s Regulations, the Commission decides: to reiterate the conclusions and recommendations contained in Chapters VI and VII supra; to publish this report; and to include it in the Commission’s Annual Report to the General Assembly of the OAS. Pursuant to the provisions contained in the instruments governing its mandate, the IACHR will continue to evaluate the measures taken by the Mexican State with respect to those recommendations, until the State has fully complied with them.

Approved by the Inter-American Commission on Human Rights on April 13, 2000. (Signed) Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-chairman; Marta Altolaguirre, Robert Goldman, Peter Laurie and Julio Prado Vallejo Commissioners.