

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF HUMAN RIGHTS DEFENDER *et al.* v. GUATEMALA\***  
**JUDGMENT OF AUGUST 28, 2014**  
***(Preliminary objections, merits, reparations and costs)***

In the case of *Human Rights Defender et al.*,  
the Inter-American Court of Human rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:<sup>\*\*</sup>

Humberto Antonio Sierra Porto, President;  
Roberto F. Caldas, Vice-President;  
Manuel E. Ventura Robles, Judge;  
Eduardo Vio Grossi, Judge, and  
Eduardo Ferrer Mac-Gregor Poisot, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and  
Emilia Segares Rodríguez, Deputy Secretary,

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 42, 65 and 67 of the Court's Rules of Procedure (hereinafter "the Rules"), delivers this Judgment, which is structured as follows:

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\* The Inter-American Court ordered the names of the presumed victims in this case to be kept confidential, at their own request. Consequently, the Court has prepared two versions of this Judgment: an original for the purposes of notification of the parties and the Inter-American Commission on Human Rights, and another with the victims' initials for publication purposes. The Court has taken the necessary steps to ensure that the identities of the persons mentioned remain confidential. By decision of this Court, the Judgment in this case was issued under the title *Human Rights Defender et al. v. Guatemala*.

\*\* Judges Diego García-Sayán and Alberto Pérez excused themselves from the deliberation of this Judgment; the former presented his excuses, and the latter did not participate for reasons of *force majeure*.

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## I

### INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case before the Court.* – On July 17, 2012, pursuant to the provisions of Articles 51 and 61 of the American Convention and Article 35 of the Court's Rules of Procedure, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted a brief to the jurisdiction of the Inter-American Court (hereinafter "submission brief") in the case of *Human Rights Defender et al. v. Guatemala* (hereinafter the "State" or "Guatemala"). According to the Commission, this case concerns the State's alleged "failure to prevent the murder of the human rights defender [A.A.], on December 20, 2004, [which] remains in impunity as a result of the irregularities committed at the beginning of the investigation and the lack of diligence in investigating hypotheses related to the motive for the killing. Furthermore, it alleged that the investigation did not take place within a reasonable time and was compromised by the lack of protection afforded to the persons who were actively involved in the process." The Commission held that the State's failure to provide protection for the victims' family members led to their displacement, in violation of the right to freedom of movement and residence. It also alleged that Guatemala failed in its duty to guarantee political rights, in view of the public position held by Mr. A.A., and the fact that it became impossible for his daughter, B.A., to continue to exercise those rights.

2. *Proceedings before the Commission* – The proceedings before the Commission were as follows:

- a) *Petition* – On December 9, 2005, the Commission received a petition submitted by Ms. Claudia Samayoa and B.A.<sup>1</sup>.
- b) *Admissibility Report.* – On September 8, 2010, the Commission approved the Report on Admissibility No. 109/10 (hereinafter "the Admissibility Report"). In that report, the Commission declared the petition admissible "for the purposes of analyzing the alleged violation of the right established in Article 4 of the American Convention, in connection with Article 1(1) thereof, with respect to [Mr. A.A.]. It also decide[d] to declare the case admissible with regard to the alleged violation of the rights established in Articles 5(1), 8(1) and 25, in relation to Article 1(1) of said Treaty with respect to [B.A.] and her relatives."
- c) *Report on the Merits.* – On March 21, 2012, in compliance with Article 50 of the American Convention, the Commission approved the Report on Merits No. 56/12 (hereinafter, "Merits Report"), in which it reached a number of conclusions and made various recommendations to the State.

i. *Conclusions.* – The Commission concluded that the State was responsible for:

[1.] the violation of the rights to judicial guarantees and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of [C.A.]; [D.A.]; [E.A.]; [B.A.]; [F.A.]; [G.A.]; [H.A.]; [I.A.] and his siblings; [J.A.]; [K.A.]; [L.A.]; [M.A.] and [N.A.];

[2.] the violation of the right to life enshrined in Article 4 of the American Convention in relation to Article 1(1) of the same Treaty, to the detriment of [A.A.] [;]

[3.] the violation of the right to freedom of movement and residence enshrined in Article 22 of the American Convention in relation to Article 1(1) thereof, to the detriment of [C.A.]; [E.A.]; [B.A.]; [F.A.]; [G.A.], [H.A.]; [J.A.]; [K.A.]; [L.A.]; [M.A.] and [N.A.];

[4.] the violation of the right to personal integrity enshrined in Article 5(1) of the American Convention in relation to Article 1(1) thereof, to the detriment of [C.A.]; [D.A.]; [E.A.]; [B.A.]; [F.A.]; [G.A.], [H.A.]; [I.A.] and his siblings; [J.A.]; [K.A.]; [L.A.]; [M.A.] and [N.A.], and

[5.] the violation of the right to participate in government enshrined in Article 23(1) of the American Convention in connection with Article 1(1) thereof, to the detriment of [A.A.] and [B.A.].

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<sup>1</sup> The State challenged the appointment of the persons mentioned as representatives (*infra* paras. 13 and 33). Notwithstanding the Court's decision on this point, hereinafter the Court shall refer to these persons as "the representatives."

ii. *Recommendations*—Consequently, the Commission made a number of recommendations to the State:

1. [m]ake comprehensive reparations for the human rights violations declared in the [Merits Report] both in their material and moral aspects [;]
2. [d]evelop and complete a full, thorough and impartial judicial investigation, in a timely manner, with the aim of establishing the circumstances surrounding [Mr. A.A.'s] death; conduct a thorough investigation of the logical lines of investigation in relation to the case; and identify all persons involved at the different stages of planning and execution, and apply the appropriate punishments [;]
3. [i]ssue the appropriate administrative, disciplinary or criminal measures with regard to the actions or omissions of the state officials who contributed to the denial of justice and impunity surrounding the events of the case [;]
4. [a]dopt measures of a legislative, institutional or judicial character aimed at reducing the exposure to risk facing human rights defenders who are in a vulnerable situation. In this regard, the State must:
  - 4.1 [s]trengthen the institutional capacity to combat the pattern of impunity surrounding cases of threats and murders of human rights defenders, through the elaboration of investigation protocols which take into account the risks inherent to the work of human rights defenders, in order to allow for a comprehensive development of the investigation under this hypothesis[;]
  - 4.2 [s]trengthen the mechanisms for the effective protection of individuals whose statements have a significant impact on the investigations and who are at risk as a result of their connection to with these [, and]
  - 4.3 [d]evelop swift and adequate institutional response measures, which allow for effective protection of human rights defenders in situations of risk.

d) *Notification of the State* –The Commission notified the Merits Report to the State on April 17, 2012, and granted it a period of two months to report on its compliance with the recommendations. The State of Guatemala submitted a report in this regard on June 20, 2012.

e) *Submission of the case to the Court*. – On July 17, 2012, the Inter-American Commission submitted to the Court's jurisdiction all the facts concerning the human rights violations described in its Merits Report No. 56/12. The Commission appointed Commissioner Dinah Shelton as its delegate before the Court. Likewise, it appointed Elizabeth Abi-Mershed, Assistant Executive Secretary, and Silvia Serrano Guzmán, Isabel Madariaga and Jorge Humberto Meza, attorneys of the Commission's Executive Secretariat, as legal advisers.

3. *Request of the Inter-American Commission*. – Based on the foregoing, the Commission requested that the Court declare the State's international responsibility for the violations cited in its Merits Report<sup>2</sup> (*supra* para. 2(c)).

## II

### PROCEEDINGS BEFORE THE COURT

4. *Notification to the State and to the representatives* – The submission of this case was notified to the State and to the representatives of the alleged victims on October 5, 2012, through a communication of the Secretariat.

5. *Brief of pleadings, motions and evidence* – On December 8, 2012, Claudia Virginia Samayoa Pineda and B.A. submitted their brief of pleadings, motions and evidence (hereinafter "pleadings and motions brief") to the Court. They substantially agreed with the arguments presented by the Commission, but included as alleged victims certain individuals who were not named in the Merits Report (*supra* paras. 2 (c) and 2(e) and *infra* para. 49). Finally, the representatives requested that the Court order the State to adopt several measures of reparation and to provide reimbursement for costs and expenses.

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<sup>2</sup> In the proceedings before the Commission, the petitioners presented arguments regarding the alleged violation of Articles 8 and 16 of the American Convention. However, in its Merits Report the Commission concluded that there were insufficient elements of fact or law to rule on a separate violation of those articles in this case. Those aspects were not included in the proceedings before the Court, since neither the Commission nor the representatives submitted arguments and the State denied its responsibility in this regard.

6. *Answer brief* – On May 20, 2013, the State presented its brief of preliminary objections, its answer to the submission of the case and observations to the brief of pleadings and motions (hereinafter “answer brief”). Regarding the merits of the case, the State argued that it was not responsible for any of the violations alleged. It appointed Mr. Rodrigo José Villagrán Sandoval as its Agent and notified the Court of the appointment of Mr. Antonio Arenales Forno as the new President of the Presidential Commission for the Coordination of Human Rights Policies (COPREDEH).

7. *Observations to the preliminary objections* – On August 28 and 30, 2013, the representatives and the Commission, respectively, submitted their observations to the preliminary objections.

8. *Public hearing* – By means of an Order issued by the President of the Court on December 20, 2013, the Inter-American Commission, the representatives and the State were summoned to a public hearing to present their final oral observations and final oral arguments, respectively, on the preliminary objections and possible merits, reparations and costs. In said Order, the Court required the statements, rendered by affidavit, of a witness proposed by the State and of an expert witness and a deponent summoned for information purposes, proposed by the representatives. The representatives and the State had an opportunity to ask questions and make observations to the deponents offered by the counterpart. The Court also summoned an alleged victim proposed by the representatives, a witness proposed by the State and an expert witness proposed by the Commission to testify at the public hearing. The public hearing took place on February 5, 2014, at the seat of the Court during its 102<sup>nd</sup> Regular Period of Sessions.<sup>3</sup>

9. *Evidence to facilitate adjudication* – On February 14, 2014, the Court’s Secretariat sent a note to the parties and to the Commission requesting documentation as evidence to facilitate adjudication. This evidence was submitted on February 28, 2014.

10. *Final written arguments and observations* – On March 3, 2014, the State submitted its final written arguments. On March 5, 2014, the representatives and the Commission submitted their final written arguments and observations, respectively. On that occasion the representatives presented new arguments in relation to the preliminary objections presented by the State and the reparations requested in the pleadings and motions brief (*supra* para. 5), and the Commission presented new arguments concerning B.A.’s status as a human rights defender. These new arguments are extemporaneous and, therefore, they will not be taken into consideration. Likewise, the representatives submitted various documents concerning, *inter alia*, the expenses incurred after the presentation of the brief of pleadings and motions.

11. *Observations to the evidence to facilitate adjudication and attachments to the final arguments of the representatives* – On March 21 and 26, 2014, the State and the Commission submitted, respectively, their observations to the evidence to facilitate adjudication and to the attachments submitted by the representatives with their final written arguments. On March 26, 2014, the representatives submitted their observations to the evidence presented by the State to facilitate adjudication.

### III JURISDICTION

12. The Inter-American Court has jurisdiction to hear this case under the terms of Article 62(3) of the American Convention, given that Guatemala has been a State Party to the Convention since May 25, 1978 and accepted the Court’s binding jurisdiction on March 9, 1987.

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<sup>3</sup> The following persons appeared at the hearing: a) for the Inter-American Commission: José de Jesús Orozco H., President of the Commission; Elizabeth Abi-Mershed, Deputy Executive Secretary; Silvia Serrano Guzmán and Jorge Meza Flores, Legal Advisors; b) for the representatives of the presumed victims: Claudia Virginia Samayoa Pineda; David Augusto Dávila Navarro; Ángela Méndez Izquierdo, and Luisa Isabel Pineda, and c) for the State: Rodrigo José Villagrán Sandoval, Agent; César Javier Moreira Cabrera, Legal Advisor, and Francisca Marroquín, Legal Advisor.

#### IV PRELIMINARY OBJECTIONS

13. In its answer brief, the State filed preliminary objections, responded to the submission brief and made observations to the brief of pleadings and motions. With respect to the preliminary objections and related matters, it presented five separate arguments:

- a) A "preliminary analysis of jurisdiction," which it did not expressly define as a preliminary objection;
- b) "Preliminary objection regarding the failure to exhaust domestic remedies";
- c) "Preliminary objection regarding the incongruities, contradictions and inconsistencies of the facts that constitute the factual framework established by the Commission [...], with respect to the facts alleged in the brief of pleadings [and motions ...]";
- d) "Preliminary objection regarding the belated submission of the brief containing a.) 'Clarification of the analysis of the attachments' to the brief of pleadings, motions and evidence presented by the petitioners; and, b.) Curriculum vitae of the expert witnesses proposed by the petitioners";
- e) "Preliminary objection regarding the lack of legal status of the representatives of the presumed victims in this case" or "Preliminary objection regarding the lack of legal status or legitimacy of the petitioners to represent all [the presumed] victims," and
- f) Alleged violation of its right to defense: Although the State did not file a preliminary objection *per se* in this regard, and did not explicitly indicate that it was an argument of that nature, it presented arguments concerning the alleged violation of its right to defense "because [it] did not know from the outset about the arguments claiming supposed additional violations" of Articles 22 and 23 of the Convention.

14. Before responding specifically to each of the State's arguments (*supra* para. 13), **the Commission** pointed out that the arguments presented by the State in subparagraphs c), d) and e) "do not have the character of preliminary objections and do not affect the Court's jurisdiction." The **representatives** did not comment on this point.

15. Having regard to the nature of each of the arguments formulated by the State, the Court will consider these in the pertinent sections of this Judgment. Accordingly, it will only consider as preliminary objections those arguments that have, or that might have the characteristics of such. In other words, those objections of a prior character that seek to prevent the analysis of the merits of a disputed matter, by contesting the admissibility of an application or the Court's jurisdiction to hear a specific case or of one of its aspects, owing to the person, matter, time or place, provided that these objections are of a preliminary nature.<sup>4</sup> If these arguments cannot be considered without previously analyzing the merits of a case, they cannot be examined by means of a preliminary objection.<sup>5</sup>

16. Therefore, in this chapter the Court will only consider the arguments set forth in paragraphs b) and f). The arguments in paragraphs c) and e) will be analyzed in the Chapter on prior considerations. It is important to note, in particular, that the alleged "incongruities, contradictions and inconsistencies in the facts" refer to the factual framework of the case, which should be analyzed in the chapter on merits.<sup>6</sup> The argument set forth in paragraph d) refers to the admissibility of certain evidence, and will therefore be examined in the corresponding section (*infra* paras. 61 and 64). Finally, since the argument presented in paragraph a) does not specifically question the Court's jurisdiction to hear this case and, given the terms in which it was presented, it refers to

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<sup>4</sup> Cf. *Case of Las Palmeras v. Colombia. Preliminary Objections*. Judgment of February 4, 2000. Series C No. 67, para. 34, and *Case of Brewer Carías v. Venezuela. Preliminary Objections*. Judgment of May 26, 2014. Series C No. 278, para. 100.

<sup>5</sup> Cf. *Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 6, 2008. Series C No. 184, para. 39, and *Case of the Pacheco Tineo Family v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 25, 2013. Series C No. 272, para. 15.

<sup>6</sup> Cf. *Case Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations*. Judgment of May 14, 2013 Series C No. 260, para. 25, and *Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 24.

the supposed failure to exhaust domestic remedies<sup>7</sup>, said argument is subsumed in the argument indicated in paragraph b), which will be addressed by the Court in this chapter.

## A) Preliminary objection regarding failure to exhaust domestic remedies

### A.1. Arguments of the parties and of the Commission

17. The **State** pointed out that, in this case, the criminal proceedings are still in the investigation stage, and therefore the petitioners would need to prove that the exceptions contemplated in Article 46(2) of the Convention are applicable. According to the State, these exceptions do not apply in this case. It argued that the exception contemplated in Article 46(2) (a) does not apply, because the State has a juridical structure that affords protection, guarantees, judgment and punishment. The exception contemplated in Article 46(2) (b) does not apply, since at no time during the substantiation of the judicial process and the investigation did the State deny access by A.A.'s family to [remedies] whereby they could advance, assist, promote and exercise control of the investigation process. Nor does the exception contemplated in Article 46(2) (c) apply, since several procedures were carried out in the domestic investigations to clarify the facts, even though "the State has not been able to proceed to a trial [...]." It added that, in the event of an unwarranted delay occurring in the processing of criminal cases, the domestic legislation affords alleged victims a number of rights and controls which they can use to "advance the investigation and/or judicial process, and prevent an unwarranted delay in criminal cases." Regarding the criminal procedural rules, it indicated that certain reforms were incorporated with the aim of strengthening the justice system and granting victims a number of rights and instruments enabling them to speed up criminal proceedings (including Decrees 18-2010 and 7-2011 of the National Congress).

18. The **Commission** held that the State's objection was invalid. It argued, in the first place, that although the State had raised the objection in its initial briefs, in a subsequent brief, also submitted before the Commission, it indicated that "even though the domestic remedies of legal due process have not yet been exhausted, the State upon recognizing that there has not been substantial progress [,] cannot oppose family [A.'s] petition." According to the Commission, the State reiterated this point in five subsequent briefs, several of which indicated that this position would not affect its possible defense in the merits stage. Consequently, it would be appropriate to apply the principles of tacit withdrawal and *estoppel* to this objection. Secondly, the Commission explained that, in its Admissibility Report 109/10, it concluded that the exception of unwarranted delay established in Article 46(2)(c) of the Convention was applicable, bearing in mind numerous signs indicative of the presumed lack of effectiveness of the domestic remedies. Third, the Commission pointed out that the first time the State had mentioned the argument regarding the remedies for "activating" the criminal proceedings, derived from Decree 51-92, was in its answer brief before the Court, which would mean it was time-barred. Finally, it considered that by using this argument, the State sought to transfer to the victims the burden of supervising and trying to move forward the investigations into the case, which would be contrary to the State's obligation to investigate violent deaths *de officio*.

19. The **representatives** emphasized that during the proceedings before the Commission, "the State did not oppose the petition of family [A] regarding the issuance of the Admissibility Report." Furthermore, they asked the Court to dismiss this objection based on three types of arguments. On the one hand, they argued that although remedies were available within the domestic jurisdiction, these were not effective since the investigations into this case were neither undertaken with due diligence nor within a reasonable time. Secondly, based on the State's failure to specify which particular domestic remedies were not exhausted, they asked the Court to dismiss the preliminary objection because it was time-barred. They also argued that there had been an unwarranted delay by the Guatemalan jurisdictional organs, which had been proven during the proceedings before the Commission. On this point, they referred to the State's

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<sup>7</sup> The State held that "this matter should not have been brought before [this Court], considering that the presumed violations of rights protected by the American Convention [...] alleged by the Commission and the petitioners, involve circumstances that occurred after the State of Guatemala had recognized the contentious jurisdiction of that body, [and] the domestic remedies contemplated in Guatemalan legislation have not yet been exhausted."



presumed lack of due diligence in the investigation, its lack of effectiveness and impartiality and its failure to fulfill its obligation to investigate within a reasonable time. Finally, the representatives pointed out that the remedies contemplated in the legislative reforms of 2010 and 2011, mentioned by the State, were not available to the family members when the events took place.

#### A.2. Considerations of the Court

20. Article 46(1)(a) of the American Convention establishes that for a petition or complaint filed before the Inter-American Commission to be admissible under Article 44 of the Convention, domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of International Law.<sup>8</sup> However, this is subject to principles of substance and form. In terms of substance, as the Court has determined in its case law since the first contentious case was brought before it, that this not only refers to the formal existence of such remedies, but also to their adequacy and effectiveness, as stated in the exceptions set forth in Article 46(2) of the Convention.<sup>9</sup> In formal terms, an objection to the Court's jurisdiction, based on a supposed failure to exhaust domestic remedies, must be filed at the appropriate procedural stage,<sup>10</sup> that is, during the early stages of the admissibility proceeding before the Commission,<sup>11</sup> and it should specify precisely which remedies must be exhausted and their effectiveness. For more than two decades, the Court's interpretation of Article 46(1) (a) of the Convention has been in keeping with international law,<sup>12</sup> according to which, after the appropriate procedural stage the principle of procedural preclusion comes into operation.<sup>13</sup>

21. First, the Court notes that, during the admissibility proceeding before the Commission, the State followed two different lines of argument regarding the failure to exhaust domestic remedies. On the one hand, in the first two briefs submitted to the Commission, it argued that "the remedies of the domestic jurisdiction have not yet been exhausted, and the investigation by the Public Prosecution Service is still pending conclusion"; therefore, the petition "bec[ame] inadmissible."<sup>14</sup> On the other hand, Guatemala submitted a third brief in which it stated that "[e]ven though the domestic remedies of the legal process have not yet been exhausted, the State, upon recognizing that there has not been substantial progress, cannot deny the petition of family [A]."<sup>15</sup> This argument did not include an expression of its willingness to find a possible solution under the terms of Article 49 of the Convention. Subsequently, the State submitted five briefs in which it reiterated its position<sup>16</sup> and, specifically, in two of them<sup>17</sup> indicated that :

In view of the fact that this case is currently in the admissibility phase, the State of Guatemala reiterates the position expressed [...], in the sense that, despite the fact that the domestic remedies of the criminal proceedings have not yet been exhausted, it does not oppose the petition of the family [A], without prejudice to any position that it may adopt in future regarding the merits of the petition.

22. In this regard, the Court confirms that the initial petition consisted of an account of the facts, which included information concerning the alleged victims, the nature or origin of the supposed violation and those responsible for it; consequently, it was based on this body of facts that the State said it did not oppose the petition. Therefore, even though the

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<sup>8</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 85, and *Case of Brewer Carías v. Venezuela, supra*, para. 83.

<sup>9</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 63, and *Case of Brewer Carías v. Venezuela, supra*, para. 83

<sup>10</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, supra*, para. 88, and *Case of Brewer Carías v. Venezuela, supra*, para. 37.

<sup>11</sup> Cf. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107, para. 81, and *Case of Brewer Carías v. Venezuela, supra*, para. 37.

<sup>12</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 22, and *Case of Brewer Carías v. Venezuela, supra*, para. 84.

<sup>13</sup> Cf. *Case of Mémoli v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 22, 2013. Series C No. 265, para. 47, and *Case of Brewer Carías v. Venezuela, supra*, para. 37.

<sup>14</sup> Cf. Briefs of the State of Guatemala of June 20 and October 2, 2006 (File of the proceedings before the Commission, pages 433 and 400).

<sup>15</sup> Cf. Brief of the State of Guatemala of July 23, 2008 (File of the proceedings before the Commission, page 379).

<sup>16</sup> Cf. Briefs of the State of Guatemala of November 14, March 27, April 14, July 28 and November 3, 2009 (File of the proceedings before the Commission, pages 358, 331, 321, 287 and 263).

<sup>17</sup> Cf. Briefs of the State of Guatemala of April 14 and July 28, 2009 (File of the proceedings before the Commission, pages 321 and 287).

State had initially raised this objection at the appropriate procedural moment and had held that the petition became inadmissible, it then changed its position during the admissibility proceeding when it stated that it does not oppose family A's petition, despite not having exhausted the domestic remedies. Consequently, this amounts to a tacit withdrawal of the objection filed by the State during the admissibility proceeding before the Inter-American Commission.

23. It should be noted that in its Admissibility Report the Inter-American Commission took into consideration that "[i]n the instant case, the State maintains that although domestic remedies have not been exhausted, it does not oppose the petition." Furthermore, in that report, the Commission concluded that "there has been an unwarranted delay on the part of Guatemalan authorities regarding the facts reported" and, as a result, the exception to the exhaustion of domestic remedies provided for in Article 46(2) (c) of the American Convention is applicable.<sup>18</sup>

24. In the second place, during the proceeding before this Court, the State once again filed a preliminary objection regarding the failure to exhaust domestic remedies, under the terms of Article 46 of the American Convention, "since in the present case, the criminal proceeding is still in the investigation stage." The Court considers that, given the aforementioned tacit withdrawal of this objection before the Commission, under the principle of *estoppel*<sup>19</sup>, the State cannot now change its position by arguing before the Court the failure to exhaust domestic remedies.

25. The Court emphasizes that the debate on the effectiveness of the criminal investigation into the facts of this case implies an assessment of the State's actions in relation to its obligation to guarantee the rights recognized in the American Convention whose violation is alleged, a matter that is closely connected with the merits of the dispute.<sup>20</sup> The Court further notes that, during the period when the Commission was examining this case, Guatemala introduced reforms to its rules of criminal procedure, consisting of supposed controls to "activate criminal proceedings." However, given that these arguments were submitted to the Court for the first time after the initial petition was filed before the Commission, and after its decision on admissibility (*supra* paras.2.a and 2.b), it is not appropriate to issue a ruling on this point in the context of this preliminary objection. Consequently, the Court dismisses the preliminary objection filed by the State regarding the failure to exhaust domestic remedies.

## **B) Regarding the alleged violation of the State's right to defense**

### *B.1. Arguments of the parties and of the Commission*

26. The **State** argued that it was "surprising" to find that Commission had declared a supposed violation of Articles 22 and 23 of the American Convention, in connection with Article 1(1) thereof, in the Merits Report, "since this violates the State's right to defense, because did not know from the outset the arguments on which the supposed additional violations were based."

27. The **Commission** argued that the initial assessment of possible violations made in the Admissibility Report is merely intended to determine, from a *prima facie* perspective, whether facts have been presented which, if proven, would tend to establish violations of the American Convention, and whether the petition is "manifestly groundless" or "obviously out of order." In this case, the Commission did not refer *prima facie* to Articles 22 and 23 of the Convention. However, it did mention, as part of the allegations

<sup>18</sup> Cf. Admissibility Report No. 109/10 of September 8, 2010, paras. 31 and 34 (File of the proceedings before the Commission, page 251).

<sup>19</sup> According to international practice, when a party to a litigation has adopted a specific attitude that adversely affects its own position or benefits the position of the other party, under the estoppel principle, it cannot then assume another position contrary to the first. Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*, *supra*, para. 96, and *Case of Mémoli v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 22, 2013. Series C No. 265, para. 34.

<sup>20</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*, *supra*, para. 96, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations*. Judgment of June 27, 2012. Series C No. 245, para. 30.

comprising the petition, the facts related thereto. During the merits stage, the scope and specific content of the facts alleged in the initial application and referred to in the Admissibility Report were determined, based on an examination of the evidence received in adversarial proceedings. Thus, the facts for which the State's international responsibility was declared and the respective arguments of the petitioners were known to the State from the moment it was notified of the initial application and during the merits stage; therefore it had ample opportunity to dispute them. The *representatives* did not present any arguments in this regard.

### B.2. Considerations of the Court

28. In its case law, the Court has held that the rights specified in the Commission's Admissibility Report are the result of a preliminary examination of the application under consideration, which does not limit the possibility of including other rights or Articles that were presumably infringed in subsequent stages of the process, provided that the State's right of defense is respected and the factual framework of the case under analysis is maintained.<sup>21</sup> However, based on the adversarial principle, the discussion on the factual issues must be reflected in the Merits Report.<sup>22</sup> Thus, it is for the Court to decide in each case on the admissibility of the arguments relating to the factual framework, thereby safeguarding the procedural balance between the parties.<sup>23</sup>

29. In the Admissibility Report of September 8, 2010,<sup>24</sup> the Commission concluded that it was competent to examine the merits of the case and declared the application admissible. It decided to proceed with the analysis of merits regarding the supposed violation of Article 4, in relation to Mr. A.A., and Articles 5(1), 8(1) and 25, in respect of B.A. and her relatives, all in accordance with Article 1(1) of the American Convention. The Commission also included in the Admissibility Report, in the section entitled "III. Position of the parties", arguments presented by the petitioners, in the following terms:

12. The petitioners allege that the initial investigative activities produced indications of a planned action. They point out that there was no robbery, so that the **motive for the murder was related to the activities of Mr. [A.A.] and his daughter**. They say that **there is a history of death threats and intimidation against [B.A.]**. They indicate that even though the authorities were informed from the outset that this was **very likely a political murder**, the authorities have never taken this fact into account, stating that this is just one more case of ordinary violence. [...]

17. According to the petition, **[A.A.] and his daughter [B.A.] were the victims of repeated threats**. [...] They allege that, **as a result of this intimidation, the [A] family has not returned to live in Santa Lucía Cotzumalguapa**. Mrs. [B.A.] travels daily to Santa Lucía Cotzumalguapa to work at the Women's Association of the Social Movement and the former mayor [of Santa Lucía Cotzumalguapa] provides her with protection through his personal security. Although the petitioners **recognize that the Presidential Commission for the Coordination of Human Rights Policies (COPREDEH) offered in May 2008 to initiate a proceeding seeking personal protection for Mrs. [B.A.]**, they state that they feel that **this could put Mrs. [B.A.]'s life at greater risk** in view of the fact that there are communications between those who threaten her and the police. [...]

19. [...] In addition, they state that the threats and intimidation against the relatives following the murder of Mr. [A.A.], **forced them to leave their homes in Santa Lucía Cotzumalguapa nine days after he was killed, and so far they have not returned** to live in the area because they

<sup>21</sup> Neither the American Convention, nor the current Rules of Procedure of the Inter-American Commission nor the Rules of the Commission in force at the time when the Merits Report was issued, contain any rules requiring that the Admissibility Report establish all the rights presumably violated. Furthermore, the Court has indicated that, in the context of proceedings in the Inter-American System, it is possible to change or modify the legal definition of the facts of a specific case. This is clearly reflected in the Court's consistent case law, according to which the presumed victims and their representatives may invoke the violation of rights other than those included in the Merits Report, provided that these remain within the factual framework. *Cf. Case of Five Pensioners v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, *supra*, para. 155, and *Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 19, 2014. Series C No. 277, para. 132.

<sup>22</sup> *Cf. Case of Gutiérrez and Family v. Argentina. Merits, Reparations and Costs*. Judgment of November 25, 2013. Series C No. 271 para. 31, and *Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 22.

<sup>23</sup> *Cf. Case of the Mapiripán Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005, para. 58, and *Case Family Pacheco Tineo v. Bolivia, supra*, para. 22.

<sup>24</sup> *Cf. Admissibility Report No. 109/10 of September 8, 2010 (File of the proceedings before the Commission, pages 247 to 252).*

are afraid. They state that the threats were not reported to the authorities for the same reason. [...]  
(Bold type added by the Court)

30. As is clear from the Admissibility Report, the State was undoubtedly aware of the facts that support the alleged violation of Articles 22 and 23 of the Convention, to the detriment of members of family A, B.A. and A.A., in the early stages of the proceeding before the Commission, and could therefore have expressed its position, had it considered it pertinent. Thus, the Court considers that the Commission's decision to include in its Merits Report the presumed violations of the right to freedom of movement and residence, and to participation in government, recognized in Articles 22 and 23 of the American Convention, is based on the principle of "*iura novit curia*" and, bearing in mind that the State "knew about the facts upon which the allegation was based, and had the opportunity to submit its observations in that regard,"<sup>25</sup> this did not imply a violation of Guatemala's right to defense.

31. For the above reasons, the Court dismisses the State's objection regarding a supposed violation of its right to defense in the proceedings before the Inter-American Commission.

## V

### PRIOR CONSIDERATIONS

32. In this Chapter, the Court will rule on the arguments put forward by the State concerning: a) the alleged "[l]ack of legal standing of the representatives of the presumed [v]ictims in this case", and b) the alleged "incongruities, contradictions and inconsistencies in the facts that constitute the factual framework established by the Commission [...] with respect to the facts alleged in the brief of pleadings [and motions]." The Court will also refer to: c) the determination of alleged victims in this case.

#### A) Alleged lack of legal standing of the representatives

##### A.1. Arguments of the parties and of the Commission

33. The **State** held that Claudia Virginia Samayoa Pineda and B.A. had acted before the Commission and Court as petitioners, and not as representatives of the alleged victims. It argued that, in order to act as representatives, this status must be accredited. It also argued that there was no evidence in the case file showing that the alleged victims had given their consent to bring the case before the Court. Similarly, the State alleged that there were no legal statements or briefs referring to any type of representation granted by the family to Claudia Samayoa and B.A. Therefore, it held that both the Commission and the Court were in breach of regulatory provisions: the Commission, because prior to submitting the case it should have asked the petitioners to certify their status as representatives of the alleged victims, and the Court, for having examined and processed the case without the petitioners having properly certified that status. According to the State, the omission of this procedural requirement regarding proper legal accreditation would render inadmissible the application submitted and would impede the exercise of the claims attempted through the brief of pleadings and motions.

34. The **Commission** considered that it is not up to the State to confirm whether or not the representatives have been duly accredited; rather, this determination is made by the Court's President under Article 38 of the Court's Rules of Procedure, as part of the "preliminary examination of the application."

35. The **representatives** explained that on September 19, 2013, the Court's Secretariat asked them to confirm whether they would indeed represent all the alleged victims, and on September 26, 2013, they replied affirmatively. They added that in a brief dated May 14, 2012, the sons and daughters of A.A., D.A., E.A., B.A., F.A., G.A. and H.A., had agreed that the Commission should submit the case to the Court, and had also expressed their agreement with the petitioners' statements before the Commission and the legal representation exercised by B.A. and Claudia Virginia Samayoa. The representatives further pointed out that in said brief the alleged victims had "delegated their representation" to B.A. and Claudia Samayoa, and that said document therefore complies with the requirements considered essential to confirm their representation. Thus, they argued that their representation "was sufficiently accredited" through documents submitted in the proceedings before this Court and before the Commission.

<sup>25</sup> Cf. Merits Report No. 56/12 of March 21, 2012 (Merits file, pages 57 and 63).

## A.2. Considerations of the Court

36. First, the Court recalls that an individual's access to the Inter-American System for the protection of human rights cannot be restricted based on the requirement to have a legal representative;<sup>26</sup> if an application were not admitted for lack of a representative, this would constitute an unwarranted restriction that would deprive the alleged victim of the possibility of access to justice.<sup>27</sup> Indeed, the appointment of a legal representative in proceedings before the Court is the right of the alleged victims, and not an obligation.<sup>28</sup> In this regard, Article 35 of the Court's Rules states that, "if applicable", the Commission must include the names, addresses, telephone number, electronic address and facsimile number of the duly accredited representatives of the alleged victims. Article 37 of the Rules states that "[i]n cases where alleged victims are acting without duly accredited legal representation, the Court may, on its own motion, appoint an Inter-American Defender to represent them during the processing of the case." Thus, the possibility exists that alleged victims or their relatives may not have appointed representatives, and that the omission of this information does not imply the rejection of the case, but rather the possibility that the Court may appoint an Inter-American Defender *de officio*.

37. Furthermore, the Court has stated that the powers granted by the alleged victims to be represented in proceedings before the Court are not necessarily bound by the same formalities required under the domestic laws of the respondent State.<sup>29</sup> In its consistent practice, this Court has allowed a certain flexibility in matters of representation. However, this latitude in accepting instruments granting representation has certain limits, dictated by the practical purpose that the representation itself is intended to serve. First, such instruments must clearly identify the person granting the power of attorney and include an error-free statement of intent. They must also clearly name the party to whom the power of attorney is granted and, finally, they must specify the purpose of the representation. In the opinion of this Court, instruments that meet these requirements are valid and take full effect upon presentation to the Court.<sup>30</sup> Thus, regardless of what the instrument is called – power of attorney, letter of attorney, authorization or any other term – any document wherein the persons granting the power of attorney express their desire to be represented, is sufficient to be legitimate for this Court.<sup>31</sup>

38. The Court confirms that, during the proceeding before the Inter-American Commission, Claudia Samayoa Pineda and B.A., daughter of A.A. and presumed victim, submitted the initial application,<sup>32</sup> and jointly signed several briefs in their role as petitioners.<sup>33</sup> Furthermore, they presented other briefs separately.<sup>34</sup> In turn, D.A., E.A., B.A., F.A., G.A. and H.A., children of A.A. and alleged victims, signed a brief which was submitted on May 14, 2012,<sup>35</sup> in which they told the Commission:

To conclude, we wish to appeal to your humanity, so that justice may be done through you and the case may be referred to the Inter-American Court of Human Rights. We ratify that everything stated by [B.A.] and Claudia Samayoa as petitioners in this case reflects our feelings and views. Consequently, we do not want a friendly settlement but a process of justice.

39. Subsequently, in the proceeding before the Court, the Commission explained in its submission brief that B.A. and Claudia Samayoa had acted as petitioners throughout the process. On September 19, 2012, these individuals were asked to confirm whether they

<sup>26</sup> Cf. *Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 23, 2005. Series C No. 127, para. 82.

<sup>27</sup> Cf. *Case of Yatama v. Nicaragua, supra*, para. 86.

<sup>28</sup> Cf. *Case of Acevedo Jaramillo et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 7, 2006. Series C No. 144, para. 143, and *Case of Yatama v. Nicaragua, supra*, para. 86.

<sup>29</sup> Cf. *Case of Loayza Tamayo v. Peru. Reparations and Costs*. Judgment of November 27, 1998. Series C No. 42, paras. 97 and 98, and *Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2010. Series C No. 218, para. 54.

<sup>30</sup> Cf. *Case of Loayza Tamayo v. Peru, supra*, paras. 98 and 99, and *Case of Vélez Loor v. Panama, supra*, para. 54.

<sup>31</sup> Cf. *Case of Castillo Páez v. Peru. Reparations and Costs*. Judgment of November 27, 1998. Series C No. 43, para. 65.

<sup>32</sup> Cf. Brief of December 9, 2005 (File of the proceedings before the Commission, pages 444 to 449).

<sup>33</sup> Briefs of June 6 and September 19, 2008, January 22, April 27, June 23 and October 22, 2009, January 5 and October 27, 2010, January 18 and August 8, 2011, January 18 and 14 May 2012. (File of the proceedings before the Commission, pages 1, 37, 294, 298, 339, 366, 386, 130, 132, 128, 233, 274, 608).

<sup>34</sup> Cf. Briefs of August 24, 2006, October 5, 2010, February 14, August 8, 2011 and June 4, 2012 (File of the proceedings before the Commission, pages 47, 120, 238, 414 and 526).

<sup>35</sup> Cf. Brief of May 2012 (File of the proceedings before the Commission, pages 605 to 607).

indeed represented all the alleged victims. In response, on September 26, 2012 Claudia Virginia Samayoa Pineda confirmed that, together with B.A., she represented all the alleged victims in this case. Thus, in compliance with Article 39(1) of the Rules, the submission of this case was notified to the parties and to the Commission.

40. On February 14, 2014, upon the instructions of the President of the Court, the representatives were required to submit, as evidence to facilitate adjudication, the powers of attorney issued by the alleged victims in this case. Accordingly, on February 28, 2014 the representatives submitted a document signed by "the sons, daughters and grandchildren of [A.A.]"<sup>36</sup> on February 24, 2014, before a notary public, in which they stated that:

[i]n May 2012, we expressed our agreement in a private document that the case be submitted to the Inter-American Court [...], and we ratify everything expressed by [B.A.] and Claudia Virginia Samayoa Pineda on our behalf during the proceeding followed until that date, and [we] the [presumed] victims confirm that [they] have acted on our behalf and with our consent; and that we have been kept informed at all times about the course of the proceedings. Likewise, through this document, we expressly grant [B.A.] and Claudia Virginia Samayoa Pineda the power to represent us before the Inter-American System [...], even after the corresponding Judgment has been issued.

41. The Court considers that the brief issued in May 2012, and the mandate accepted on September 26, 2012, are effective, and were made effective upon B.A. and Claudia Virginia Samayoa Pineda exercising the representation on behalf of all the alleged victims and participating in the various procedural acts before the Court (*supra* paras. 5, 7, 8, 10 and 11). Furthermore, their standing as representatives of the alleged victims was confirmed in the power of attorney submitted to the Court on February 28, 2014, as evidence to facilitate adjudication. Consequently, the Court dismisses the State's objection.

## **B) Factual framework**

### *B.1. Arguments of the parties and of the Commission*

42. The **State** argued that a number of incongruities, contradictions and inconsistencies exist between the facts which constitute the factual framework established in Merits Report No. 56/12, and those presented by the petitioners in their brief of pleadings and motions. Consequently, it requested that the Court declare inadmissible the action filed against it and, in the event of its objection being dismissed, that it be declared partially valid, arguing that the brief of pleadings and motions does not comply with the *sine qua non* requirements established in Article 40(2) of the Court's Rules, and therefore should not be admitted. Furthermore, in its final written arguments, the State explained that it was not calling for these alleged contradictions, inconsistencies and incongruities to be assessed separately, i.e. one by one, but rather that the objective was to show the lack of agreement and legitimacy in the arguments presented by the representatives.

43. The **Commission** pointed out that the alleged contradictions, incongruities or inconsistencies cited by the State are not evident in any of the points raised, and that the facts referred to by the representatives form part of the factual framework defined by the Commission. The **representatives** argued that the account of the facts contained in the brief of pleadings and motions fits into the factual framework established by the Commission, and denied that any contradictions exist in that account. In particular, they noted that five of the alleged contradictions explain or clarify aspects that are already included in the factual framework, while the four remaining ones refer to facts that had already been proven, the recounting of the same facts but with different words and the questions raised about their veracity.

### *B.2. Considerations of the Court*

44. The Court recalls that the factual framework of the case before it is comprised of the facts contained in the Merits Report submitted to its consideration. Consequently, it is not admissible for the parties to allege new facts, distinct from those presented in said report, without detriment to setting forth those that may explain, clarify or reject the facts

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<sup>36</sup> The brief was signed by D.A., E.A., B.A., F.A., G.A., I.A., P.A., O.A., Q.A., Z.A., S.A., R.A., J.A., L.A., M.A. and N.A.

mentioned therein that have been submitted to the consideration of the Court.<sup>37</sup> Supervening facts are the exception to this principle, and may be presented provided that they are linked to the facts of the case.<sup>38</sup>

45. The State presented a total of nine supposed facts, described in a comprehensive and detailed manner, which it alleged had not been mentioned in the Merits Report or had not been argued or explained before the Commission, and which appear to be contradictory, incongruent, inconsistent or lacking credibility and factual consistency, with respect to those put forward by the Commission. The Court finds that, while the alleged facts do indeed form part of the factual framework described by the Commission in its Merits Report,<sup>39</sup> the arguments presented by the State are related to a matter of assessment of the evidence and proven facts. Accordingly, the Court will decide on the matter in the relevant Chapters, taking into account the observations of Guatemala. For all the foregoing reasons, the Court considers that the State's objection is unfounded.

### C) Determination of the alleged victims

#### C.1. Arguments of the parties and of the Commission

46. In accordance with Article 35(1) of the Court's Rules of Procedure, in its submission brief the **Commission** named the alleged victims in this case as A.A.; C.A.; D.A., E.A., B.A., F.A., G.A. and H.A.; "[I.A.] and his siblings", without identifying those siblings; J.A., K.A., L.A., M.A. and N.A. The **representatives** agreed with the list submitted by the Commission and added the following individuals as alleged victims: O.A., P.A., Q.A., R.A., S.A., T.A., U.A., V.A. and W.A. However, after the public hearing they reported that H.A. and her children, T.A., U.A. and V.A. did not wish to "appear as victims in this case [...]." The **State** considered that the term "relatives" should be understood to mean only Mr. A.A.'s wife and children who lived with him or whose efforts in the search for justice were confirmed by the petitioners and the Commission. As to the grandchildren, it argued that neither the representatives nor the Commission had stated the reasons why they should be considered as victims, nor was there any certainty that they were alive at the time their grandfather died. Moreover, it pointed out that the pleadings and motions brief merely included a list of all the descendants of the presumed victims and the supposed emotional effects they suffered, without proving that these were directly connected with their grandfather's death and without having their emotional state assessed by an expert in this matter.

#### C.2. Considerations of the Court

47. The Court recalls that the presumed victims must be indicated in the Commission's Merits Report, pursuant to Article 50 of the Convention. Article 35(1) of the Court's Rules of Procedure establishes that that the case must be submitted to the Court through the presentation of said report, which must "identify the presumed victims." According to this article, it is for the Commission and not this Court to specify the presumed victims in a case before the Court, at the appropriate procedural stage.<sup>40</sup> Legal certainty, as a general rule, demands that all the presumed victims be duly identified in the Merits Report, and it is not possible to add new presumed victims subsequently, except in the circumstances established in Article 35(2) of the Court's Rules, which do not apply in this case.

48. Accordingly, the Court emphasizes that the representatives must indicate all the presumed victims during the proceedings before the Commission and refrain from doing so following the issue of the Merits Report referred to in Article 50 of the Convention. The reason for this is that, upon issuing said report, the Commission must have all the necessary information to determine the legal and factual aspects of the case, including the

<sup>37</sup> Cf. *Case of Five Pensioners v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 27, 2013. Series C No. 275, para. 27.

<sup>38</sup> Cf. *Case of Five Pensioners v. Peru*, *supra*, para. 154, *Case of J. v. Peru*, *supra*, para. 27.

<sup>39</sup> See paras. 56 and 57, 62 to 64, 68 and 69, 71 to 74, 80, 86, 171 and 172, 187 and 188, 190, and footnotes 68 and 84 of Merits Report No. 56/12 of the Inter-American Commission.

<sup>40</sup> Cf. *Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of J. v. Peru*, *supra*, para. 23.

identity of those who should be considered as victims,<sup>41</sup> something that did not occur in this case.<sup>42</sup>

49. Consequently, in application of Article 35(1) of its Rules of Procedure and its consistent case law, the Court *declares that it will only consider the following persons as presumed victims and eventual beneficiaries of any reparations corresponding to Mr. A.A. and his family: C.A.; D.A., E.A., B.A., F.A. and G.A.; I.A., J.A., K.A., L.A., M.A. and N.A.* (hereinafter, "family A"), who were the persons identified as such in the Commission's Merits Report.<sup>43</sup> Furthermore, although H.A. was also included as a presumed victim in the Merits Report, the representatives have advised that she does not wish to "appear as a victim in this case [...]" (*supra* para. 46). Therefore, the Court will not rule on the alleged violations against her.

50. At the same time, the Court notes that the other arguments presented by the State (*supra* para. 46) concern the assessment of the evidence. Therefore, the Court will rule on this matter in the appropriate Chapters, taking into account the observations of the State.

## VI EVIDENCE

51. Based on the provisions of Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules, and on its case law regarding evidence and its assessment,<sup>44</sup> the Court will examine and assess the documentary evidence submitted by the parties at different stages of the proceedings, including the statements, testimony and expert opinions rendered by affidavit and during the public hearing, as well as the evidence requested by the Court to facilitate adjudication. In doing so, the Court will adhere to the principles of sound judgment, within the corresponding legal framework.<sup>45</sup>

52. Regarding the reception of evidence, the Court has established that the proceedings before it are not subject to the same formalities as domestic judicial proceedings, and that evidence may be admitted only after careful attention to the circumstances of the particular case, bearing in mind the limits imposed by respect for legal certainty and procedural balance between the parties.<sup>46</sup>

### A) Documentary, testimonial and expert evidence

53. The Court received various documents presented as evidence by the Commission and the parties, attached to their main briefs (*supra* paras. 1, 5 and 6). The Commission and the parties also submitted the documents requested by the Court as evidence to facilitate adjudication (*supra* para. 9). In addition, the Court received the statements, rendered by affidavit, of the expert witness Luis Enrique Eguren Fernández and of the deponent, H. I. summoned for information purposes, both proposed by the representatives, as well as of the witness M.I., proposed by the State. As to the evidence rendered at the public hearing, the Court heard the testimonies of Mrs. B.A., presumed victim offered by the representatives, as well as the testimony of Mr. E.M., offered by the State, and the report of the expert witness Ms. Hina Jilani, proposed by the Commission.<sup>47</sup> Finally, the Court received documents submitted by the representatives, attached to their brief of final written arguments (*supra* para. 10).

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<sup>41</sup> Cf. *Case of García and Relatives v. Guatemala. Merits Reparations and Costs*. Judgment of November 29, 2012, Series C No. 258, para. 35, and *Case of J. v. Peru, supra*, para. 24.

<sup>42</sup> In their pleadings and motions brief, the representatives added nine individuals as presumed victims, identified as grandchildren of A.A., namely: O.A., P.A., Q.A., R.A., S.A., T.A., U.A., V.A. and W.A.

<sup>43</sup> It should be noted that P.A., O.A., Q.A., S.A. and R.A., all siblings of I.A., were not duly identified and named as presumed victims in the Merits Report of the Inter-American Commission. Cf. Birth certificates (Merits file, pages 1684 to 1695).

<sup>44</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Merits, Reparations and Costs*. Judgment of May 29, 2014. Series C No. 279, para. 49.

<sup>45</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits, supra*, para. 38, and *Case of Norín Catrimán et al. (Leaders, members and activists of the Mapuche Indigenous People) v. Chile, supra*, para. 49.

<sup>46</sup> Cf. *Case of Bamaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 96, and *Case of Gutiérrez and Family v. Argentina, supra*, para. 79.

<sup>47</sup> The purpose of these statements and expert opinions are established in the Order of the President of December 20, 2013 (*supra* para. 8).



## B) Admission of the evidence

### B.1. Admission of documentary evidence

54. In this case, as in others, the Court admits those documents forwarded by the parties and the Commission at the appropriate procedural stage (*supra* paras. 1, 5 and 6) that have not been contested or challenged, and whose authenticity has not been questioned.<sup>48</sup> The documents requested by the Court and provided by the parties after the public hearing, have been included in the body of evidence, in application of Article 58 of the Rules.

55. Regarding the newspaper articles submitted by the Commission<sup>49</sup> and the representatives<sup>50</sup>, the Court has considered that these may be assessed when they refer to well-known public facts or declarations by State officials, or when they corroborate certain aspects of the case. The Court therefore decides to admit those newspaper articles that are complete, or at least those whose source and date of publication can be verified, and will assess them taking into account the body of evidence, the observations of the parties and the rules of sound judgment.<sup>51</sup>

56. Similarly, with regard to certain documents referred to by the parties and the Commission by means of their electronic links, the Court has established that, if a party provides at least the direct electronic link to the document cited as evidence, and it can be accessed until the respective Judgment is issued, legal certainty and the procedural balance will not be affected, because it can immediately be located by the Court and the other parties.<sup>52</sup>

57. With respect to the proper procedural stage for submitting documentary evidence, in accordance with Article 57(2) of the Rules this must be presented, in general, together with the brief submitting the case, the pleadings and motions brief or the answer brief, as appropriate.

58. Notwithstanding the foregoing, in the course of the public hearing (*supra* para. 8) the expert offered by the Inter-American Commission, Ms. Hina Jilani, presented three documents<sup>53</sup> related to her expert opinion, while the representatives submitted various documents with their final written arguments. Copies of said documents presented by expert Hina Jilani and by the representatives were distributed to the parties and to the Commission, so that they could submit their observations.<sup>54</sup> Because it considers these documents to be necessary for the settlement of this case, under the terms of Article 58 of

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<sup>48</sup> Cf. *Case of Velásquez Rodríguez. Merits, supra*, para. 140, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, supra*, para. 54.

<sup>49</sup> The press reports presented by the Commission include the following: *Prensa Libre*, "Unsung Hero Murdered", December 22, 2004, and "Public tribute to social work of 19 unsung heroes", 21 November 2002; *Nuestro Diario*, "In Cruce de la Esperanza, [A.A.] helps his community, July 21, 2003; and *Prensa Libre*, "The [A family] continue to be persecuted," January 30, 2005 (File of attachments to submission brief, pages 1385, 1391 and 1394).

<sup>50</sup> The press reports presented by the representatives are the following: *Prensa Libre*, "Tribute to 19 Unsung Heroes", November 21, 2002; *Prensa Libre*, "Public tribute to social work of 19 unsung heroes", 21 November 2002; *Nuestro Diario*, "In Cruce de la Esperanza, [A.A.] helps his community, July 21, 2003; *Prensa Libre*, "The [A family] continue to be persecuted," January 30, 2005; *Prensa Libre*, "Unsung Hero Murdered", December 22, 2004; *Prensa Libre*, "25 complaints filed for investigation of disappearances", January 30, 2005; and *Prensa Libre, Línea directa*, "No leisure area", December 22, 2002 (File of attachments to the brief of pleadings and motions, pages 2096, 2097, 2098, 2124, 2128, 2126, 2197 and 2264).

<sup>51</sup> Cf. *Case of Velásquez Rodríguez. Merits, supra*, para. 146, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, supra*, para. 58.

<sup>52</sup> Cf. *Case of Escué Zapata v. Colombia. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165*, para. 26, and *Case of Norín Catrimán et al. (Leaders, members and activists of the Mapuche Indigenous People) v. Chile, supra*, para. 59.

<sup>53</sup> The following documents were submitted: i) Statement by Hina Jilani, Former Special Representative of the United Nations Secretary-General on Human Rights Defenders, in the case of [*Human Rights Defender et al.*] v. *Guatemala*; ii) Promotion and Protection of Human Rights - Human Rights Defenders: Report by Ms. Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders, submitted pursuant to Commission on Human Rights Resolution 2000/61- Addendum- Mission to Guatemala, and iii) "Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development: Report of the Special Representative of the Secretary-General on the situation of human rights defenders Hina Jilani Addendum- Mission to Guatemala (Merits file, pages 790 to 916).

<sup>54</sup> The State objected to the presentation of these reports because they were not submitted at the appropriate procedural moment and were not requested by the Court.

the Rules, the Court, on its own motion, has obtained the documents provided by expert Jilani during the public hearing, since these support her expert opinion, together with some of the documents presented by the representatives for the purpose of contesting an argument of the State, presented for the first time during the public hearing.<sup>55</sup> The Court will consider, where pertinent, the information contained therein, bearing in mind the body of evidence, the observations of the parties and the rules of sound judgment.

59. The Court also notes that the representatives submitted, with their final written arguments, receipts for expenses related to the litigation of this case. In this regard, the Court will only consider those referring to costs and expenses incurred after the submission of the pleadings and motions brief.

60. Furthermore, the Court notes that the State objected to certain documents offered by the Inter-American Commission with its submission brief (*supra* para. 1). In this regard, it alleged "a number of irregularities ranging from illegible and incomplete documents, to inadmissible evidence and abundant documentation that is not related to the facts disputed and does not serve to illustrate the context in which the victims allege that the facts occurred." In particular, the State argued that "the written testimonial statements presented by the C[ommission] are not valid because they were not rendered before a notary public."<sup>56</sup> Similarly, it objected to "a number of documents in the file related to the [...] the investigation of the death of [A.A.]", which were incomplete or illegible, or contained inconsistencies. The State also objected to the presentation of "a psychosocial report carried out by [H.M.]", arguing that based on this report "the damage suffered by the family [A] cannot be assessed, because the expert merely conducts 22 interviews lasting between one and two hours each" with the same number of individuals.<sup>57</sup> Finally, it asked the Court not to admit as evidence a DVD identified as "Interviews [M.I.] 2009", which forms part of the file before the Commission, since it was not used in the preparation of the Merits Report and was not included in the list of attachments presented by the latter.

61. Likewise, the State objected to various pieces of evidence submitted by the representatives with their brief of pleadings and motions, arguing that they were illegible or incomplete,<sup>58</sup> or were cited in the footnotes of said brief but were not submitted until after the Secretariat had requested clarification in that respect.<sup>59</sup> It also challenged the admissibility of the documents presented with the clarifications submitted by the representatives at the request of the Court, pointing out that this brief was sent without its cover page. According to the State, the representatives tried to submit the entire brief mentioned extemporaneously. Furthermore, it emphasized that the petitioners did not re-submit the interviews of F.A., I.A., D.A. and "X.A.", presented in DVD format, despite a note from the Secretariat dated February 28, 2013, confirming that it had not been possible to play them.

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<sup>55</sup> During the public hearing, the State challenged the status of B.A. as a human rights defender. The documents submitted by the representatives are the following: Note of the Presidential Secretariat for Women, of June 23, 2009 (Merits file, page 2074); Awards granted to B.A. as Permanent Representative of Women's Organizations before the Departmental Development Council of Escuintla (Merits file, page 2075 to 2081); Fax transmission sheet dated November 12, 2003, sent to MINUGUA by B.A. as Vice-president of the Women's Network of Escuintla, supporting the statement "Toward a New Stage in the Construction of Peace" (Merits file, pages 2082 to 2085); Awards granted to B.A. for promoting community organization and participation (Merits file, pages 2086 to 2091), and death certificate of L.L., (Merits file, pages 2092 and 2093).

<sup>56</sup> The State explained that it referred to the following statements: Statement of the former municipal Mayor of December 5, 2010 (File of attachments to submission brief, pages 793 to 797); Statement of a member of the CICM of December 1, 2010 (File of attachments to submission brief, pages 1346 to 1349); Statement of B.A. of December 12, 2010 (File of attachments to the brief submitting the case, pages 1351 to 1371), and Statement of A.A. of October 11, 2004 (File of attachments to submission brief, pages 1376 to 1377). Regarding the aforementioned statement of B.A., it added that the heading states "January 2005" and that it includes the statements of other persons who did not sign the document. The Court notes that this was only signed by B.A. on December 12, 2010. Therefore, the Court will not take into account the testimony of the other people included in that document.

<sup>57</sup> This document was also presented by the representatives, and the State again objected.

<sup>58</sup> The State objected to five documents attached to the pleadings and motions brief (Annexes 1, 7, 10, 17 and 23), arguing that these "do not serve a useful purpose because they are not legible and the explanations provided by the petitioner did not clarify their content [...]". It also objected to the presentation of the copy of the file before the Public Prosecution Service MP 001/2005/33263, since it was apparently incomplete.

<sup>59</sup> The State objected to 23 documents mentioned in the footnotes of the brief of pleadings, motions and evidence because these were not attached thereto (Merits file, pages 360 and 361).

62. Similarly, the State objected to the Organizational and Operating Rules of the Office of the Human Rights Prosecutor, approved in an Agreement of the Council of the Public Prosecution Service 3-2005, arguing that this does not constitute "evidence relevant to this case, [...] because it does not indicate what [the representatives] are trying to prove with these." Furthermore, the State challenged the submission of a number of documents arguing that these "are not official" and are not signed.<sup>60</sup> In addition, it asked the Court not to give evidentiary value to two documents prepared by the organization UDEFEGUA, or by the representative in this case, Claudia Samayoa, "as Coordinator of UDEFEGUA,"<sup>61</sup> since these could contain biased information.

63. Next, the State challenged "the written testimonies" and "DVD [statements]" of various individuals offered by the representatives, some of which also were presented by the Commission (*supra* para. 60), arguing that these were not rendered before a notary public and there is no record indicating who received them. Finally, Guatemala requested that the Court declare inadmissible the "expert opinion on the investigation file" prepared by Messrs. F.S. and Q.M., since these individuals were not "qualified for that purpose." Similarly, it noted that those "expert opinions" were not rendered before a notary public.

64. First, with respect to the State's objections that some of the documents presented as evidence by the Commission and the representatives were incomplete or illegible, or were not submitted until after the Secretariat had requested clarification (*supra* paras. 60 and 61), the Court recalls that, under Article 59 of the Rules of Procedure, any item of evidence submitted to it by the Commission or one of the parties must be complete and intelligible. Otherwise, the Court will grant the Commission or the party in question a deadline within which to correct the defects or submit relevant clarifications. Furthermore, Article 58 of the Rules empowers the Court to request the parties and the Commission to submit any evidence that it considers may be useful for the settlement of the case. Accordingly, the Court confirms that in their briefs of September 26, 2012, and February 28, 2013, the Commission and the representatives presented, respectively, the clarifications and documents requested through the notes of the Secretariat of September 19, 2012, and 18 February 2013. Consequently, the objections raised by the State are invalid, and the documents referred to will be assessed within the context of the existing body of evidence and according to the rules of sound judgment. Similarly, the Court considers unfounded the State's argument that the documents containing the representatives' clarifications should be rejected because the brief arrived without its cover page. The Court notes that those documents were received within the deadline established for that purpose and, although the brief with which they were submitted was received without its cover page, this is not sufficient reason to affect the admissibility of the evidence offered.

65. Secondly, with respect to the written testimonies or those recorded on DVD, presented by the Commission and the representatives, which were not rendered before a notary public (*supra* paras. 60 and 61), as well as the "psychosocial expert report" of the psychologist H.M. (*supra* para. 60) and the "expert report on the investigation" prepared by Mr. F.S. and Mrs. Q.M. (*supra* para. 63), which were not rendered before a notary public either, the Court emphasizes that these will only have the character of documentary evidence.<sup>62</sup> As to the DVD disk identified as "Interviews [M.I.] 2009", the Court finds that this forms part of the case file before the Commission, which was submitted to the Court and included in the file in accordance with Article 35(d) of the Rules. Therefore, this evidence will be assessed within the context of the existing body of evidence and according to the rules of sound judgment. Nevertheless, the Court notes that the

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<sup>60</sup> For those reasons, the State objected to the following documents: Programme of Measures for Prevention and Protection of Human Rights Defenders and other Vulnerable Groups, Final Agreed Version of 2009; Proposal for a Framework Agreement for the Implementation of Precautionary Measures and Provisional Measures ordered by the Organs of the Inter-American System; National Measures of Protection presented on November 4, 2009 by CALDH, ICCPG, UDEFEGUA and CEJIL, and Risk Analysis prepared by the URNG (Merits file, pages 363 and 365).

<sup>61</sup> The State referred to a document entitled "Evaluation conducted by CALDJ, ICCPG, UDEFEGUA and CEJIL on the status of the implementation of Precautionary and Protection Measures at national level in June 2009", and to another entitled "Risk Analysis prepared by the URNG, and Claudia Virginia Samayoa in her role as Coordinator of UDEFEGUA, in September 2006, concerning the acts of violence that occurred between 2004 and 2006." Regarding this last document, the State argued that it is not appropriate for illustrating the context in which the facts of this case occurred.

<sup>62</sup> Cf. Order of the President of the Court of December 20, 2013, *supra*, para. 8. Similarly, see, *Case of Abrill Alosilla et al. v. Peru. Merits, Reparations and Costs*. Judgment of March 4, 2011. Series C No. 223, para. 39, and *Case of J. V. Peru*, *supra*, para. 46.

representatives did not re-submit the statements recorded in DVD format of Messrs. F.A., I.A., D.A. and "X.A.", even though they were informed, in a note of the Secretariat dated February 28, 2013, that was not possible to play the DVD. (*supra* para.61).

66. Finally, with respect to the State's objections to certain items of evidence that "are not official", are not signed, or were prepared by UDEFEGUA or by Mrs. Claudia Samayoa, the representative of the presumed victims in this case, or that did not specify what they were intended to prove, the Court considers that the State's argument has a bearing on their evidentiary weight and scope, but does not affect their admissibility as part of the body of evidence. Therefore, the Court deems it appropriate to admit those documents that are relevant to the examination of this case, and will assess these within the context of the body of evidence, taking into account the State's observations and the rules of sound judgment.

#### *B.2. Admission of testimonial and expert evidence*

67. The Court notes that, in its final written arguments, the State objected to the admission of "the intervention" of H.I. as an expert witness or deponent for information purposes, arguing that she "lack[ed] objectivity and impartiality because [...] she forms part of the Governing Board of the Protection Unit for Human Rights Defenders of Guatemala [UDEFEGUA]." The State also objected to the expert opinion of Mr. Luis Enrique Eguren, arguing that since the year 2000 "he has maintained a professional relationship [with Claudia Samayoa] because of the issue that unites them, [...] the protection of human rights defenders" and this, according to the State, "proves that this expert witness has maintained and still maintains a close friendship and affinity with the claimants, for which reason the expert report [...] lacks objectivity and validity." In addition, the State made several observations regarding the relevance, scope, veracity and credibility of the statements and reports rendered by B.A., E.M., Hina Jilani, H.I. and Luis Enrique Eguren Fernández at the public hearing in this case and via affidavits.

68. In this regard, the Court confirms that, in its answer brief, the State had already objected to Mrs. H.I. rendering an expert report for the reasons indicated (*supra* para. 6). The Court ratifies the ruling issued in the Order of the President of the Court, on December 20, 2013, stating that, "in light of the particularities of the evidence proposed, [the President] deems it pertinent that [it] be offered to the proceeding, not as expert evidence but rather for information purposes only."<sup>63</sup> This evidence will be assessed taking into account the observations of the State, the body of evidence and the rules of sound judgment.

69. With respect to the State's arguments regarding the expert report of Luis Enrique Eguren, as well as other observations regarding the statements and expert opinions rendered at the public hearing and in affidavits, the Court considers that the State's position has a bearing on their evidentiary weight and scope, but does not affect their admissibility. Consequently, these will be assessed within the context of the body of evidence, taking into account said observations, as well as the rules of sound judgment.

70. The Court deems it pertinent to admit the statements of the presumed victim, the witnesses, the expert witnesses and the deponent for information purposes, rendered during the public hearing and through affidavits, only insofar as these are consistent with the object defined by the President of the Court in the Order requiring them (*supra* para. 8). Similarly, in accordance with the Court's case law, the statements rendered by the presumed victims cannot be assessed separately, but rather within the body of evidence in this case, since are useful only to the extent that they can provide greater information on the alleged violations and their consequences.<sup>64</sup>

## **VII FACTS**

71. This Chapter will establish the facts of this case, based on the factual framework submitted to the consideration of the Court by the Commission, taking into consideration

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<sup>63</sup> Order of the President of the Court, December 20, 2013, Considering para. 15, *supra* para. 8.

<sup>64</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Liakat Ali Alibux v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 30, 2014. Series C No. 276, para. 31.

the body of evidence, the brief of pleadings and motions of the representatives and the arguments of the State. The Court will refer to these facts in the following order:

- a) Background relevant to the case, including:
  - i. Vulnerability of human rights defenders;
  - ii. Situation in Santa Lucía Cotzumalguapa, Escuintla;
- b) Life and previous work of A.A. and B.A.;
  - i. Life and work of A.A.
  - ii. Work of B.A.
- c) The facts of the case:
  - i. Facts prior to the death of A.A.;
  - ii. The death of Mr. A.A.;
  - iii. Facts subsequent to the death of A.A.;
- d) The investigations:
  - i. Investigation related to the death of A.A.;
  - ii. Investigation of the alleged intimidation of B.A.

#### **A) Background relevant to the case**

##### *A.1. Vulnerability of human rights defenders*

72. The **Commission** and the **representatives** held that the facts of this case occurred against a background of threats and attacks against human rights defenders in Guatemala. The **State** contested these claims, questioning the reliability and impartiality of the sources on which they were based. According to the State, the information was prepared by the representatives themselves and does not constitute "specific evidence to be able to determine the existence of a supposed systematic pattern." It also argued that "[the] supposed context of continuous attacks stemming from the internal armed conflict ended years before the death of Mr. [A.A.]."

73. The Court recalls that, in the exercise of its contentious jurisdiction, it has examined different historical, social and political contexts which enabled it to situate alleged violations of the American Convention in the context of the specific circumstances in which they occurred. In some cases, it has taken into account the background or context in order to determine the State's international responsibility.<sup>65</sup> The Court considers it pertinent to examine the contextual framework to facilitate a better understanding of the evidence and the arguments in order to assess the State's possible responsibility in this case. Accordingly, the Court will establish whether, at the time of the events, a specific context of violations against the rights of human rights defenders existed in Guatemala.

74. Between 1962 and 1996, an internal armed conflict took place in Guatemala, which had significant human, material, institutional and moral costs.<sup>66</sup> According to the Commission for Historical Clarification (CEH), "[d]uring much of the internal armed conflict, attempts to create organizations for the defense of human rights resulted in the elimination of their leaders. During the 1980s, the emergence of new groups of defenders in several areas was met with an intense repressive action by the State, which led to the murder or disappearance of many of their members. The campaigns aimed at discrediting these types of organizations, portraying them as 'subversive', were a constant feature of the repression."<sup>67</sup>

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<sup>65</sup> Cf., *inter alia*, *Case of Goiburú et al. v. Paraguay*, *supra*, paras. 53 and 63, and *Case of Gudiel Álvarez (Diario Militar) v. Guatemala. Merits, Reparations and Costs*. Judgment of November 20, 2012. Series C No. 253, para. 52.

<sup>66</sup> Cf. *inter alia*, *Case Massacre Plan of Sánchez v. Guatemala. Merits*. Judgment of April 29, 2004. Series C No. 105, para. 42(1) and *Case of Gudiel Álvarez (Diario Militar) v. Guatemala*, *supra*, para. 54.

<sup>67</sup> Cf. Commission for Historical Clarification (CEH). *Guatemala, Memory of Silence*. Chapter 4, Section II. Page 42 (File of attachments to pleadings and motions brief, page 4341).

75. In the context of the Peace Accords, signed by the Guatemalan Government and the *Unit Revolucionaria Nacional Guatemalteca* (hereinafter "URNG")<sup>68</sup> in an effort to reach a negotiated settlement to the conflict, on March 29, 1994, the "Global Agreement on Human Rights" was signed. In this agreement, the parties recognized "the importance of national institutions and entities for the protection and promotion of human rights, as well as the advisability of strengthening and consolidating" these bodies- They also "agree[d] that all actions that may affect the guarantees of individuals or organizations working to promote and protect human rights, are condemnable." The State made a commitment to adopt "special measures of protection" in favor of individuals or organizations working in the field of human rights. Similarly, [it promised to] "investigate promptly and thoroughly any complaints submitted, related to acts or threats that could affect them," and reiterated its "commitment to effectively guarantee and protect the work of individuals and organizations that defend human rights."<sup>69</sup>

76. However, in subsequent years, many acts of harassment and aggression against human rights defenders continued, as confirmed by numerous reports from different sources:

a) In 2001, the *Inter-American Commission on Human Rights* reported that while attacks against human rights defenders had declined substantially in the period prior to the signing of the Peace Accords, these attacks had begun to increase again in the year after the signing of the treaty, and had continued to rise steadily since then.<sup>70</sup> In 2003, the Commission found "a progressive deterioration in the situation of human rights activists in Guatemala, [... and] a significant increase in attacks, which directly or indirectly, impede or obstruct the work of human rights defenders." The main targets of those attacks were, on the one hand, those who investigated human rights violations committed during the armed conflict (including the victims themselves, witnesses, lawyers, human rights activists and forensic experts), and on the other, those who promoted economic, social and cultural rights and the rights of indigenous populations and ecologists.<sup>71</sup> The acts of intimidation included telephone calls, surveillance and tailing or spying, and the most frequent methods used were "threats in writing, by telephone or electronic means, or through third parties", as well as "hindering the efforts of defenders" and "intimidation [...] through attacks on the defender's life and physical integrity." According to the Commission, "there [was] a clear link between the impunity prevailing in the country and the defenders' situation of vulnerability." As to the perpetrators, there was a general consensus - recognized even by the Government - that the increase in attacks was associated with the existence and operation of illegal groups and clandestine security organizations, with connections to organized crime and State agents and agencies, particularly with the military intelligence services.<sup>72</sup> In 2004, the Commission reported that the number of such acts had increased in the previous years and formed part of a "pattern of intimidation toward human rights defenders," aimed at "preventing the effective action of the Judiciary in cases of human rights violations committed during the armed conflict."<sup>73</sup>

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<sup>68</sup> According to the Commission for Historical Clarification (CEH) of Guatemala, "[t]he *Partido Guatemalteco del Trabajo (PGT)*, *Fuerzas Armadas Rebeldes (FAR)*, *Organización del Pueblo en Armas (ORPA)* and *Ejército Guerrillero de los Pobres (EGP)*, participated in the unification process which culminated with the creation of the *Unidad Revolucionaria Nacional Guatemalteca (URNG)* on February 7, 1982, [however] each organization continued to maintain its own identity. [...]". Cf. CEH, *Guatemala, Memory of Silence*, Chapter 2, pages 235 and 298 (File of attachments to pleadings and motions brief, pages 3214 and 3277). After the conflict, the URNG became a political party. Cf. Supreme Electoral Tribunal, Report on the General Elections 2003, Municipality of Santa Lucía Cotzumalguapa. Available at: <http://216.230.138.139/elections2003/SantaLuciaCotz.pdf> and Statement of December 5, 2010 of the then municipal Mayor (attached to submission brief, page 794).

<sup>69</sup> Cf. Comprehensive Agreement on Human Rights, March 29, 1994 (File of attachments to pleadings and motions brief, pages 2429 to 2436).

<sup>70</sup> Cf. IACHR, Fifth Report on Human Rights situation in Guatemala, OAS/Ser.L/V/II.111 Doc. 21 rev. April 6, 2001, Chapter VI, para. 26. Available at: <http://www.IACHR.org/countryrep/guatemala01sp/indice.htm>.

<sup>71</sup> Cf. IACHR. Justice and Social Inclusion: The Challenges of Democracy in Guatemala. OAS/Ser.L/V/II.118, Doc. 5, rev. 1, December 29, 2003, paras. 173, 176 and 178. Available at: <http://www.IACHR.org/countryrep/Guatemala2003sp/capitulo3.htm>.

<sup>72</sup> Cf. IACHR. Justice and Social Inclusion: The Challenges of Democracy in Guatemala. OAS/Ser.L/V/II.118, Doc. 5, rev. 1, December 29, 2003, paras. 182 to 184 and 186. Available at: <http://www.IACHR.org/countryrep/Guatemala2003sp/capitulo3.htm>.

<sup>73</sup> Cf. IACHR. Annual Report. 2004. OAS/Ser.L/V/II.122. Doc. 5 rev. 1, February 23, 2005. Chapter V, Title III, para. 55. Available at: <http://www.IACHR.oas.org/annualrep/2004sp/cap.5a.htm>.

- b) In 2002, the *Special Representative of the United Nations Secretary-General on the situation of Human Rights Defenders, Hina Jilani*, issued a report on her mission to Guatemala, in which she observed “an increase in attacks against human rights defenders” in 2000-2002, and indicated that these attacks included “death threats, acts of intimidation, violations of physical integrity (including beatings and abductions) and violations of the right to life, which sometimes were linked to “specific political and other events.” She agreed with the Commission regarding the main targets of the attacks, and regarding the perpetrators of those violations, who were “notably [...] members of the police forces and the military, which continues to perform tasks that go beyond those performed by that institution in a democratic society, as well as clandestine groups linked to the security forces.” Ms. Jilani also agreed that there was “an obvious link between impunity and the precarious situation of human rights defenders in the country” and concluded that there was “decline in the commitment of the Government to pursue the goals set by the Comprehensive Agreement on Human Rights and the human rights components of the peace agreements.”<sup>74</sup>
- c) In its Final Report of November 15, 2004, the *United Nations Verification Mission in Guatemala* (hereinafter “MINUGUA” or “the Mission”), reported that, between 1994 and 2004, it “[received] constant complaints about violations of the right to integrity, in the form of death threats and other threats against human rights defenders.” These attacks targeted “official institutions such as the Human Rights Ombudsman”, but “the most frequent attacks” were reported against “non-governmental human rights organizations.” Finally, it emphasized that, “[d]espite the obvious difficulty involved in investigating clandestine organizations, the Mission” had managed to “confirm the involvement of these illegal groups in threats and intimidation against human rights defenders, in violation of their right to life, and even in actions intended to obstruct justice.” It concluded that the clandestine groups had “broad logistical support” that enabled them, among other things, “to use State resources [...]”<sup>75</sup>
- d) In their reports of 2003 and 2004, the *Human Rights Defenders Protection Unit of the National Movement for Human Rights* and the *Coalition for the CICIACS*, reported an increase in human rights violations during the three years prior to 2003. The reports stressed that the situation of those defending the right to defend rights had deteriorated, particularly those fighting for truth, justice and the recovery of the historical memory. As to the perpetrators of these acts, the Protection Unit had been able to “identify elements typical of military intelligence operations.” It warned that, “if the current situation of impunity continues”, this clear trend “cannot be reversed.”<sup>76</sup> According to the 2004 report, “the most attacked groups are defenders working on

<sup>74</sup> Cf. United Nations Human Rights Commission. Report presented by Ms. Hina Jilani, Special Representative of the Secretary-General on the situation of Human Rights Defenders, pursuant to Resolution 2000/61 of the Human Rights Commission. Addendum, Mission to Guatemala. E/CN.4/2003/104/Add.2 (Merits file, pages 794, 807, 812 and 813). In her follow-up report in 2009 (United Nations Human Rights Commission. Report of Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders. Addendum, Mission to Guatemala. A/HRC/10/2/Add. 3 (Merits file, pages 860, 865, 867, 870 and 871), Ms. Jilani noted that the number of attacks against human rights defenders had doubled “in the last five years, with an average of one attack against defenders every two days.” She reported a growing tendency to criminalize human rights defenders, and emphasized the “ongoing stigmatization and criminalization of human rights defenders by some sectors of the political establishment and the media,” which made defenders “more vulnerable to attacks.” Impunity remained the general rule for such actions. However, she mentioned some progress: the Public Policy for the Prevention and Protection of Human Rights Defenders, Procedural Subjects, Journalists and Social Communicators, prepared by the Presidential Commission for the Coordination of Human Rights Policies (hereinafter, “COPREDEH”); the creation of the Human Rights Unit of the Criminal Investigation Division of the National Civil Police, and the Body for the Analysis of Attacks against Human Rights Defenders in Guatemala. She described the Office of the Human Rights Ombudsman as “a reference for Guatemalan civil society and other institutions” and said it was at the forefront of efforts to defend the right to the truth and the struggle against the structural causes of impunity. As a result, both the staff of the Ombudsman’s Office and the Ombudsman himself were “often victims of attacks and threats.” Finally, she mentioned the Human Rights Prosecutor, who “[is] in charge of investigating crimes against human rights defenders.” The parties did not provide the Court with information on the results of the State initiatives mentioned.

<sup>75</sup> Cf. MINUGUA. Final Report, Consultancy on Human Rights, United Nations Verification Mission in Guatemala, 15 November 2004, paras. 31, 34 and para. 81. Available at: <http://www.rightshumanos.net/lesahumanidad/reports/guatemala/Report-Final-Minugua.pdf>.

<sup>76</sup> Cf. The Face of Terror. Analysis of attacks against Human Rights Defenders in 2000-2003, Defenders Protection Unit– National Movement for Human Rights (File of attachments to pleadings and motions brief, page 2459).

issues of justice and truth, supporters, trade unionists and journalists who cover issues of corruption.”<sup>77</sup>

- e) In his report on the Mission to Guatemala in 2006,<sup>78</sup> the *United Nations Special Rapporteur on Extra-Legal, Summary and Arbitrary executions, Philip Alston*, described the situation of human rights defenders as “indicative of the broader human rights problems in the country.” He reported that death threats and assassinations of human rights defenders were “alarmingly common”; the defenders most frequently murdered were those who promoted economic, social or cultural rights and those seeking “truth and justice for human rights violations committed during the internal armed conflict.” He added that few attacks were investigated and even fewer resulted in convictions, leading to an increase in killings “in large part due to the failure to investigate and punish those responsible.”<sup>79</sup>

77. However, in its arguments, the State alleged that the sources used to demonstrate the context of attacks against human rights defenders lacked objectivity and impartiality, having been prepared by the representatives. In this regard, the Court notes that the author of the 2003 Report of the Human Rights Defenders Protection Unit of the National Movement for Human Rights and the Coalition for CICIACS (*supra* para. 76(d)) is Claudia Samayoa, the representative in this case. Nevertheless, according to the expert Hina Jilani, the aforementioned National Movement for Human Rights is comprised of “the main human rights organizations” in Guatemala<sup>80</sup>, and the Coalition for the CICIACS includes the following organizations: the Center for Legal Action on Human Rights; the International Center for Investigations on Human Rights; the Mutual Support Group (GAM); the Myrna Mack Foundation; the Rigoberta Menchú Tum Foundation; the Institute for Comparative Studies in Criminal Sciences of Guatemala; the Human Rights Office of the Archbishop of Guatemala, and *Seguridad en Democracia* (SEDEM).<sup>81</sup> Consequently, both the 2003 report and the report issued by these organizations in 2004, have the support of a broad sector of Guatemalan civil society. Furthermore, other pieces of evidence in the file concerning the background to this case were issued by international organizations. The Court also notes that the State did not submit evidence contesting the credibility of those documents or supporting its assertion that the attacks on human rights defenders had ceased prior to the events of this case. Therefore, the Court considers that the State’s arguments are unfounded.

78. In view of the foregoing, the Inter-American Court concludes the following: that after the signing of the peace accords, which sought to end the internal armed conflict in Guatemala, human rights defenders in that country continued to face a context of threats and attacks on their lives and personal integrity, among other rights; that this created a particular situation of vulnerability for those working to protect and promote economic, cultural and social rights, and those seeking truth and justice for human rights violations committed during the conflict; that the main perpetrators of those threats and attacks were clandestine groups and the State’s own security forces; and that the impunity arising from the failure to investigate and punish those responsible propitiated their continuity and increase during the period mentioned.

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<sup>77</sup> Cf. “And the terror continues. Analysis of attacks in against of Human Rights Defenders during 2004”. Protection Unit for Human Rights Defenders of the National Movement for Human Rights (File of attachments to pleadings and motions brief, page 2487).

<sup>78</sup> Cf. Report of the Special Rapporteur, Philip Alston, on extrajudicial, summary or arbitrary executions. Civil and political rights, in particular matters related to disappearances and summary executions. Mission to Guatemala, August 21 to 25, 2006. A/HRC/4/20/Add.2, February 19, 2007, para. 35. Available at: <http://www.acnur.org/biblioteca/pdf/5017.pdf?view=1>.

<sup>79</sup> In this regard, he mentioned that: “[a] large number of killings [were] preceded by death threats or acts of intimidation that [were] not investigated.” Cf. United Nations Human Rights Council. Report of the Special Rapporteur, Philip Alston, on extrajudicial, summary or arbitrary executions. Civil and political rights, in particular matters related to disappearances and summary executions. Mission to Guatemala, August 21-25 2006. A/HRC/4/20/Add.2, February 19, 2007, para. 36. Available at: <http://www.acnur.org/biblioteca/pdf/5017.pdf?view=1>

<sup>80</sup> Cf. Report presented by Ms. Hina Jilani, pursuant to Resolution 2000/61 of the Commission on Human Rights. Addendum, Mission to Guatemala. E/CN.4/2003/104/Add.2 (Merits file, page 806).

<sup>81</sup> Cf. “The face of terror. Analysis of attacks against Human Rights Defenders from 2000 to 2003.” Defenders Unit – National Movement for Human Rights and Coalition for CICIACS (File of attachments to pleadings and motions brief, page 2476).



## A.2. Situation in Santa Lucía Cotzumalguapa, Escuintla

79. Santa Lucía Cotzumalguapa (hereinafter "Santa Lucía") is a municipality located in the Department of Escuintla, Guatemala, with some of the largest sugarcane farms on the country's south coast. A number of factors converged in this area which led to attacks against certain sectors of the population,<sup>82</sup> of which Mr. A.A. formed part (*infra* para. 82). During the 1970s, the *Comité de Unidad Campesina* or Peasant Unity Committee (hereinafter "CUC")<sup>83</sup> created a broad base of support linked to the pastoral work of the Congregation of the Immaculate Heart of Mary (CICM), organized by Belgian priests.<sup>84</sup> At the beginning of that decade, "several parishes in the diocese of Escuintla [...] began carrying out social pastoral work through the so-called Families of God,"<sup>85</sup> with a view to "incorporating local communities into the traditional pastoral work [...]," according to a statement by a member of the CICM. These groups addressed "social issues such as jobs, wages, authorities, access to land, health care, schooling, etc."<sup>86</sup> In the 1980s, pastoral agents "who supported the organization and demands of workers on the large farms of the south coast" suffered reprisals, and dozens of catechists were killed or forcibly disappeared in Escuintla.<sup>87</sup> According to the CEH, the Army in that department "associated union leaders and anyone who demanded their labor rights, with the insurgency," while State agents recruited community members as informants and "snitches," which led to the rupture of the social fabric and community ties.<sup>88</sup>

80. After the conflict ended, in accordance with the commitments made upon signing the Agreement for a Firm and Lasting Peace, the Government enacted local legislation which acknowledged Guatemala as a "multiethnic, multicultural and multilingual" nation. In 2002, the National Congress issued Decree 12-2002 (Municipal Code)<sup>89</sup> and Decree 11-2002 (Law of Urban and Rural Development Councils), creating the system of Community Development Councils,<sup>90</sup> for the purpose of "organizing and coordinating public administration through policymaking on development, budgetary plans and programs and the promotion of inter-institutional coordination, both in the public and private sectors." The Community Development Councils (hereinafter "COCODES") established in the Municipality of Santa Lucía Cotzumalguapa,<sup>91</sup> to which Mr. A.A. and Mrs. B.A. belonged (*infra* paras. 87 and 90), were meant to operate as "the principal means for the participation of the Maya, Xinca, Garifuna and non-indigenous populations in public affairs, in order to pursue a democratic process of development planning, taking into account the national, multi-ethnic, multicultural and multilingual unity of the Guatemalan people."<sup>92</sup>

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<sup>82</sup> Cf. Commission for Historical Clarification (CEH), *Guatemala Memory of Silence*, Illustrative cases, Annex I, Illustrative case No. 13 (File of attachments to pleadings and motions brief, page 4696).

<sup>83</sup> According to the report *Guatemala, Memory of Silence*, "[d]uring the 1960s, the population organized itself in the *ligas campesinas* to demand their rights, especially labor rights [... so that in 1978] the *Comité de Unidad Campesina* (CUC) was created, the largest peasant organization in the country after the counter-revolution of 1954[.] A large number of workers joined this organization and began to make a series of claims, including demands for a minimum wage and improved working conditions on farms of the South Coast." Cf. Commission for Historical Clarification (CEH), *Guatemala Memory of Silence*, Chapter 1, page 238, Tome III, page 379, para. 3437 (File of attachments to pleadings and motions brief, pages 2936 and 3883).

<sup>84</sup> Cf. Commission for Historical Clarification (CEH), *Guatemala Memory of Silence*, Illustrative cases, Annex I, Illustrative case No. 56 (File of attachments to pleadings and motions brief, page 4702).

<sup>85</sup> Cf. Commission for Historical Clarification (CEH), *Guatemala Memory of Silence*, Illustrative cases, Annex I, Illustrative case No. 74 (File of attachments to pleadings and motions brief, page 4695).

<sup>86</sup> Cf. Statement of a member of the CICM of December 1, 2010 (File of attachments to submission brief, pages 1346 and 1347).

<sup>87</sup> Cf. Commission for Historical Clarification (CEH), *Guatemala Memory of Silence*, Illustrative cases, Annex I, Illustrative case No. 56 (File of attachments to pleadings and motions brief, page 4704).

<sup>88</sup> Cf. Commission for Historical Clarification (CEH), *Guatemala Memory of Silence*, Illustrative cases, Annex I, Illustrative case No. 74 (File of attachments to pleadings and motions brief, page 4708).

<sup>89</sup> Cf. Decree 12-2002 of the National Congress of Guatemala of April 2, 2002 (Merits file, page 948).

<sup>90</sup> Cf. Decree 11-2002 of the National Congress of Guatemala of April 15, 2002 (Merits file, pages 1656 and 1657).

<sup>91</sup> Cf. Statement of December 5, 2010 of the former municipal Mayor (File of attachments to submission brief, page 794), and Certification of Record 04-2004 of September 11, 2004 (File of attachments to submission brief, page 1124).

<sup>92</sup> Cf. Decree 11-2002 of the National Congress of Guatemala of April 15, 2002 (Merits file, pages 1656 and 1657).

## B) Life and previous work of A.A. and B.A.

### B.1. Life and work of A.A.

81. Mr. A.A. was born on October 16, 1930, in the Department of Jutiapa. In 1954, approximately,<sup>93</sup> he married Mrs. C.A., with whom he had the following sons and daughters: D.A., E.A., B.A., F.A., G.A., H.A. and Y.A. (a disappeared victim in the case of *Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*), and the following grandchildren, among others:<sup>94</sup> I.A., J.A., K.A., L.A., M.A. and N.A.<sup>95</sup>

82. After his "mandatory period of service" in Guatemala's National Army between 1954 and 1955<sup>96</sup>, Mr. A.A. worked as a carpenter and a farmer, both independently and at the "Pantaleón" sugar mill. He was dismissed from the mill in 1968 for his activities in defense of workers' rights. He was also a catechist, participating in projects to provide decent housing,<sup>97</sup> and was an "important promote[r]" of a savings and credit cooperative founded by members of CICM in Escuintla to "nominally combat the precarious poverty in which the population liv[ed]."<sup>98</sup> The case file shows that in August 1978, Mr. A.A. was the "fifth member of the Committee for the Improvement of the village 'Cruz [*sic*] de la Esperanza' [...]."<sup>99</sup>

83. In 1983, Mr. A.A.'s son, Y.A., was "disappeared" by State security agents in Guatemala City, a fact established by the Court in the Judgment delivered in the case of *Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*. In that Judgment, the Court determined that the security forces considered this family "subversive", for which reason its members were forced to move around within Guatemala, to Mexico and to the United States, during the period from 1983 to 1987, approximately.<sup>100</sup>

84. Although the Court does not have information as to when Mr. A.A. joined the URNG, the file shows that, after the signing of the Peace Accords, on August 9, 1997, he was granted a "special license for a single return journey to Guatemala as a member of the international structures of the URNG, [...]."<sup>101</sup> Upon his return to Guatemala, Mr. A.A. resumed his activities as a community leader in the village of Cruce de la Esperanza. On the one hand, he was involved in establishing the local Development Association for Individuals with Disabilities of Western and Southern Guatemala (AIDOS).<sup>102</sup> In addition, from January 1998, he promoted the construction of the Community Self-Management School of the Village of Cruce de la Esperanza and subsequently served as chairman of its Education Committee, COEDUCA.<sup>103</sup> In March 2001, local residents of the municipality of

<sup>93</sup> Cf. Statement of C.A. (File of attachments to submission brief, disk 1, minutes 1:00, 1:48, 1:58), and Residence Card of A.A. issued on December 12, 1983 (File of attachments to submission brief, pages 805 to 807).

<sup>94</sup> The body of evidence shows that Mr. A.A. had more grandchildren; however, only those identified as presumed victims in this case are mentioned (*supra* para. 81).

<sup>95</sup> The following persons were minors at the time of the events: J.A., born on December 1, 1992, daughter of E.A. Cf. Birth certificate (Merits file, page 1696); K.A., born on August 29, 1997, son of E.A. Cf. Birth certificate (Merits file, page 1698), and N.A., born on September 30, 1990, son of B.A. (Merits file, page 1704).

<sup>96</sup> Cf. Certificate of service, December 13, 1962 (File of attachments to pleadings and motions brief, page 2032).

<sup>97</sup> Cf. Statement of B.A. of December 12, 2010 (File of attachments to submission brief, pages 1360 and 1361); Record of inscription in the Civil Register of the Supreme Electoral Tribunal (File of attachments to pleadings and motions brief, page 2048); Statement of A.A. of October 11, 2004 (File of attachments to submission brief, page 1376); Statement of a member of the CICM of December 1, 2010 (File of attachments to submission brief, page 1348), and Statement of B.A. (File of attachments to submission brief, disk 1, minutes 3:23 and 09:23).

<sup>98</sup> Cf. Statement of a member of the CICM of December 1, 2010 (File of attachments to submission brief, page 1348); Statement of B.A. before the Prosecutor's Office of Santa Lucía Cotzumalguapa of February 10, 2005 (File of attachments to submission brief, page 821); Statement of B.A. (attached to submission brief, disk 1, minute 9:23), and "In El Cruce de la Esperanza [A.A.] helps his community", *Nuestro Diario*, published on July 21, 2003 (File of attachments to pleadings and motions brief, page 2098).

<sup>99</sup> Cf. Record of the Secretary of the Departmental Governor of Escuintla of August 16, 1978 (File of attachments to pleadings and motions brief, page 2038).

<sup>100</sup> Cf. Case of *Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, *supra*, para. 308.

<sup>101</sup> Cf. Special license of A.A. (File of attachments to submission brief, page 799).

<sup>102</sup> Cf. Leaflet "Training on aspects for the design and management of projects focusing on disability, gender and multiculturalism for members of AIDOS" of March 2005 (File of attachments to pleadings and motions brief, pages 2086 to 2087); Statement of B.A. of December 12, 2010 (File of attachments to submission brief, pages 1366 and 1367), and Statement of the former municipal Mayor of December 5, 2010 (File of attachments to submission brief, page 794).

<sup>103</sup> Cf. Contract promising a donation, January 10, 2003 (File of attachments to pleadings and motions brief, pages 2059 to 2063); Copy of Certificate No. 87 certifying the election of A.A. as Chairman of the Education

Santa Lucía set up the “Committee for the Prevention of Learning Disabilities” of which Mr. A.A. was vice-chairman.<sup>104</sup> According to the former Mayor of Santa Lucía Cotzumalguapa, during the period from 2004 to 2008,<sup>105</sup> this committee submitted a project to the local government to “address the problems of school drop-out rates, low achievement and girls’ non-attendance at school.”<sup>106</sup>

85. In 2002, Mr. A.A. was named an “Unsung Hero” by the United Nations System in Guatemala, in recognition of his “commitment to peace-building and community development”, through activities such as “building homes for poor people.”<sup>107</sup> According to the Municipal Mayor:

[A.A.] [...] was prominent not only during my administration, but also previously, as a social leader involved in promoting decent housing. [...] Between [19]99 and 2003 he implement [ed] a project that benefited 32 families, and during my administration he continued with the process and included another group of beneficiaries in the municipality. In fact, he managed to have it incorporated into the national improvement plan, but with his murder, the process was interrupted.<sup>108</sup>

86. In 2003, as chairman of the Culture and Sports Committee of the village of Cruce de la Esperanza, Mr. A.A. worked with other villages to organize the construction of a sports complex and a Basic Education Institute so that “children and young people [would have ...] a place to complete their education and also to promote multiculturalism, especially in the area of sports [...] and] in the field of music [...].”<sup>109</sup>

87. From May 24, 2004, A.A. served as Deputy Mayor of the Community Development Council (COCODE) of the village of Cruce de la Esperanza (*supra* para. 80)<sup>110</sup>, and on September 11, 2004 the General Assembly of the Community Development Council elected him as Mayor.<sup>111</sup> During his term as Deputy Mayor, Mr. A.A. negotiated the construction of a sewerage system and the paving of three kilometers of road, given that “the lack of infrastructure [...] damage[d] the health and economy of the families in [...] five communities.”<sup>112</sup> As Mayor, he was involved in a project to build a peace monument in memory of those who lost their lives during the armed conflict.<sup>113</sup>

88. At the time of his death (December 20, 2004), Mr. A.A. and his family were seeking justice for the forced disappearance of his son Y.A. (victim in the *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*), after having “denounced [his

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Committee COEDUCA (File of attachments to pleadings and motions brief, page 2057); Resolution of the Departmental Directorate of Education Escuintla, Ministry of Education, D.D.E.E./U.D.E. No. 0456-2001 of June 27, 2001 (File of attachments to pleadings and motions brief, page 2064), and Statement of B.A. of February 10, 2005 (File of attachments to submission brief, page 822).

<sup>104</sup> Cf. Brief of COEDUCA addressed to the Ministers of Education and Health, of March 28, 2001 (File of attachments to pleadings and motions brief, page 2073).

<sup>105</sup> Cf. Statement of the former municipal Mayor of December 5, 2010 (File of attachments to submission brief, page 793), and Supreme Electoral Tribunal, Report on the General Elections of 2003, Municipality of Santa Lucía Cotzumalguapa. Available at: <http://216.230.138.139/elections2003/SantaLuciaCotz.pdf>.

<sup>106</sup> Cf. Statement of the former municipal Mayor of December 5, 2010 (File of attachments to submission brief, page 795).

<sup>107</sup> Cf. Unsung Hero Certificate (File of attachments to submission brief, page 813); “In El Cruce de la Esperanza Don [A.A.] helps his community”, *Nuestro Diario*, published on July 21, 2003 (File of attachments to pleadings and motions brief, page 2098), and interview of February 3, 2009 (File of attachments to pleadings and motions brief, page 1913).

<sup>108</sup> Cf. Statement of the former municipal Mayor of December 5, 2010 (File of attachments to pleadings and motions brief, page 2005). See, also, “In El Cruce de la Esperanza [A.A.] helps his community,” *Nuestro Diario*, published on July 21, 2003 (File of attachments to pleadings and motions brief, page 2098).

<sup>109</sup> Cf. Record No. 02-2003 of the Culture and Sports Committee of the village of Cruce de la Esperanza of January 10, 2003 (File of attachments to submission brief, page 1399).

<sup>110</sup> Credential of Community Deputy Mayor, May 24, 2004 (File of attachments to pleadings and motions brief, pages 2079 to 2080), and Certified record of appointment as Mayor of the Community Development Council of Cruce de la Esperanza (File of attachments to submission brief, pages 1124, 1125 and 1127).

<sup>111</sup> Cf. Certification of appointment as Mayor of the Community Development Council of Cruce de la Esperanza of September 11, 2004 (File of attachments to submission brief, pages 1124 to 1125).

<sup>112</sup> Cf. Sewerage project and paving of main road (File of attachments to pleadings and motions brief, pages 2081 to 2083). See, also, Statement of B.A. of December 12, 2010 (File of attachments to submission brief, page 1367), and Certificate of appointment as Mayor of the Community Development Council of the village of Cruce de la Esperanza (File of attachments to submission brief, page 1124).

<sup>113</sup> Cf. Statement of the former Mayor of December 5, 2010 (File of attachments to submission brief, page 795).

disappearance] internationally, first to the churches and then to humanitarian organizations in the United States [...]."<sup>114</sup>

### B.2. Work of B.A.

89. The file shows that on November 12, 2003, Mrs. B.A. served as vice-president of the Women's Network of Escuintla.<sup>115</sup> Also, in May 2004 she worked as the Social Organization Officer of the municipality of Santa Lucía,<sup>116</sup> a position that involved:

organizing each canton, hamlet, village, neighborhood [and] subdivision [...] in the municipality, and helping to organize unions, trade associations, transport and other forms of organization in the community, provide civic training and influence the political life of the municipality and of the nation in general, according to the common interest.<sup>117</sup>

90. Subsequently, on September 11, 2004, the General Assembly of the village of Cruce de la Esperanza elected Mrs. B.A. to the position of Secretary of the local COCODE.<sup>118</sup> Mrs. B.A. was also involved in the investigations into the forced disappearance of her brother, Y.A., at least from October 13, 2004. In this regard, in its Judgment in the case of *Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, this Court established that Mrs. B.A., together with other individuals, filed the initial application before the Inter-American Commission on December 9, 2005.<sup>119</sup>

## C) The facts of the case

### C.1. Events prior to the death of A.A.

91. On November 26, 2003, Mrs. B.A. filed a complaint before the Office of the District Prosecutor of Santa Lucía Cotzumalguapa, stating that :

On [...] November 25 [of that year] at 2.30 in the afternoon a meeting was organize[d] in the community of La Esperanza [...] to elect the new COEDUCA committee [...] for the "Republic of Mexico" Community Self-Management School [...] During that meeting I discussed some problems that the school was having [...] [...] Finally, we chose the new board of the local Committee [...] [...] but at around 6.40 pm I was at a wake in [the village of] El Rosario, when I received a call on my cell phone [...] from Mr. [L.L.] [...] who identified himself when he spoke to me, and told me 'so, you guys got your own way and appointed a new committee, but you can be sure I'll turn you and your son into shit'. I only asked him why he was threatening me like that, and said that if he [was] going to say those things to us to do it personally, it's not the first time he threatens us [,] because a previous time he threatened my sister and told her that he was an ex *kaibil* and that we were really going to see what he [could] do to us. But this man has no reason to threaten us in this way because [he] doesn't belong to the community and if he had any grievance with the Assembly he could have expressed it at the time but he did not do so. Also, I think that it's only an excuse to bother us because I belong to the URNG and, as a former member of the Army, he still holds on to certain ideologies and that's why he bothers us [...].<sup>120</sup>

92. The file also shows that on February 20, 2004, Mrs. B.A. went to the Mediation Center of Escuintla to attend a mediation session "because of the conflict over the threats." However, the other party did not appear, so the case was "transferred" to the First Magistrates Court of Escuintla.<sup>121</sup>

<sup>114</sup> Cf. Statement of A.A. of October 11, 2004 (File of attachments to submission brief, page 1377).

<sup>115</sup> Cf. Endorsement of the statement: Toward a New Stage in the Construction of Peace (Merits file, pages 2082 to 2085); Statement of the former municipal Mayor of December 5, 2010 (File of attachments to submission brief, page 797).

<sup>116</sup> Cf. Carnet of Social Organization Officer of the Municipality of Santa Lucía Cotzumalguapa (File of attachments to pleadings and motions brief, pages 2110 a 2111).

<sup>117</sup> Cf. Statement of B.A. of December 12, 2010 (File of attachments to submission brief, page 1353).

<sup>118</sup> Cf. Certification of Record 04-2004 of September 11, 2004 of the General Assembly of Cruce de la Esperanza (File of attachments to submission brief, page 1125).

<sup>119</sup> Cf. *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, *supra*, paras. 1 and 182, and footnotes 75, 166, 336 and 372.

<sup>120</sup> Cf. Complaint MP60-2003-5418 of November 26, 2003 filed before the Permanent Office of the Prosecutor of Santa Lucía Cotzumalguapa (Merits file, pages 1311 to 3312), and Report of April 5, 2005 submitted by the Criminal Investigations Specialist of the Public Prosecution Service to the Assistant Prosecutor of Santa Lucía de Cotzumalguapa (File of attachments to submission brief, page 1065). According to the Report of the Commission for Historical Clarification, *Guatemala: Memory of Silence*, "the *kaibiles* were a special counterinsurgency force of the Guatemalan Army, who put into practice the extreme cruelty of their training methods in a range of operations." Cf. *Case of The Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, footnote 6.

<sup>121</sup> Cf. Record of attendance at Mediation Center of Escuintla of February 20, 2004 (File of attachments to submission brief, page 1430).

C.2. The death of Mr. A.A.

93. On December 20, 2004, the lifeless body of Mr. A.A. was found on the road surface at "kilometer 90.5 along the highway to Pacific"<sup>122</sup>, with three gunshot wounds, two in the frontal region of the skull and another in the left side of his back,<sup>123</sup> with the bicycle he had been riding still between his legs.<sup>124</sup>

94. According to the statement made by Mrs. C.A., "a neighbor came to tell [them]" that "[her] husband was lying in the road."<sup>125</sup> The first person to arrive at the murder scene was his son G.A.<sup>126</sup> According to the statements of Mrs. E.A. and B.A., because they were away from their homes,<sup>127</sup> they were told of the death by the then Mayor, and so they returned home.<sup>128</sup>

C.3. Events subsequent to the death of Mr. A.A.

95. Following Mr. A. A.'s death, the family, with the help of neighbors, organized nine days of prayers (*novena*), in accordance with religious customs.<sup>129</sup> During that period, on December 22 and 23, 2004, the Departmental Assistant of the Office of the Human Rights Ombudsman requested different units of the National Civil Police to provide perimeter and personal security measures for Mrs. B.A. and her family, "given the constant death threats that family [A] has received and the recent murder of [B.A.'s] father."<sup>130</sup> There is no evidence in the record that such measures were implemented.

96. Nevertheless, following complaints that several men had apparently "arrived to threaten" the family, and after B.A. had requested support from the then Mayor of Santa Lucía Cotzumalguapa, agents of the Municipal Transit Police provided security patrols and accompanied the family during the nine days of prayers.<sup>131</sup> The Court confirms that during the five months after Mr. A.A.'s death, and on several occasions, B.A. and E.A. reported that the family had suffered acts of intimidation during the aforementioned nine-day period (*infra* para. 152).

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<sup>122</sup> Cf. Report No. 315<sup>a</sup>- 2005 EEC-G 11 and sketch prepared on April 29, 2005 by the Criminal Investigations Expert (File of attachments to submission brief, page 858).

<sup>123</sup> The State disputed the number of gunshot wounds received by Mr. A.A. Cf. Autopsy No. 225/04 of December 22, 2004 (File of attachments to submission brief, page 941), and Extended Report dated May 10, 2005 of Autopsy Report No. 225/04 (File of attachments to submission brief, page 880).

<sup>124</sup> Cf. Photographs attached to note MP60/2004/5417 of the Assistant Prosecutor of the Public Prosecution Service of January 12, 2005 (File of attachments to submission brief, pages 818 to 820); "The A family still suffers persecution", *Prensa Libre*, 30 January 2005 (File of attachments to submission brief, page 1403); Statement of E.A. before the Prosecutor for Crimes against Human Rights Activists of May 11, 2005 (File of attachments to submission brief, page 865); and Report submitted by the Chief of the substation of the National Civil Police of Escuintla to the District Prosecutor of the Public Prosecution Service of December 21, 2004 (File of attachments to submission brief, page 1145).

<sup>125</sup> Cf. Statement of C.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minutes 24:34 and 25:39).

<sup>126</sup> Cf. Record of the procedure for the removal of the body, December 20, 2004 (File of attachments to submission brief, page 939); Statement before the Special Human Rights Prosecutor of May 9, 2005 (File of attachments to submission brief, page 861), and Report of the Chief the substation of the National Police to the District Prosecutor of the Public Prosecution Service of December 21, 2004 (File of attachments to submission brief, page 940).

<sup>127</sup> Cf. Statement of C.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minute 20:00), and Statement of E.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minute 37:28).

<sup>128</sup> Cf. Statement of B.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minute 1:18:53).

<sup>129</sup> Cf. Statement of B.A. before the Office of the Special Prosecutor for Human Rights in Guatemala City of May 11, 2005 (File of attachments to pleadings and motions brief, page 2222), and Testimony of B.A. of December 12, 2010 (File of attachments to pleadings and motions brief, page 2014).

<sup>130</sup> Cf. Letter of December 22, 2004, of the Departmental Assistant of the Office of the Human Rights Ombudsman of Escuintla (File of attachments to submission brief, page 898); Letter of December 23, 2004 from the Departmental Assistant of the Office of the Human Rights Ombudsman of Escuintla to the Chief of the substation of the National Civil Police in Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 899), and Letter of December 23, 2004 from the Departmental Assistant of the Office of the Human Rights Ombudsman of Escuintla to the Departmental Commissioner of Precinct 31 of the National Civil Police of Escuintla (File of attachments to submission brief, page 900).

<sup>131</sup> Cf. Statement rendered by B.A. before the Special Human Rights Prosecutor on May 11, 2005 (File of attachments to submission brief, page 869); Statement rendered by B.A. on December 17, 2010 (File of attachments to submission brief, disk 2, minute 1:30:8), and Statement of the former municipal Mayor of December 5, 2010 (attached to submission brief, page 797).

97. Once the nine days of prayers had concluded,<sup>132</sup> on December 31, 2004, C.A., B.A. and her children L.A. and N.A., aged 20 and 14 years, respectively, as well as E.A. and her children J.A. and K.A., aged 12 and 7 years, respectively, left their homes in the village of Cruce de la Esperanza and the Municipality of Santa Lucía Cotzumalguapa, and “fled to Escuintla”, accompanied by the Local Transit Police of Santa Lucía “as far as the neighborhood between Santa Lucía and Siquinala.”<sup>133</sup>

98. The family initially moved to the city of Escuintla, the departmental capital.<sup>134</sup> Mrs. E.A., together with her children J.A. and K.A., settled in another part of the country where they rented a house.<sup>135</sup> The son of Mrs. B.A., M.A., remained in the care of D.A.<sup>136</sup>

99. There is also evidence that by February 2006, C.A., B.A. and her children, L.A. and N.A., were already back in Santa Lucía Cotzumalguapa, and that they stayed in the municipality where they rented a house, but did not return to their home.<sup>137</sup> On February 16, 2006, Mrs. B.A. returned to her job as Social Organization Officer of the Municipality of Santa Lucía, Cotzumalguapa, but resigned on October 31, 2007, after she was chosen to manage the Municipal Office for Women.<sup>138</sup> In addition, on June 26 and 27, 2007, Mrs. B.A. participated in the First National Meeting of Municipal Offices for Women.<sup>139</sup>

100. Subsequently, Mrs. B.A. continued working in Escuintla. Evidence in the file shows that on June 4, 2009, she was elected Permanent Representative of the Women’s Organizations on the Departmental Development Council of Escuintla.<sup>140</sup> On March 8, 2011, the Departmental Human Rights Office in the municipality of La Gomera, in the Department of Escuintla, granted her an award for her efforts to promote women’s rights.<sup>141</sup> In 2011 and 2012, she participated in the forum on “Strengthening the Institutional Framework for Peace, and promoting women’s participation in its

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<sup>132</sup> Cf. Statement of E.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minute 47:40); Statement of C.A. of January 1, 2005 (attached to submission brief, disk 1, minutes 25:33 and 24:44).

<sup>133</sup> Cf. Statement of B.A. at the public hearing of February 7, 2014. See also, Statement of E.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minutes 1:40, 47:00 and 48:05); Statement of C.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minutes 22:44, 27:22 and 25:33); Statement of B.A. of 17 December 2010 (File of attachments to submission brief, disk 2, minute 1:31:06); Statement of B.A. of December 12, 2010 (File of attachments to submission brief, page 1370), and Report sent by the Criminal Investigations Specialist to the Assistant Prosecutor of the Prosecutor’s Office of Santa Lucía Cotzumalguapa of April 5, 2005 (File of attachments to submission brief, pages 1063 and 1064).

<sup>134</sup> Cf. Statement of E.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minute 48:30).

<sup>135</sup> Cf. Statement of B.A. of December 12, 2010 (File of attachments to submission brief, page 1371); Statement of E.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minutes 47:40 and 48:32), and Statement of C.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minute 27:22).

<sup>136</sup> Cf. Statement of B.A. of December 12, 2010 (File of attachments to submission brief, page 1370).

<sup>137</sup> In a statement rendered on December 12, 2010, Mrs. B.A. indicated that “[a]t the time of [her] father’s murder, each family had its own new house; these now lie abandoned, along with the land, without any benefit, other than expenses incurred for cleaning and guarding.” Cf. Statement of B.A. of December 12, 2010 (File of attachments to submission brief, page 1370). On another occasion, when asked to give her place of residence, Mrs. B.A. stated it was Escuintla. Cf. Statement of B.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minute 0:28). Furthermore, in a statement submitted by the representatives to the Commission, Mrs. B.A. stated that among the difficulties suffered by her mother was not having a home, a situation in which she, B.A., was forced to “shoulder the financial burden of moving, of paying rent, which she still continues to pay.” Cf. Statement of B.A. of December 17, 2010 (File of attachments to submission brief, disk 2, minute 1:36:05). Subsequently, at the public hearing before this Court, Mrs. B.A. reiterated that “[at] this point [...] we have not had a place to live, we have been renting.” Cf. Statement of B.A. at the public hearing on February 7, 2014. See also, Psychosocial Evaluation January 5, 2011 (File of attachments to submission brief, page 1425).

<sup>138</sup> Cf. Resignation submitted on November 5, 2007 (File of attachments to pleadings and motions brief, page 2116); Resolution of the Mayor’s Office Number 201 – 2007 (File of attachments to pleadings and motions brief, page 2117), and Statement of B.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minute 1:33:07). According to the Municipal Mayor for the period 2004–2008, this position involved: “organizing the Municipality, provide continuous training and political education, providing information on the Municipality (municipal development plan) and ensure that everything is done with a gender equity, generational and ethnic focus.” Cf. Communication sent by the Municipal Mayor to the Head of Human Resources on November 6, 2007 (File of attachments to pleadings and motions brief, page 2119).

<sup>139</sup> Cf. Diploma awarded by the Presidential Secretariat for Executive Coordination, the Democratic Municipalities Program, the Support Program for MyPES, the Collective for the Defense of Women’s Rights in Guatemala, the National Association of Municipalities of Guatemala and the Guillermo Toriello Foundation, of July 26 and 27, 2007 (Merits file, page 2076).

<sup>140</sup> Cf. Letter from the Presidential Secretariat for Women to the President of the Departmental Development Council of Escuintla, of June 23, 2009 (Merits file, page 2074).

<sup>141</sup> Cf. Award granted by the Departmental Office of Human Rights on March 8, 2011 (Merits file, page 2079).

implementation”<sup>142</sup> and attended a workshop on “Local development challenges facing Municipal Offices for Women.”<sup>143</sup>

#### **D) The investigations**

##### *D.1. Investigations related to the death of A.A.*

101. Following the death of Mr. A.A. on December 20, 2004, a criminal investigation was opened by the Municipal Office of the Public Prosecution Service of Santa Lucía Cotzumalguapa (hereinafter “Prosecutor’s Office of Santa Lucía Cotzumalguapa”). Subsequently, on March 21, 2005, the case was forwarded to the office of Guatemala’s Special Prosecutor for Human Rights (hereinafter “Human Rights Prosecutor”), where it was received the following day.<sup>144</sup> The investigation was carried out by a special unit of the Human Rights Prosecutor specializing in crimes against human rights activists. During the time that the criminal investigation was assigned to these offices of the Public Prosecution Service, criminal investigations experts of the Criminal Investigations Directorate of the Public Prosecution Service (hereinafter “DICRI investigators”) carried out various investigative procedures at the request of the prosecution’s agents and assistants. Also, on December 22, 2004 the Office of the Human Rights Ombudsman of Escuintla (hereinafter “the Ombudsman’s Office”), opened an investigation based on a complaint filed anonymously.<sup>145</sup> Subsequently, B.A. was identified as the person who filed that anonymous complaint.<sup>146</sup> The latter investigation was initiated and processed parallel to the criminal investigation until June 8, 2005.

##### *D.1.1. Investigation by the District Prosecutor’s Office of the Public Prosecution Service of Santa Lucía Cotzumalguapa, Escuintla (MP60/2004/5417)*

102. On December 20, 2004 two National Civil Police officers from the police substation of Santa Lucía Cotzumalguapa, acting on orders of the police’s Central Dispatch Center, and the Assistant Prosecutor of Santa Lucía Cotzumalguapa, went to the scene of Mr. A.A.’s murder.<sup>147</sup> A witness who was interviewed at the time reported that “two men who were riding bicycles were responsible for killing Mr. [A.A.]”<sup>148</sup> and that “after the incident [they] escaped on bicycles to an unknown destination.”<sup>149</sup> In a statement, one of the National Civil Police officers reported that, upon arriving at the crime scene he noticed “that a pick-Up [*sic*] truck was parked there, of which no details were taken, and that there were also some individuals apparently trying to help the victim.”<sup>150</sup> Then, they proceeded to remove the body and gather the evidence found at the scene, consisting of three gunshot casings. The Assistant Prosecutor then ordered the body to be transferred

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<sup>142</sup> Cf. Diploma awarded by the National Council for the Implementation of the Peace Accords on March 25, 2011 (Merits file, page 2080).

<sup>143</sup> Cf. Certificate awarded by the Local Development Institute on March 19, 2012 (Merits file, page 2081).

<sup>144</sup> Cf. Official letter from the Assistant Prosecutor of Santa Lucía Cotzumalguapa to the Agent of the Special Prosecutor for Human Rights, of March 21, 2005 (File of attachments to submission brief, page 817).

<sup>145</sup> Cf. Brief of the Assistant of the Escuintla Departmental Office of the Human Rights Ombudsman of December 22, 2004 (File of attachments to submission brief, page 898), and complaint filed by B.A., anonymously, on December 22, 2004 (File of attachments to submission brief, pages 896 and 897).

<sup>146</sup> Cf. Report on the investigation of December 23, 2004, prepared by the investigator of the Office of the Human Rights Ombudsman (File of attachments to submission brief, page 901), and Memorandum of February 7, 2005 prepared by the investigator of the Office of the Human Rights Ombudsman (File of attachments to submission brief, page 914).

<sup>147</sup> Cf. Letter of December 20, 2004 from the Chief of Substation No. 31-43 Escuintla to the District Prosecutor of the Public Prosecution Service (File of attachments to submission brief, page 940).

<sup>148</sup> Cf. Procedure conducted by the Assistant of the District Prosecutor’s Office of Santa Lucía Cotzumalguapa, of December 20, 2004 (File of attachments to submission brief, page 939).

<sup>149</sup> Cf. Letter of December 20, 2004 from the Chief of Substation No. 31-43 Escuintla to the District Attorney of the Public Prosecution Service (File of attachments to submission brief, page 940).

<sup>150</sup> Cf. Statement of May 9, 2005 rendered by the agent of the National Civil Police who attended the crime scene, before the Special Prosecutor for Human Rights (File of attachments to submission brief, page 860).

to the local morgue of the Judiciary for the autopsy.<sup>151</sup> That same day an autopsy was performed on the mortal remains of Mr. A.A.<sup>152</sup>

103. The prosecutor assigned to the case by the Criminal Investigation Service of Precinct 31 of the National Civil Police of Escuintla also arrived at the crime scene, but “the body had already been removed.” On December 21, 2004, the agent prepared a preliminary report on the investigation, confirming that details were taken regarding the body and the two probable perpetrators of the murder, the instrument of crime and the items sequestered. He also reported that a visual inspection “was not performed.” In addition, the agent interviewed B.A., C.A. and E.E.<sup>153</sup> Subsequently, on February 10, 2005, B.A. rendered a statement before the Assistant Prosecutor of Santa Lucía Cotzumalguapa.<sup>154</sup>

104. Although B.A. was not an eyewitness to A.A.’s murder, in her statements (*supra* para. 103), she held that his death was due to political reasons and indicated that Messrs. M.M. and L.L. were responsible. She also mentioned that A.A. had ideological differences, personal confrontations and conflicts with those individuals, in his role as community Mayor of the village Cruce de la Esperanza and in the management of the “Republic of Mexico” Community Self-Management School in that village. Based on her statements a possible hypothesis emerged in the investigation.

*D.1.2. Investigation conducted by the Criminal Investigations Experts of the Criminal Investigations Directorate (DICRI) of the Public Prosecution Service*

105. In letters dated January 12 and March 14, 2005, agents of the Prosecutor’s Office of Santa Lucía Cotzumalguapa asked the Subdirector of Criminal Investigations of the Criminal Operations Section of the Public Prosecution Service, to appoint the investigators he considered appropriate to conduct the relevant investigation.<sup>155</sup> The file shows that, having been assigned the case, the DICRI Investigators submitted a report on the investigation to the Prosecutor’s Office of Santa Lucía on April 5, 2005,<sup>156</sup> despite the fact that the investigation had already been assigned to the Office of the Human Rights Prosecutor. Subsequently, in letters dated May 17, 2005, March 1 and November 21, 2006, and April 8 and November 24, 2008, the Assistant Human Rights Prosecutor asked the Office of Criminal Investigations to perform various procedures.<sup>157</sup> In response, the DICRI investigators submitted the investigation reports of August 30, 2005, June 21, 2006, March 26 and April 10, 2008 and February 5, 2009.<sup>158</sup> In this last report, the DICRI investigator requested new guidelines for the investigation.

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<sup>151</sup> Cf. Procedure of December 20, 2004 carried out by the Assistant of the District Prosecutor’s Office of Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 939); Letter of December 20, 2004 from the Chief of Substation No. 31-43 Escuintla to the District Prosecutor of the Public Prosecution Service (File of attachments to submission brief, page 940), and Statement of May 9, 2005 rendered by the agent of the National Civil Police who attended the crime scene, before the Special Prosecutor for Human Rights (File of attachments to submission brief, pages 860 to 862).

<sup>152</sup> Cf. Autopsy No. 225/04 conducted by the Medical examiner of the Judicial Organism of Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 941).

<sup>153</sup> Cf. Report prepared on December 21, 2004 by the investigator assigned by the Criminal Investigation Service of Precinct 31 of the National Civil Police of Escuintla (File of attachments to submission brief, pages 916 to 918).

<sup>154</sup> Cf. Statement rendered by B.A. on February 10, 2005, before the Assistant of the District Prosecutor’s Office of Santa Lucía Cotzumalguapa (File of attachments to submission brief, pages 821 to 825).

<sup>155</sup> Cf. Letter of January 12, 2005 of the Assistant Prosecutor of the Public Prosecution Service addressed to Subdirector of Criminal Investigations of the Criminal Operations Section of the Public Prosecution Service (File of attachments to submission brief, page 818), and Brief of March 14, 2005 prepared by the Assistant Prosecutor of Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 827).

<sup>156</sup> Cf. Report of April 5, 2005 prepared by the Investigator of the DICRI (File of attachments to submission brief, pages 1060 to 1065).

<sup>157</sup> Cf. Request for procedures submitted to the Criminal Investigations Directorate by the Office of the Human Rights Prosecutor, May 17, 2005 (File of attachments to submission brief, pages 877 to 879); Request for procedures submitted to the Criminal Investigations Directorate by the Office of the Human Rights Prosecutor of March 1, 2006 (File of attachments to submission brief, pages 948 and 949); Request for procedures submitted to the Criminal Investigations Directorate by the Office of the Human Rights Prosecutor of November 21, 2006 (File of attachments to submission brief, page 1122); Request for procedures submitted to the Criminal Investigations Directorate by the Human Rights Prosecutor of 8 April 2008 (File of attachments to submission brief, page 1136), and Request for procedures submitted to the Criminal Investigations Directorate by the Human Rights Prosecutor of November 24, 2008 (File of attachments to submission brief, page 1307).

<sup>158</sup> Cf. Report of August 30, 2005 prepared by the DICRI investigators (File of attachments to submission brief, pages 931 to 934); Report of June 21, 2006 prepared by the DICRI investigators (File of attachments to



106. In addition, after a request from the agent of the Office of the Human Rights Prosecutor and with the information provided by E.A., daughter of A.A., on May 17, 2005, two photo-fit pictures were prepared by the Crime Scene Specialists Unit of the Criminal Investigations Directorate. The photo-fits were then submitted to the Prosecutor's Office in a letter on May 19, 2005.<sup>159</sup>

*D.1.3. Investigation by the Office of the Special Prosecutor for Human Rights of Guatemala (Ref. Exp.16-2005 MPFDH)*

107. On April 5, 2005, the investigating agent assigned by the Office of the Human Rights Prosecutor submitted the report on the autopsy performed on Mr. A.A. on December 22, 2004, to the Chief Medical Examiner of the Public Prosecution Service, and asked him to appoint a medical examiner to determine whether it was necessary request an extension of the report. In his reply, on April 8, 2005, the Chief Medical Examiner of the Public Prosecution Service concluded that it was necessary to extend the autopsy report and mentioned the aspects to be included.<sup>160</sup> On April 19, 2005, the investigating agent assigned requested an extension to the report of the medical examiner of the Judicial Body. This extended version was submitted on May 13, 2005.<sup>161</sup> In a letter dated July 26, 2006, the Assistant Prosecutor asked the medical examiner who conducted the autopsy on Mr. A.A.'s body to specify certain aspects of the procedure and to send a copy of the autopsy protocol mentioned. In response, the medical examiner submitted an extension to the autopsy report on August 3, 2006.<sup>162</sup>

108. On April 1 and 18, 2005, the Assistant Prosecutor of Santa Lucía sent an envelope to the Office of the Human Rights Prosecutor containing three bullet shells found at the crime scene, and another envelope containing two fragments of a bullet extracted from Mr. A.A.'s body.<sup>163</sup> On April 6 and 21, 2005, the Assistant Human Rights Prosecutor sent this evidence to the Evidence Depository of the Public Prosecution Service for safekeeping and custody.<sup>164</sup> At the request of the Assistant Prosecutor, on June 23, 2006, the Ballistics Section of the Technical-Scientific Department of the Public Prosecution Service sent a report on the ballistics tests carried out on the shells and bullet fragments from the firearm.<sup>165</sup> Subsequently, in a letter dated August 1, 2006, the Assistant Prosecutor asked

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submission brief, pages 1152 to 1156); Report of March 26, 2008 prepared by the DICRI investigators (File of attachments to submission brief, pages 1169 to 1174); Report of April 10, 2008 prepared by the DICRI investigators (File of attachments to submission brief, pages 1177 to 1179), and Report of February 5, 2009 prepared by the DICRI investigator (File of attachments to submission brief, pages 1308 to 1309).

<sup>159</sup> Cf. Letter from the Unit of Crime Scene Specialists of June 1, 2005 (File of attachments to submission brief, pages 888 to 893).

<sup>160</sup> Cf. Autopsy No.225/04 conducted by the Medical examiner of the Judicial Body of Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 941); Brief of April 5, 2005 prepared by the Agent of the Special Prosecutor for Crimes Committed against the Human Rights Activists, addressed to the Head of the Forensic Medicine Service of the Public Prosecution Service in Guatemala City (File of attachments to submission brief, page 828), and Letter of April 8, 2005 from the Medical examiner of the Public Prosecution Service to the Special Prosecutor for Crimes Against Human Rights Activists of the Public Prosecution Service (File of attachments to submission brief, page 838).

<sup>161</sup> Cf. Letter of April 19, 2005 prepared by the Prosecuting Agent of the Office of Human Rights Prosecutor addressed to the Medical Examiner of the Judicial Body (File of attachments to submission brief, page 833), and Expanded Autopsy Report issued on May 13, 2005 (File of attachments to submission brief, pages 880 to 881).

<sup>162</sup> Cf. Letter of July 26, 2006 from the Assistant Prosecutor to the Medical examiner of the Judicial Body of Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 984); Letter of July 26, 2006, from the Assistant Prosecutor to the Medical examiner of the Judicial Body of Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 985), and letters of August 3, 2006, sent by the Medical examiner to the Assistant Prosecutor of the Human Rights Section (File of attachments to submission brief, pages 1045 to 1047).

<sup>163</sup> Cf. Brief of April 1, 2005, prepared by the Assistant Prosecutor of Santa Lucía Cotzumalguapa addressed to the Special Prosecutor for Human Rights of the Public Prosecution Service (File of attachments to submission brief, page 830), and Brief of April 18, 2005 prepared by the Assistant Prosecutor of Santa Lucía Cotzumalguapa addressed to the Special Prosecutor for Human Rights of the Public Prosecution Service (File of attachments to submission brief, page 852).

<sup>164</sup> Cf. Letter of April 6, 2005, from the Assistant Prosecutor of the Public Prosecution Service to the Head of the Evidence Depository of the Public Prosecution Service (File of attachments to submission brief, page 829), and Letter of April 21, 2005, from the Assistant Prosecutor of the Public Prosecution Service to the Head of the Evidence Depository of the Public Prosecution Service (File of attachments to submission brief, page 851).

<sup>165</sup> Cf. Letter from the Assistant Prosecutor to the Head of the Ballistics Unit of the Technical-Scientific Department of the Public Prosecution Service, received on June 13, 2006 (File of attachments to submission brief, page 969); letter received on July 12, 2006 prepared by Assistant Prosecutor of Section of Human Rights to the Head of the Ballistics Unit of the Technical-Scientific Department of the Public Prosecution Service (File of attachments to submission brief, page 981), and expert report prepared on June 23, 2006 by the Ballistics Unit of

the Ballistics Chief of the Criminal Records Bureau of the National Civil Police to order a ballistics test so as to "establish the weapon to which the shells found at the crime scene belong, or if a comparison can be made with those in the archives."<sup>166</sup> He also submitted the analysis conducted by the Technical Scientific Department of the Public Prosecution Service. The file contains no evidence of a response to this request.

109. On April 12, 2005, the investigating agent asked the Head of the Civil Registry of the Supreme Electoral Tribunal for information on Messrs. L.L. and M.M.<sup>167</sup> Although the file contains no evidence of a response to this request, it does contain the identification numbers (I.D. cards) and information on the occupations of those individuals.<sup>168</sup> Similarly, on April 19, 2005, the agent asked the Department of Arms and Munitions Control of the Ministry of National Defense whether it had any record of a firearms license being issued to Messrs. L.L. and M.M.<sup>169</sup> In response, on May 3, 2005, the Department reported that it had not issued any firearm licenses to those individuals nor were any firearms registered in their names.<sup>170</sup>

110. The file shows that the Assistant Human Rights Prosecutor, the DICIR investigator and the Assistant Prosecutor of Santa Lucía Cotzumalguapa, carried out the "procedure of preparing a layout plan" at the crime scene.<sup>171</sup> Subsequently, on April 25, 2005, the Crime Scene Specialists Unit of the DICRI made a sketch of the location where Mr. A.A.'s body was found, based on information provided by the Assistant Prosecutor of Santa Lucía Cotzumalguapa who visited the scene on the day of the incident. The DICRI Investigator then sent a report to the Assistant Human Rights Prosecutor on April 29, 2005.<sup>172</sup>

111. At the same time, in a brief of April 28, 2005, the investigating agent assigned to the case asked the District Prosecutor of Santa Lucía Cotzumalguapa to send the negatives of all the photographs taken at the crime scene on December 20, 2004. He also requested that the agent of that office who visited the crime scene render a report on specific points of the procedures carried out on that occasion.<sup>173</sup> On May 4, 2005, the Assistant Prosecutor of Santa Lucía Cotzumalguapa submitted a report in response to that request.<sup>174</sup>

112. On May 9 and 11, 2005, May 24 and 29, August 17 and September 29, 2006, and March 13, 2007, the investigating agent and his assistant took several statements.<sup>175</sup> Similarly, on August 25, 2006, the Assistant Prosecutor and the DICRI investigator

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the Technical-Scientific Department of the Criminal Investigations Directorate of the Public Prosecution Service (File of attachments to submission brief, pages 1175 and 1176).

<sup>166</sup> Cf. Letter of August 1, 2006 from the Assistant Prosecutor of the Human Rights Section to the Head of Ballistics of the Criminal Records Bureau of the National Civil Police (File of attachments to submission brief, page 986).

<sup>167</sup> Cf. Letter of April 11, 2005 prepared by the investigating agent of the Office of the Human Rights Prosecutor of the Public Prosecution Service, addressed to the Head of the Civil Registry of the Supreme Electoral Tribunal and received on April 12, 2005 (File of attachments to submission brief, page 834).

<sup>168</sup> Cf. Report of August 30, 2005 prepared by the DICRI Investigators (File of attachments to submission brief, pages 931 a 934).

<sup>169</sup> Cf. Letter of April 19, 2005 from the Agent of the Human Rights Prosecutor to the Head of the Department of Arms and Munitions Control of the Ministry of Defense (File of attachments to submission brief, page 850).

<sup>170</sup> Cf. Letter of May 3, 2005 from Infantry Colonel DEM and Head of the Department of Arms and Munitions Control, to the Agent of the Special Prosecutor for Human Rights (File of attachments to submission brief, page 857).

<sup>171</sup> Cf. Record of the procedure to prepare a map (File of attachments to submission brief, page 848).

<sup>172</sup> Cf. Letter of April 29, 2005 from the DICRI investigators to the Assistant Prosecutor of the Special Human Rights Prosecutor (File of attachments to submission brief, pages 858 and 859).

<sup>173</sup> Cf. Letter of April 28, 2005 from the Assistant Prosecutor of the Public Prosecution Service to the District Prosecutor of Santa Lucía Cotzumalguapa of the Public Prosecution Service (File of attachments to submission brief, page 849).

<sup>174</sup> Cf. Letter of May 4, 2005 from the Assistant Prosecutor of Santa Lucía Cotzumalguapa to the Assistant Human Rights Prosecutor of the Public Prosecution Service (File of attachments to submission brief, page 855).

<sup>175</sup> Cf. Statement of May 9, 2005 (File of attachments to submission brief, pages 860 to 862); Statement of May 11, 2005 (File of attachments to submission brief, pages 863 to 867); Statement of May 11, 2005 (File of attachments to submission brief, pages 868 to 870); Statements of May 24, 2006 (File of attachments to submission brief, pages 954 to 958); Statements of May 29, 2006 (File of attachments to submission brief, pages 962 and 963); Statement of August 17, 2006 (File of attachments to submission brief, pages 1053 to 1058); Statement of August 17, 2006 (File of attachments to submission brief, pages 1068 to 1073); Statement of August 17, 2006 (File of attachments to submission brief, pages 1074 to 1080); Statement of September 29, 2006 (File of attachments to submission brief, pages 1104 and 1105), and Statement of March 13, 2007 (File of attachments to submission brief, pages 1165 to 1167).

reviewed the record book of the "Republic of Mexico" Self-Management School.<sup>176</sup> In addition, when B.A. verbally requested a simple copy of the criminal investigation file, she was handed said copy on June 9, 2005, at the Prosecutor's office.<sup>177</sup> Furthermore, on May 16 and 24, 2006, B.A. and E.A. asked the Assistant Prosecutor to carry out various investigative procedures.<sup>178</sup>

113. Based on the investigations conducted up to that moment, on May 17, 2005, two young "gang members" nicknamed "El Queso" and "El Gato" were suspected of material involvement in Mr. A.A.'s death.<sup>179</sup> Also, based on statements made by S.Z. in 2006 (*supra* para. 112) a possible new hypothesis emerged in the investigation, namely that the death of A.A. was due to the fact that he had witnessed the killing of a young man in the area, and the suspects were four individuals nicknamed "El Gato", "Susy", "Salomón" and "Chelelo."<sup>180</sup> Furthermore, based on the statement of M.I. made in 2007 (*supra* para. 112) two other individuals, known as "Nito" and "Selvin," were implicated in the crime.<sup>181</sup>

114. On June 12, 2006, the prosecutor in charge submitted a report on the investigation to the Executive Secretariat of the Public Prosecution Service, stating that in several interviews with the victim's relatives he was informed that "on one occasion the deceased was threatened by Mr. [L.L.], though there are no signs of his involvement in the matter." The report added that "a group of criminals opera[ted] in the community [...], who could be involved in [Mr. A.A.'s] death, as possible perpetrators [...] since they were implicated in other local crimes in which some individuals [had] died" and therefore ballistic tests would be carried out to compare this case with others that occurred in that sector.<sup>182</sup> For his part, on August 1, 2006, the investigating agent sent the Assistant Prosecutor a report on the desk-based investigations of crimes committed in the area in which A.A. was killed, and which could be connected with his death. The report referred to six cases corresponding to a period between October 2004 and May 2006.<sup>183</sup>

115. In the context of the investigation by the Public Prosecution Service, in letters dated September 19, 20 and 27, and October 6, 9, 10, 12 and 19, 2006, the Assistant Prosecutor requested information from the following: the General Coordinator of the Sugar Foundation (FUNDAZUCAR);<sup>184</sup> the Director of the National Self-Management Program for Educational Development (PRONADE);<sup>185</sup> the Director General of Immigration;<sup>186</sup> the Head

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<sup>176</sup> Cf. Record of the review carried out of the Minutes Book of the "Republic of Mexico" School on August 25, 2006 (File of attachments to submission brief, pages 1081 and 1082).

<sup>177</sup> Cf. Record of June 9, 2005 of the Office of the Human Rights Prosecutor of the Public Prosecution Service (File of attachments to submission brief, page 894).

<sup>178</sup> Cf. Appearance of B.A. before the Assistant Prosecutor of the Public Prosecution Service on May 16, 2006 (File of attachments to submission brief, page 951), and Appearance of E.A. before the Assistant Prosecutor of the Public Prosecution Service (File of attachments to submission brief, page 959).

<sup>179</sup> Cf. Request by the Human Rights Prosecutor to the Criminal Investigations Directorate of May 17, 2005 (File of attachments to submission brief, page 878).

<sup>180</sup> Cf. Report sent on October 9, 2009, by the Assistant Prosecutor to the Office of the Human Rights Prosecutor (File of attachments to answer brief, pages 7316 to 7321).

<sup>181</sup> Cf. Report prepared on June 21, 2006, by the DICRI investigators (File of attachments to submission brief, pages 1152 to 1156); Report prepared on March 26, 2008, by the DICRI investigators (File of attachments to submission brief, pages 1169 to 1174), and Statement rendered by the DICRI investigators before the District Office of the Human Rights Prosecutor on April 10, 2008 (File of attachments to submission brief, pages 1180 to 1182).

<sup>182</sup> Cf. Report of June 12, 2006, submitted by the Prosecutor's Agent to the Executive Secretariat of the Public Prosecution Service (File of attachments to submission brief, pages 965 to 967). See also, Statement rendered by E.M., a Prosecutor assigned to the case, before the Inter-American Court at the public hearing held on February 5, 2014.

<sup>183</sup> Cf. Brief of August 1, 2006, prepared by the Agent of the Human Rights Prosecutor and sent to the Assistant Prosecutor of the Office of the Human Rights Prosecutor (File of attachments to submission brief, pages 987 to 990). See also, Statement rendered by E.M., a Prosecutor assigned to the case, before the Inter-American Court at the public hearing held on February 5, 2014.

<sup>184</sup> Cf. Letter of September 19, 2006, from the Assistant to the Special Prosecutor for Human Rights to the Coordinator of FUNDAZUCAR (File of attachments to submission brief, page 1085).

<sup>185</sup> Cf. Letter of September 19, 2006, from the Assistant to the Special Prosecutor for Human Rights to the director of PRONADE (File of attachments to submission brief, page 1086), and letter of October 6, 2006 from the Assistant to the Special Prosecutor for Human Rights to the Director of PRONADE (File of attachments to submission brief, page 1109).

<sup>186</sup> Cf. Letter of September 20, 2006 from the Assistant to the Special Prosecutor for Human Rights to the Director General of Immigration (File of attachments to submission brief, page 1092), and brief prepared by the Assistant to the Special Prosecutor for Human Rights to the Director General of Immigration, received on October 12, 2006 (File of attachments to submission brief, page 1107).

of the Criminal Records Bureau of the National Civil Police;<sup>187</sup> the Mayor of Santa Lucía Cotzumalguapa;<sup>188</sup> the Head of the United Nations Development Program;<sup>189</sup> the chairman of the Committee of the Community Self-Management School of Cruce de la Esperanza;<sup>190</sup> the Director of the Civil Registry of the Supreme Electoral Tribunal;<sup>191</sup> and the parish priest of the Parish of Santa Lucía Cotzumalguapa.<sup>192</sup> In response to these requests, in letters dated September 20, 21 and 27, October 1, 10 and 19, and November 21, 2006, the Coordinator of PRONADE/FUNDAZUCAR,<sup>193</sup> the Director National of PRONADE,<sup>194</sup> the Administrative Assistant for Immigration Control of the General Immigration Office,<sup>195</sup> the Head of the Criminal Records Bureau of the National Civil Police,<sup>196</sup> the Mayor of Santa Lucía Cotzumalguapa<sup>197</sup> and the parish priest of the Parish of Santa Lucía Cotzumalguapa,<sup>198</sup> provided the required information.

116. On April 10, 2008, a DICRI investigator appeared before the Assistant Prosecutor to make a statement regarding the investigations conducted thus far. He reported that, based on the statement of SZ, four individuals known as El Gato, Susy, Salomón and Chelelo had been identified. Based on M.I.'s statement, a fourth person known as Selvin had also been identified (*supra* para. 113). He added that they, "proceeded to identify the houses where they live[d]", but could only identify and locate the addresses associated with El Gato, Chelelo, Salomón and Selvin.<sup>199</sup> Subsequently, it was discovered that the person known as Salomón had been arrested several times for various crimes, including homicide, possession of firearms and the killing of a police officer, and that "on December 20, 2004, the day of Mr. A.A.'s death, he was in prison."<sup>200</sup>

117. Following a request by the Prosecutor,<sup>201</sup> on June 16, 2008, the Court of First Instance for Criminal Matters, Drug trafficking and Crimes against the Environment of Santa Lucía Cotzumalguapa, exercising its jurisdictional control over the case,<sup>202</sup> ordered a

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<sup>187</sup> Cf. Letter of September 20, 2006 from the Assistant of the Special Human Rights Prosecutor to the Head of the Criminal Records Bureau of the National Civil Police (File of attachments to submission brief, page 1093).

<sup>188</sup> Cf. Communication of September 19, 2006, sent by the Assistant of the Special Human Rights Prosecutor to the Municipal Mayor of Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 1100).

<sup>189</sup> Cf. Letter of September 27, 2006, from the Assistant of the Special Human Rights Prosecutor to the Head of the United Nations Development Program (File of attachments to submission brief, page 1099).

<sup>190</sup> Cf. Letter of September 27, 2006, from the Assistant Human Rights Prosecutor to the President of the Committee of the Community Management School of Cruce de la Esperanza (File of attachments to submission brief, page 1106), and Letter of October 19, 2006 from the Assistant Human Rights Prosecutor to the President of the Committee of the Community Self-Management School of Cruce de la Esperanza (File of attachments to submission brief, page 1119).

<sup>191</sup> Cf. Letter of October 9, 2006, from the Assistant Human Rights Prosecutor to the Director of Civil Registry of the Supreme Electoral Tribunal (File of attachments to submission brief, page 1108).

<sup>192</sup> Cf. Letter of October 10, 2006, from the Assistant Human Rights Prosecutor to the Parish priest of Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 1112).

<sup>193</sup> Cf. Letter of September 20, 2006, from the Coordinator General of PRONADE/FUNDAZUCAR (File of attachments to submission brief, pages 1088 to 1091).

<sup>194</sup> Cf. Letter of September 21, 2006, from the National Director of PRONADE to the Assistant Prosecutor of the Public Prosecution Service (File of attachments to submission brief, pages 1095 and 1096). Letter of October 10, 2006, from the National Director of PRONADE to the Assistant Prosecutor of the Public Prosecution Service (File of attachments to submission brief, page 1111).

<sup>195</sup> Cf. Letter of September 27, 2006, from the General Immigration Office (File of attachments to submission brief, pages 1101 to 1103), and Letter of October 1, 2006, from the General Immigration Office (File of attachments to submission brief, pages 1114 to 1118).

<sup>196</sup> Cf. Memorandum of October 19, 2006 prepared by the Head of Criminal Records Bureau and the head of the Fingerprints Section (File of attachments to submission brief, page 1120).

<sup>197</sup> Cf. Letter of November 21, 2006 from the municipal Mayor to the Assistant of the Office of the Human Rights Prosecutor (File of attachments to submission brief, pages 1123 to 1128).

<sup>198</sup> Cf. Baptism certificate of the Parish of Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 1129).

<sup>199</sup> Cf. Statement of April 10, 2008 of the Investigator of the DICRI before the Office of the Human Rights Prosecutor (File of attachments to submission brief, pages 1180 to 1182).

<sup>200</sup> Cf. Report of October 9, 2009 issued by the Assistant Prosecutor to the Office of the Human Rights Prosecutor (File of attachments to the answer brief, pages 7316 to 7321).

<sup>201</sup> Cf. Request submitted on June 16, 2008, by the Agent Fiscal before the Court of First Instance for Criminal Matters, Drug trafficking and Crimes against the Environment of the Municipality of Santa Lucía Cotzumalguapa (File of attachments to submission brief, pages 1183 to 1188).

<sup>202</sup> On August 31, 2005, the Assistant Prosecutor of the Special Prosecutor for Human Rights of the Public Prosecution Service requested that the Court of First Instance for Criminal Matters, Drug trafficking and Crimes against the Environment of Santa Lucía Cotzumalguapa take jurisdictional control of the case. In response to that request, this Court took jurisdictional control of the matter on September 1, 2005, opened case number C-475/2005 and sent it to the Prosecutor's Office on September 8, 2005. Cf. Brief of August 31, 2005, submitted by the Assistant

raid, inspection and search of four houses connected with El Gato, Chelelo, Salomón and Selvin.<sup>203</sup> The following day, this procedure<sup>204</sup> was carried out with the support of officers from Precinct No. 31 of Escuintla, the Municipal Prosecutor of Santa Lucía Cotzumalguapa and the Human Rights Prosecutor. These procedures concluded “with negative results.”<sup>205</sup>

118. The file shows that the Presidential Commission for the Coordination of Human Rights Policies in Guatemala (COPREDEH) requested information from the investigating agent assigned to the case. In response, on April 2, 2009, the agent reported,<sup>206</sup> *inter alia*, that “the investigations have established that the area where Mr. [A.A.] died, has been the scene of several criminal acts [,] including [,] murders, presumably carried out by common criminals,” and that “upon examining that criminal context” a hypothesis emerged that A.A. had been killed by a criminal gang because he had apparently witnessed the murder of a young man in that sector several days before his death (*supra* para. 113).

119. In response to a request, the Assistant Prosecutor prepared a detailed report on the case, which he sent to the Office of the Human Rights Prosecutor on July 20, 2009.<sup>207</sup> That report concluded that Mr. A.A.’s case continues under investigation, and that:

In this case Mrs. [B.A.], indicated Messrs. [L.L.] and [M.M.] as possible intellectual authors; however, based on the investigation carried out there are no legal grounds to proceed against these persons, since [...]the involvement of the individuals mentioned [...] has not been legally established.

120. Finally, during the proceedings before the Court, the State insisted that the investigation would remain open. However, the representatives pointed out that M.M. had died in 2010 and L.L. in 2012.<sup>208</sup>

*D.1.4. Investigation conducted by the Office of the Human Rights Ombudsman in Escuintla (File REF.EXP.ORD.ESC.048-2004/DI)*

121. In the context of the investigation opened on December 22, 2004, by the Office of the Human Rights Ombudsman, it appears that on December 22, 2004, and on January 5 and 25, 2005, the Departmental Assistant of the Ombudsman’s Office called on the Departmental Commissioner of the National Civil Police of Escuintla and the Departmental Governor of Escuintla to conduct a thorough investigation into the crime reported and to present the respective detailed report.<sup>209</sup> In this regard, the file of the Ombudsman’s

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Special Prosecutor for Human Rights before the Court of First Instance for Criminal Matters, Drug trafficking and Crimes against the Environment of Santa Lucía Cotzumalguapa (File of attachments to submission brief, pages 942 to 943); Record September 7, 2005 (File of attachments to submission brief, pages 944 and 945), and Brief of September 8, 2005, of the head of the Municipal Public Prosecutor’s Office of Santa Lucía Cotzumalguapa (File of attachments to submission brief, pages 937 and 938).

<sup>203</sup> Cf. Decision of June 16, 2008, issued by the Judge of the Court of First Instance for Criminal Matters, Drug trafficking and Crimes against the Environment of the Municipality of Santa Lucía Cotzumalguapa (File of attachments to submission brief, pages 1273 to 1276 and 1294 to 1296).

<sup>204</sup> Cf. Inspection, raid and search procedure of June 17, 2008 (File of attachments to submission brief, pages 1291 to 1293); Inspection, raid and search procedure of June 17, 2008 (File of attachments to submission brief, pages 1296 and 1297); Procedure Inspection, raid and search procedure of June 17, 2008 (File of attachments to submission brief, pages 1300 and 1301), and inspection, raid and search procedure of June 17, 2008 (File of attachments to submission brief, pages 1304 to 1306).

<sup>205</sup> Cf. Report of June 17, 2008, prepared by the Chief of Substation 31-43 of the National Civil Police of Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 1286), and Report of June 17, 2008 prepared by the Chief of Substation 31-43 of the National Civil Police of Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 1287).

<sup>206</sup> Cf. Report of April 2, 2009, submitted by the Prosecutor’s Agent to the Coordinator of the Technical Coordination Secretariat (File of attachments to submission brief, pages 1320 and 1321), and Report of April 2, 2009 prepared by the investigating agent addressed to the Office of the Human Rights Prosecutor (File of attachments to submission brief, pages 1326 and 1327).

<sup>207</sup> Cf. Report of October 9, 2009, prepared by the Assistant Prosecutor and submitted to the Office of the Human Rights Prosecutor (File of attachments to answer brief, pages 7316 to 7321).

<sup>208</sup> Cf. Death certificate of L.L. (Merits file, page 2092).

<sup>209</sup> Cf. Letter of December 22, 2004, of the Departmental Assistant of the Office of the Human Rights Ombudsman of Escuintla (File of attachments to submission brief, page 898); Brief of January 5, 2005 of the Departmental Assistant of Escuintla of the Office of the Human Rights Ombudsman addressed to the Departmental Commissioner of the National Civil Police (File of attachments to submission brief, page 906), and Brief of January 25, 2005 of the Departmental Assistant of Escuintla of the Office of the Human Rights Ombudsman addressed to the Departmental Governor of Escuintla (File of attachments to submission brief, page 911).

Office contains a copy of the investigation report of December 21, 2004,<sup>210</sup> prepared by the investigating agent assigned by the Criminal Investigation Service of Precinct 31 of the National Civil Police of Escuintla (*supra* para. 103). On December 23, 2004, the Departmental Assistant of the Ombudsman's Office asked various units of the National Civil Police to provide security measures for Mrs. B.A. and her family; however, there is no record that such measures were implemented (*supra* para. 95). The investigator assigned by the Ombudsman's Office also issued four reports on the investigation dated December 23, 2004, and January 3, February 7 and March 22, 2005, confirming that several investigative procedures had been performed.<sup>211</sup>

122. On March 22, 2005, the investigator assigned by the Ombudsman's Office discovered that the file concerning Mr. A.A.'s death held by the Prosecutor's Office of the Public Prosecution Service of Santa Lucía Cotzumalguapa had been forwarded to the Office of Human Rights Prosecutor.<sup>212</sup> Therefore, on June 7, 2005, the Departmental Assistant of the Ombudsman's Office assumed the task of Human Rights Prosecutor in order to gather information on the criminal investigation and confirmed that the file was under investigation.<sup>213</sup> Finally, in a decision on June 8, 2005, the Human Rights Ombudsman decided:

I. To declare the violation of the right to life of Mr. [A.A.]. II. To suspend its action in this case, considering that the facts which prompted the opening of the Merits file, are known and investigated by the Office of the Special Human Rights Prosecutor of the Public Prosecution Service of Guatemala City. III. To certify a copy of this file for the Office of the Special Human Rights Prosecutor of the Public Prosecution Service of Guatemala City, so that it may be incorporated into case number 16-2005 [...], in order to support the investigation [...].<sup>214</sup>

#### *D.2. Investigation into the alleged harassment of B.A.*

123. On January 21, 2005, that is, during the period immediately after Mr. A.A.'s death, Mrs. B.A. filed a complaint before the Public Prosecution Service, alleging that on "January 14, 2005, at approximately 7pm in the evening, she was traveling from Santa Lucía Cotzumalguapa to Escuintla, with Mr.[GB], driving her pick-up truck, when she noticed that it had been doused with a liquid, covering the roof, cargo bed and the windscreen, affecting their visibility, and so they stopped [...], they presume that the liquid was gasoline." When interviewed about this matter, B.A. and G.B. stated that they "could not see the license plates of the vehicles nearby because of limited visibility." The Department of Criminal Investigations, which was ordered to investigate the incident, reported that "it was not possible to identify anyone who witnessed this act." The Court of First Instance of Santa Lucía Cotzumalguapa dismissed the case of B.A. on February 28, 2008.<sup>215</sup> In this regard, it is a proven fact that in a brief dated June 23, 2008, the Office of the Human Rights Prosecutor was informed of a complaint filed on January 21, 2005, and that B.A. "had not asked to be included in the Witness Protection Program."<sup>216</sup>

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<sup>210</sup> Cf. Memorandum of the investigation of February 7, 2005, prepared by the investigator of the Office of the Human Rights Ombudsman (File of attachments to submission brief, pages 913 to 918).

<sup>211</sup> Cf. Memorandum of the investigation of December 23, 2004, prepared by the investigator of the Office of the Human Rights Ombudsman (File of attachments to submission brief, pages 901 to 905); Memorandum of the investigation of January 3, 2005, prepared by the investigator of the Office of the Human Rights Ombudsman (File of attachments to submission brief, pages 907 to 909); Memorandum of the investigation of February 7, 2005, prepared by the investigator of the Office of the Human Rights Ombudsman (File of attachments to submission brief, pages 913 to 915), and Memorandum of the investigation of March 22, 2005, prepared by the investigator of the Office of the Human Rights Ombudsman (File of attachments to submission brief, pages 924 and 925)

<sup>212</sup> Cf. Memorandum of the investigation of March 22, 2005, prepared by the investigator of the Office of the Human Rights Ombudsman (File of attachments to submission brief, pages 924 and 925).

<sup>213</sup> Cf. Record of procedure of June 7, 2005, prepared by first officer of the Departmental Office of the Human Rights Ombudsman in Escuintla (File of attachments to submission brief, page 926).

<sup>214</sup> Cf. Decision of June 8, 2005 of the Human Rights Ombudsman (File of attachments to submission brief, pages 927 and 928).

<sup>215</sup> Cf. Report sent on July 20, 2009, by the Assistant Prosecutor of the Office of the Human Rights Prosecutor (File of attachments to submission brief, pages 7316 to 7321), and complaint filed by B.A. on January 21, 2005 (File of attachments to answer brief, page 1405).

<sup>216</sup> Cf. Brief submitted on June 23, 2008 to the Human Rights Prosecutor (File of attachments to submission brief, page 1284).

## VIII MERITS

### VIII.1. RIGHTS TO LIFE AND PERSONAL INTEGRITY, IN RELATION TO THE OBLIGATION TO GUARANTEE RIGHTS

124. In this Chapter, the Court will examine the arguments of the Commission and the representatives that the State of Guatemala did not guarantee the rights to life and personal integrity of the presumed victims recognized in Articles 4<sup>217</sup> and 5<sup>218</sup> of the Convention. In this regard, the Commission and the representatives alleged that Mr. A.A. and Mrs. B.A. were human rights defenders at the time of the facts of this case, and that this would have a bearing on the State's obligation to guarantee these individuals said rights. The State, in turn, disputed all these arguments. Consequently, the Court will first consider the dispute concerning the presumed status of Mr. A.A. and Mrs. B.A. as human rights defenders, in light of its consistent case law regarding the activities carried out by human rights defenders. It will then examine the State's alleged failure to guarantee the rights to life and personal integrity, respectively, of A.A. and B.A. and their relatives.

#### A) Status of A.A. and B.A. as human rights defenders

##### A.1. Arguments of the Commission and of the parties

125. The **Commission** argued that Mr. A.A. fitted the profile of a human rights defender because he promoted economic, social or cultural rights, and pursued truth and justice in relation to human rights violations committed during the internal armed conflict.

126. The **representatives** affirmed that both A.A. and B.A. held the status of human rights defenders. They explained that, prior to his exile, Mr. A.A. "founded a savings cooperative, a trade union, gave literacy classes to more than thirty people and participated in a project to provide decent housing. After his return to the community [...] he founded a public school, participated in the preparation of a study on [...] low achievement and drop-out rates in schools, a project to build decent housing and promoted paving and sewerage projects in his community. He also worked with the Office of the Human Rights Ombudsman on issues related to children and youth and promoted social auditing processes." The representatives also emphasized A.A.'s "efforts to preserve the historical memory, including his quest for justice in the forced disappearance of his son." In relation to B.A., the representatives indicated that upon her return to Guatemala in 1997, she had participated "actively in her community, defending women's rights, the right to political participation at the community, municipal and national levels, and promoting efforts to protect the environment from the impact of monocultures in the area." They added that she had fought for "truth and justice in the forced disappearance of her brother [...]". They held that in 2004 B.A. "agree[d] to work with the municipal government as Social Organization Officer, in charge of the municipality's democratization process through the promotion of community participation. At that time, she also worked as Secretary of the COCODE [...in Santa Lucía Cotzumalguapa]." The representatives emphasized that in 2010, "the Office of the Human Rights Ombudsman acknowledged her work in defense of women's equal rights."

127. The **State** argued that both the petitioners and the Commission had tried to portray Mr. A.A. as a human rights defender without offering evidence to confirm this status. It affirmed that "there is no proof that Mr. [A.A.] had actually worked in an institution as a human rights defender [...]. The only evidence is that he was actively involved in political activities in his community [...]." It also considered that the description of human rights defender "takes advantage of the broad definition given to human rights." Finally, it argued that Mrs. B.A.'s status as a human rights defender had not been confirmed either.

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<sup>217</sup> Article 4(1) of the American Convention establishes that: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

<sup>218</sup> Article 5(1) of the American Convention establishes that: "Every person has the right to have his physical, mental and moral integrity respected."

## A.2. Considerations of the Court

128. On several occasions, this Court has acknowledged the work carried out by human rights defenders, considering it “fundamental for the strengthening of democracy and the Rule of Law.”<sup>219</sup> Moreover, the Organization of American States has called on its Member States to recognize the “valuable contribution [of defenders] to the promotion, protection and respect for fundamental human rights and freedoms [...]”<sup>220</sup>

129. This Court considers that the status of human rights defender is defined by the work carried out, regardless of whether the person is a private citizen or a public servant.<sup>221</sup> In this regard, the Court has referred to the monitoring, reporting and education activities<sup>222</sup> carried out by human rights defenders, emphasizing that the defense of rights not only applies to civil and political rights, but also necessarily covers economic, social and cultural rights, according to the principles of universality, indivisibility and interdependence.<sup>223</sup> Furthermore, this Court recognizes that international consensus exists that, among other activities, human rights defenders are involved in the promotion and protection of human rights. Similar views have been expressed by the United Nations High Commissioner for Human Rights,<sup>224</sup> the Council of the European Union,<sup>225</sup> the Parliamentary Assembly of the European Union<sup>226</sup> and the Inter-American Commission on Human Rights.<sup>227</sup> Likewise, Article 1 of the Declaration on the Right and Responsibility of

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<sup>219</sup> *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C. 192, para. 87, and *Case of Castillo González, Merits.* Judgment of November 27, 2012. Series C No. 256, para. 124.

<sup>220</sup> Cf. Organization of American States, “Human Rights Defenders in the Americas: support for individuals, groups and civil society organizations working to promote and protect Human Rights in the Americas, AG/Res. 1671 (XXIX-O/99) of June 7, 1999, Available at: <http://www.oas.org/dil/esp/ag01249s08.doc>; AG/Res. 1711 (XXX-O/00) of June 5, 2000, Available at: <http://www.oas.org/dil/esp/ag01511s07.doc> and AG/Res. 2412 (XXXVIII-O/08) of June 3, 2008, Available at: [https://www.oas.org/dil/esp/AGRES\\_2412.doc](https://www.oas.org/dil/esp/AGRES_2412.doc).

<sup>221</sup> Cf. *Case of Luna López v. Honduras. Merits, Reparations and Costs.* Judgment of October 10, 2013. Series C No. 269, para. 122.

<sup>222</sup> Cf. *Valle Jaramillo et al. v. Colombia, supra*, para. 88; *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs.* Judgment of April 3, 2009. Series C No. 196, para. 147, and *Case of Fleury et al. v. Haiti. Merits and Reparations.* Judgment of November 23, 2011. Series C No. 236, para. 80.

<sup>223</sup> Cf. *Case of Kawas Fernández v. Honduras, supra*, para. 147.

<sup>224</sup> The United Nations High Commissioner for Human Rights has suggested that the status of human rights defender is determined by the person’s actions and not by other qualifications. Human rights defenders can be any person or group of persons working to promote human rights. See, Office of the United Nations High Commissioner for Human Rights, *Human Rights Defenders: Protecting the Right to Defend Human Rights*, Fact Sheet No. 29, UN publications, Geneva, 2004, page 8. Available at <http://www.ohchr.org/Documents/Publications/FactSheet29sp.pdf>, and Special Rapporteur on the Situation of the Human Rights Defenders, “Who is a Defender”, Available at: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

<sup>225</sup> The *European Union Guidelines on Human Rights Defenders* have defined the term human rights defenders as “persons, groups and institutions of society that promote and protect universally recognized human rights and fundamental freedoms.” See, Council of the European Union. *European Union Guidelines on Human Rights Defenders*, December 8, 2008, para. 3. Available at: <http://www.consilium.europa.eu/uedocs/cmsUpload/16332-re02.es08.pdf>.

<sup>226</sup> The Parliamentary Assembly of the Council of Europe has stated that “Human Rights Defenders are all those persons who, individually or jointly, act to promote or protect human rights. Their activities in this field define them as human rights defenders”. See, Parliamentary Assembly of the Council of Europe, *The situation of human rights defenders in Council of Europe Member States*, Resolution 1660, April 28, 2009, point 2. Available at: <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17727&lang=en>.

<sup>227</sup> The Inter-American Commission has stated: “every person who in any way promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally, must be considered a human rights defender.” See IACHR, *Report on the Situation of Human Rights Defenders in the Americas.* OAS/Ser.L/V/II.124 Doc. 5 rev. 1 March 7, 2006, para. 13, Available at: <http://www.IACHR.org/countryrep/defensores/defensorescap1-4.htm#UNIDAD>, and *Second Report on the Situation Human Rights Defenders in the Americas*, OAS/Ser.L/V/II. Doc.66, para. 12, Available at: <http://www.oas.org/es/IACHR/defensores/docs/pdf/defensores2011.pdf>. See, also, IACHR, *Guarantees for the independence of justice operators*, of December 5, 2013, para. 2. In that report, the Commission stated that: “As the Special Rapporteur of the United Nations on the Situation of Human Rights observed, when justice operators work to ensure effective access to justice and make ‘a special effort’ in a process so that justice is imparted independently and impartially, thereby guaranteeing the rights of victims, it can be said that they act as human rights defenders.” Under that perspective, and within the context of the Inter-American Commission, the Rapporteurship on Human Rights Defenders has been the focal point for following and monitoring the situation of justice operators, in recognition of the special function that they, as guarantors of the right of access to justice and redress, perform in the defense of human rights.” Available at: <http://www.oas.org/es/IACHR/defensores/docs/pdf/Operadores-de-Justice-2013.pdf>.



Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, approved by the United Nations General Assembly through Resolution A/RES/53/144 of 1999, establishes that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” Moreover, in the opinion of this Court, such activities must be carried out peacefully, so that this concept does not include acts of violence or acts that lead to violence.<sup>228</sup> In addition, these activities for the promotion and protection of human rights may be carried out intermittently or occasionally, so that the condition or status of human rights defender is not necessarily permanent.<sup>229</sup>

130. Prior to his exile in Mexico, Mr. A.A. organized a workers’ union at a sugar mill, participated in projects to provide decent housing and in the creation of a cooperative, among other activities. Upon his return to the village of Cruce de la Esperanza, he was involved in establishing the Integral Development Association for People with Disabilities of Western and Southern Guatemala. In 1998, he promoted the construction of the Community Self- Management School in that village, subsequently serving as member and President of its education committee. In 2001, he joined a committee made up of local residents to tackle the problems of school drop-out rates, under-achievement and non-attendance of girls. The following year the United Nations System in Guatemala, among other organizations, nominated him for an “Unsung Hero” award, for his “commitment to peace-building and the development of his community,” through activities such as “the construction of homes for poor people.” In 2003, as a member of the Culture and Sports Committee of the village of Cruce de la Esperanza, he promoted the construction of a sports complex and an Institute of Basic Education so that “children and young people [would have...] a place to complete their education and also to promote multiculturalism, especially in the area of sports [...] and] the field of music [...].” In addition, as Community Mayor of the COCODE of the village of Cruce de la Esperanza, he promoted activities to preserve the historical memory of the internal armed conflict. At the time of his death, he was seeking justice for the forced disappearance of his son, Y.A. (*supra* paras. 82 to 88).

131. From the foregoing account, it is clear that, prior to his departure to Mexico, Mr. A.A. was involved in activities to promote labor rights and the right to a decent life through the construction of homes (*supra* paras. 82 and 84), among other activities. Upon returning to the Village of Cruce de la Esperanza, he worked to promote a child’s right to education, the right to a decent life and to the benefits of culture, as well as the rights of individuals with disabilities. Furthermore, as part of his work as Mayor of the COCODE of his village, he organized activities to promote the right to know the truth about human rights violations committed during the armed conflict in Guatemala. Consequently, the Court considers that Mr. A.A. held the status of a human rights defender both before his exile to Mexico and after his return to Santa Lucía, and at the time of his death.

132. Regarding Mrs. B.A., in her position as Social Organization Officer of Santa Lucía, she was involved in organizing unions in that municipality in 2004.<sup>230</sup> She also played an active role in the search for justice for the forced disappearance of her brother, Y.A., both in the domestic investigations and before the international bodies, which resulted in the *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala* (*supra* para. 90). After her

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<sup>228</sup> Also see: Statement on Human Rights Defenders, Article 12.3, Available at: <http://www.ohchr.org/SP/Issues/SRHRDefenders/Pages/Statement.aspx>; Council of the European Union, European Union Guidelines on Human Rights Defenders. December 8, 2008, *supra*, para. 3, and Office of the United Nations High Commissioner for Human Rights, “Human Rights Defenders: Protection of the Right to Defend Human Rights”, Fact Sheet No. 29, *supra*, page 11.

<sup>229</sup> In her expert report, Ms. Hina Jilani stated: “the status of a human rights defender is not permanent; in some cases it is, because there are non-governmental organizations dedicated solely to that activity, at national or international level. However we cannot deny that status to those who have acted temporarily to promote Human Rights.” See, also, High Commissioner for Human Rights, Human Rights Defenders: Protection of the Right to Defend Human Rights, Fact Sheet No. 29, *supra*, pages 8 to 9, which states that: “[m]any professional activities do not involve human rights work all of the time, but may have occasional links with human rights.” When such activities are carried out in a manner that implies specific support for human rights, it may be said that those individuals who perform them act as human rights defenders. Furthermore, “[m]any people act as human rights defenders outside any professional or employment context.” The important point to consider is how these people act in support of human rights and, in some cases, determine if they make a “special effort” to promote or protect human rights.

<sup>230</sup> The Court also confirmed that on November 12, 2003, Mrs. B.A. served as Vice-president of the Women’s Network of Escuintla (*supra* para. 89). However, it has no information on the activities carried out by that organization, or on Mrs. B.A.’s activities as its Vice-president.

return to Santa Lucía in 2006, Mrs. B.A. resumed her activities as Social Organization Officer which, as mentioned, included organizing unions. Similarly, in 2011, the Departmental Human Rights Office in the municipality of La Gomera, in the Department of Escuintla, gave her an award for her efforts to promote women's rights (*supra* para. 100).<sup>231</sup> Consequently, the Court considers that, in 2004, Mrs. B.A. was engaged in activities to promote union rights and the right to the truth. Upon her return to Santa Lucía in 2006, and at least up to 2011, she carried out activities to promote women's rights. In view of the foregoing, the Court will consider her as a human rights defender during these periods.

## **B) Rights to life and personal integrity in relation to the obligation to guarantee rights**

### *B.1. Arguments of the Commission and of the parties*

133. The **Commission** argued that the State is "responsible for the violation of the right to life to the detriment of [A.A.]," since it knew that he faced a situation of real and imminent danger. In this regard, it stated that on November 26, 2003, Mrs. B.A. reported to the Public Prosecution Service that a former *kaibil* of the Guatemalan Army had threatened her, her father and her son in a telephone call. According to information provided by B.A., and not disputed by the State, family A "informed the municipal Mayor that a group of armed men were watching the house of [A.A.] at night," prior to his death. However, the State had not adopted specific measures of protection and had not investigated the situation, despite the fact that Mr. A.A. "had the exact profile of the defenders who were being attacked" in the specific context of violations of the rights of human rights defenders working in Guatemala who demanded justice for the events that occurred during the armed conflict. In addition, the Commission argued that the loss of a loved one in a context such as the one described in this case, among other factors, led to the violation of the right to personal integrity of his relatives.

134. At the same time, the Commission presented five groups of arguments to support the alleged violation of the right to psychological and moral integrity of Mr. A.A.'s family, given that the State had knowledge of the threats made against those individuals, but did not investigate those threats or provide them with measures of protection.<sup>232</sup> For those reasons, and in view of the harassment, surveillance and attacks they suffered in the days following Mr. A.A.'s murder, the State violated their right to psychological and moral integrity.

135. The **representatives** argued that Mr. A.A.'s murder occurred "after he and his family had suffered different acts of intimidation and the Public Prosecution Service had received a complaint about threats made against him by [a] former *kaibil* [...]. The absence of investigative procedures in relation to these events not only created the right conditions for subsequent threats and, eventually for his murder, but made the family [A] decide not to report the events that occurred afterwards to that institution, and to others." The representatives pointed out that, at the time of the events, there was a real and imminent danger to the life of A.A. They argued that "the death threat was especially serious [considering] the characteristics of the presumed aggressor, a former *kaibil*, [...] those of the family attacked, [the situation] of human rights defenders and demobilized combatants, the post-conflict context and the fact that the threats were clearly linked to [his] community leadership, promotion of social auditing and the participatory citizenship of defenders." They added that, prior to his death, the family had reported acts of surveillance and harassment to the municipal Mayor. Consequently, "by not investigating the facts, or providing due protection, [the State] did not guarantee [A.A.] and his family the full enjoyment of rights recognized in the Convention [...]." Therefore, "[A.A.'s] right to

<sup>231</sup> The Court recalls that in 2009 she was elected as the Representative of Women's Organizations before the Departmental Development Council of Escuintla (*supra* para. 100).

<sup>232</sup> It alleged that: i) although the presumed threats received by B.A. in December 2003 were reported to the Mediation Center of the Judicial Body, these were not investigated; ii) the aforementioned threat made in 2003 by a supposed former *kaibil* was not investigated either; iii) following Mr. A.A.'s death the family suffered threats, harassment and surveillance in their home; however, those facts were not properly investigated nor did the relatives receive protection from the State, even though the threats had been reported to the authorities; iv) regarding the facts related to the supposed attack of January 14, 2005 against B.A., no significant procedures were carried out to investigate these; and v) although the State indicated that it had offered to initiate a request for protection for Family A, this offer was made in 2008.

life was violated.” In relation to the alleged violation of the right to personal integrity of Mr. A.A.’s family resulting from his murder, and the lack of protection they suffered, the representatives agreed with the arguments presented by the Commission. Finally, the representatives argued that “the State of Guatemala’s duty to provide protection was increased by the [presumed] victims’ status as human rights defenders and the inherent risk facing this group” in Guatemala at the time of the events.

136. The **State** held that it was not responsible for violating the right to life of A.A., “given that, with regard to its duty of prevention, this is recognized and guaranteed [in its domestic legal system].” Moreover, it was not aware of any intimidation or threatening act that might have constituted a situation of danger to his life, or of any request for measures of protection, other than a complaint supposedly filed one year prior to the event. In this regard, the State pointed out that during the time between the complaint filed and Mr. A.A.’s death, there was no evidence of a real and immediate danger. “Then, upon finding out about [...] Mr. [A.A.’s] death, it began a thorough and diligent investigation [...]” The State also argued that “[t]he petitioners and the Commission have tried to suggest that Mr. [A.A.] lost his life in retaliation [...] for his work as a human rights defender and for his supposed participation in investigating the facts of the internal armed conflict. However, they do not offer any proof to confirm their hypothesis [...]” According to the State, “in order to situate the facts of this case within the historical context at the time of the internal armed conflict [...the representatives] have used a series of [...] arguments, concerning antecedents [...]that] form part of a historical context, which is undeniable; however, [...]they do not] establish a causal link that is reasonable and legitimate to suggest the possible connection of those antecedents [...] with the facts of this case.”

137. Regarding the alleged violation of the right to personal integrity of Mr. A.A.’s relatives, the State held that this right is also recognized and guaranteed in its domestic legislation. Moreover, although it regretted the suffering caused by Mr. A.A.’s death, this was not instigated by the State. Furthermore, regarding the argument that A.A.’s relatives had suffered the violation of their personal integrity due to the supposed threats and harassment after the murder, the State argued that no evidence was provided to demonstrate that it had knowledge of this and that it did not investigate. As to B.A.’s complaint about the incident of the gasoline doused on her car, it pointed out that a visual inspection was carried out and several individuals were interviewed; however, no information was obtained that would enable the investigating body to prosecute someone. This invalidates the assertion that the State did not act in response to that incident. As to the other incidents mentioned, it held that at no time were the corresponding complaints filed, and therefore the State limited itself to investigating the death of A.A.

#### *B.2. Considerations of the Court*

138. According to Article 1(1) of the American Convention, the States have the obligation to respect and guarantee the human rights recognized therein.<sup>233</sup> Regarding the rights to life and personal integrity, these obligations not only imply that the State must respect them (negative obligation), but they also require the State to adopt all appropriate measures to guarantee them (positive obligation).<sup>234</sup>

139. The obligation to guarantee the rights to life and personal integrity presuppose the duty of States to prevent the violation of those rights. This obligation of prevention encompasses all measures of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any potential violation of these rights is effectively considered and treated as an unlawful act which, as such, may result in the punishment of the person who commits it, as well as the obligation to compensate the victims for the harmful consequences. It is also clear that the obligation to prevent is one of means or conduct, and that failure to comply with it is not proved merely because the right has been violated.<sup>235</sup>

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<sup>233</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 163, and *Case of Gutiérrez and Family v. Argentina, supra*, para. 76.

<sup>234</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala, supra*, para. 139, and *Case of Castillo González V. Venezuela, supra*, para. 122.

<sup>235</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 166, and *Case of Luna López v. Honduras, supra*, para. 118.

140. The State's obligation to guarantee rights goes beyond the relationship between its agents and the persons under its jurisdiction; it also encompasses the obligation to prevent, within the private sphere, third parties from violating protected juridical rights.<sup>236</sup> However, according to the Court's case law, it is clear that a State cannot be held responsible for all the human rights violations committed by private individuals within its jurisdiction. Indeed, the nature of the State's treaty-based guarantee obligations does not imply its unlimited responsibility for all acts or deeds by private parties. The State's duty to adopt measures of prevention and protection for private individuals in their relationships with each other is conditioned by its knowledge of a situation of real and immediate danger to an individual or a specific group of individuals - or that it should have known of a such a situation<sup>237</sup> - and by the reasonable possibilities of preventing or avoiding that danger. In other words, even though an act or omission by an individual may have the legal consequence of violating the specific human rights of another individual, this cannot be automatically attributed to the State, because the particular circumstances of the case and the application of these guarantee obligations must be taken into account.<sup>238</sup> Accordingly, the Court must determine whether it is appropriate to attribute responsibility to the State in this specific case.

141. This Court has also established that, in addition to the general obligations to respect and guarantee rights, pursuant to Article 1(1) of the Convention, special obligations are derived from these, which are determined according to the particular needs for protection of the subject of law, either owing to his personal situation or to the specific situation in which he finds himself.<sup>239</sup> In this regard, the Court recalls that in certain situations, the States have the obligation to adopt all necessary and reasonable measures to guarantee the right to life, personal liberty and personal integrity of individuals who find themselves in situations of special vulnerability, particularly as a consequence of their work, whenever the State is aware of a situation of real and immediate danger, and has reasonable possibilities of preventing or avoiding that danger.<sup>240</sup>

142. The Court reiterates that the defense of human rights can be exercised freely only when the persons engaged in it are not victims of any threats or any type of physical, psychological or moral aggression, or other forms of harassment.<sup>241</sup> Therefore, it is the State's obligation not only to create the legal and formal conditions, but also to ensure the real conditions in which human rights defenders can freely carry out their work.<sup>242</sup> Furthermore, the States should provide the necessary means for persons who are defenders of human rights or who perform a public function, so that when they encounter threats or situations of risk or report human rights violations, they can freely carry out their activities; protect them when they receive threats so as to prevent attacks on their lives and integrity; create conditions to eradicate violations by State agents or private individuals; refrain from hindering their work, and thoroughly and effectively investigating violations committed against them, combating impunity.<sup>243</sup> Finally, the State's obligation

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<sup>236</sup> Cf. *Case of the Mapiripán Massacre v. Colombia*, *supra*, para. 111, and *Case of Luna López v. Honduras*, *supra*, para. 120.

<sup>237</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia*, *Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, para.123, and *Case of Luna López v. Honduras*, *supra*, para. 123. In this regard, the European Court of Human Rights has established that: "[...] not every claimed risk can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materializing. For a positive obligation to arise, it must be established that the authorities knew, or should have known at the time, of the existence of a real and immediate risk to the life of an identified individual [...] from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk [...]" Cf. ECHR, *Case Kiliç v. Turkey*, No. 22492/93, Judgment of March 28, 2000, paras. 62 and 63, and ECHR, *Osman v. United Kingdom*, No. 23452/94, Judgment of October 28, 1998, paras. 115 and 116.

<sup>238</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia*, *supra*, para. 123, and *Case Suárez Peralta v. Ecuador*. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 21, 2013. Series C No. 261, para. 129.

<sup>239</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia*, *supra*, para. 111, and *Case of Castillo González v. Venezuela*, *supra*, para. 123.

<sup>240</sup> Cf. *Case of Luna López v. Honduras*, *supra*, para. 123.

<sup>241</sup> Cf. IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, *supra*, para. 46.

<sup>242</sup> Cf. *Case of García and Relatives v. Guatemala*, *supra*, para. 182.

<sup>243</sup> Cf. *Case of Nogueira de Carvalho et al. v. Brazil*. *Preliminary Objections and Merits*. Judgment of November 28, 2006. Series C No. 161, para. 77, and *Case of Luna López v. Honduras*, *supra*, para. 123. See also, United Nations Working Group on Arbitrary Detention, Opinion No. 39/2012 (Belarus), UN Doc. A/HRC/WGAD/2012/39, November 23, 2012, para. 45, Available at:

to guarantee the rights to life and personal integrity of an individual is increased in the case of a human rights defender.

143. In the instant case, no violations of the State's obligation to respect the rights to life and personal integrity have been alleged. The dispute has focused solely on the obligation to guarantee those rights. Therefore, the Court will consider whether in this case the requirements were met to determine that the State failed to discharge its positive obligation to guarantee human rights by taking the measures necessary to prevent violations. To this end, it is necessary to ascertain whether, at the time of the events, a situation of real and imminent danger existed for the life or personal integrity of a specific individual, or group of individuals, whether the authorities knew, or should have known about this, and whether they took the necessary measures within the scope of their respective powers which, reasonably judged, could have been expected to prevent or avoid such danger.<sup>244</sup> The Court will examine these suppositions, in light of the complaints made to public institutions or officials, in order to ascertain whether the State had prior knowledge.<sup>245</sup> In this case, the Court will also take into account the fact that in 2003 and 2004, the State of Guatemala was aware of the situation of special vulnerability facing human rights defenders, especially those working to protect or promote economic, cultural and social rights, and those seeking truth and justice for human rights violations committed during the internal armed conflict (*supra* para. 78), as Mr. A.A. and Mrs. B.A. did (*supra* paras. 131 and 132). All this will be considered in light of the standards of prevention and protection indicated previously.

*B.2.1. Alleged failure to fulfill the obligation to guarantee the life Mr. A.A.*

144. With respect to the State's alleged failure to guarantee the life Mr. A.A., this Court finds that the allegations made by the Commission and the representatives that the State had knowledge of a situation of real and immediate danger to Mr. A.A.'s life were based on two suppositions: first, that Mrs. B.A. had reported a threat made against herself, her son and her father on November 26, 2003, to the Public Prosecution Service; and secondly, that family A had reported acts of intimidation and surveillance against Mr. A.A. prior to his death, to the municipal Mayor of Santa Lucía Cotzumalguapa.

145. As to the first supposition, the Court emphasizes that, in its answer brief and during the public hearing, the State based its litigating position and its defense on the lack of evidence regarding the aforementioned complaint of November 26, 2003, and, specifically, denied its existence. Nevertheless, after the Court requested the parties to present that complaint, and given that both the State and the representatives submitted it to the Court, Guatemala insisted in its final written arguments that [the complaint] "at no time makes reference to, much less mentions, Mr. [A.A.] as a victim of the threat reported by Mrs. [B.A.]." For their part, the representatives reiterated that the threat received on November 26, 2003, was against A.A., B.A. and her son, which B.A. "stated when she filed her complaint", the following day, and that the omission of Mr. A.A. in that complaint was due to a "transcription error by the official of the Prosecutor's Office who drafted it." The Commission pointed out that, during the entire proceeding before it, the State had never challenged the complaint filed by Mrs. B.A., and emphasized that "both in her statements in the domestic jurisdiction and before the Commission and the Court, [B.A.] she has consistently stated that her father was also threatened." The Commission argued that it was for the State to investigate the scope of the facts reported to it, including the

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<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/183/17/PDF/G1218317.pdf?OpenElement>.

Similarly, see UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, *supra*, Article 12(2): "The State shall take all necessary measures to ensure the protection by competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, *de facto* or *de jure*, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in this Declaration", and Resolutions 1818/01 of May 17, 2001 and 1842/02 of the General Assembly of the Organization of American States, *Human Rights Defenders in the Americas: Support for the Work of Individuals, Groups and Civil Society Organizations for the Promotion and Protection of Human Rights in the Americas*, of June 4, 2002 which resolved, "To urge Member States to step up their efforts to adopt the necessary measures, in keeping with their domestic law and with internationally accepted principles and standards, to safeguard the lives, personal safety and freedom of expression of human rights defenders."

<sup>244</sup> Cf. *Case of Pueblo Bello Massacre v. Colombia*, *supra*, para. 123, and *Case of Luna López v. Honduras*, *supra*, para. 124.

<sup>245</sup> *Mutatis mutandis*, *Case of Luna López v. Honduras*, *supra*, para. 125.

individuals who were threatened and the specific circumstances of method, time and place.

146. This Court has already established that the complaint of November 2003 merely stated that a former *kaibil* of the Guatemalan Army had made a phone call threatening Mrs. B.A. and her son, and that he had allegedly threatened her sister on a previous occasion (*supra* para. 91). Consequently, although Mrs. B.A. has been consistent in her statements made after Mr. A.A.'s death,<sup>246</sup> indicating that the telephone threat was made against her, her son and her father, this Court notes that she signed the aforementioned complaint. Thus, the Court does not have sufficient elements to confirm that the State was aware of a threat made against Mr. A.A. on that occasion.

147. However, with respect to the former municipal Mayor of Santa Lucía Cotzumalguapa's alleged knowledge of the situation of danger facing Mr. A.A. prior to his death, the file confirms that on December 5, 2010, he stated that A.A. was one of the community leaders threatened in the municipality "for his democratic and revolutionary views [...], because his knowledge of human development and his work methodology [...] was accepted and produced satisfaction in the community [...], but caused a lot of discontent and anger among figures whose leadership was strongly associated with the *caudillismo* (war-lordism) and corruption of the past, especially those linked to the repressive apparatus of the period of armed conflict."<sup>247</sup> The Mayor then referred to the violent deaths of several community leaders, which, he said, occurred after Mr. A.A.'s death. However, from the former Mayor's statement it is not clear whether he knew of the threats made against Mr. A.A. prior to his death, or if this is a retrospective account of the "systematic threats" made against municipal "leaders", among whom Mr. A.A. was the first in lose his life.

148. Similarly, the body of evidence shows that on December 22, 2004, two days after Mr. A.A.'s death, the then municipal Mayor informed the Assistant of the Departmental Office of the Human Rights Ombudsman in Escuintla (*supra* para. 121), that he knew that Mr. A.A. had "various problems" with a man called M.M., "who recently assumed the powers of Deputy Mayor which did not belong to him, because the Deputy Mayor was [Mr. A.A.]."<sup>248</sup> However, the Court considers that this statement by the then municipal Mayor is insufficient to conclude that the State was aware of a real and imminent danger to Mr. A.A.'s life prior to his death.

149. Consequently, having assessed the evidence provided by the Commission and the parties, the Court considers that it does not have sufficient elements to prove that the State knew, or should have known, of a situation of real and immediate danger to Mr. A.A.'s life prior to his death, which would have resulted in its obligation to adopt the measures necessary to address that danger. The Court notes that the Commission and the representatives did not provide any other evidence to prove that the State should have known about the specific situation of danger facing Mr. A.A. in the context of vulnerability for human rights defenders (*supra* para. 78). Therefore, the Court considers that it does not have sufficient elements to declare that the State failed in its obligation to protect the life Mr. A.A., under the terms of Article 4(1) of the American Convention, in relation to Article 1(1) thereof. Thus, the Court does not consider it appropriate to examine the possible effects on the personal integrity of his relatives, resulting from Mr. A.A.'s death. As it has done previously,<sup>249</sup> the Court will examine the obligation to conduct an effective investigation with due diligence in Chapter VIII.4 in relation to Articles 8 and 25 of the Convention.

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<sup>246</sup> Cf. Interview with B. A. conducted on December 23, 2004, by the investigator assigned by the Office of the Human Rights Ombudsman (File of attachments to submission brief, page 902); Interview conducted on January 25, 2005 with B.A. by the investigator of the DICRI (File of attachments to submission brief, page 1063); Statement rendered by B.A. on February 10, 2005, before the Prosecutor of Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 823), and private statement of B.A. (File of attachments to submission brief, disk 2, minute 59:23 to 1:00); Statement of B.A. rendered at the public hearing before the Inter-American Court the February 5, 2014.

<sup>247</sup> Cf. Statement of the former municipal Mayor of Santa Lucía Cotzumalguapa of December 5, 2010 (Attachment to submission brief, pages 794 to 795).

<sup>248</sup> Cf. Report of the Departmental Office of Escuintla of the Office of the Human Rights Ombudsman of December 23, 2004 (File of attachments to submission brief, page 903).

<sup>249</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 7, 2003. Series C No. 99, para. 186, and *Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 19, 2014. Series C No. 277, para. 234.

*B.2.2. Alleged failure to guarantee the personal integrity of Mrs. B. A. and her family*

150. Regarding the State's alleged failure to guarantee the personal integrity of Mrs. B.A. and her family, the Court notes that, prior to Mr. A.A.'s death, she filed the following complaints before the Public Prosecution Service: i) on November 26, 2003, she reported to the Public Prosecution Service that she and her son had received threats from a former *kaibil* of the Guatemalan Army, and ii) on February 20, 2004 she attended the Mediation Center of the Judicial Body of Guatemala to complain that she had received threats from Mr. P.M. (*supra* paras. 91 and 92). Furthermore, during the five months following Mr. A.A.'s death, and on several occasions, B.A. recounted to agents of the National Civil Police of Escuintla, the Office of the Human Rights Ombudsman and the Public Prosecution Service, the threat received in 2003 and reiterated the existence of the complaint filed before the Public Prosecution Service on November 26, 2003.<sup>250</sup> She also filed a new complaint before the Public Prosecution Service on January 21, 2005, alleging that an attack had occurred on January 14, 2005 (*supra* para. 123).

151. Furthermore, during the nine days following Mr. A.A.'s death, there is evidence that acts of intimidation carried out against B.A. and her family near their house were reported to the Office of the Human Rights Ombudsman and to the then municipal Mayor. On this point, there is evidence that: i) on December 23, 2004, the investigator assigned by the Office of the Human Rights Ombudsman filed a report in which he stated that, "[f]rom interviews [conducted] with several neighbors of family [A] [...], it is clear that the family suffers from constant intimidation by unknown individuals who are heavily armed and [...] arrive at night shooting near the family's home" (*supra* para. 121); ii) on that same day, the Departmental Assistant of the Ombudsman's Office asked the chief of the National Civil Police substation in Santa Lucía Cotzumalguapa and the Departmental Commissioner of Precinct 31 of the National Civil Police of Escuintla, to provide "perimeter and personal security measures for Mrs. [B.A.] and her family," although there is no record that these measures were implemented (*supra* para. 95), and iii) on the orders of the municipal Mayor of Santa Lucía, agents of the Municipal Transit Police patrolled the area and provided accompaniment to the family during the nine days of prayers following Mr. A.A.'s death (*supra* para. 96).

152. During the five months after Mr. A.A.'s death, his daughters B.A. and E.A. made several reports to agents of the Public Prosecution Service regarding acts of intimidation suffered by the family during the nine days of prayers.<sup>251</sup> B.A. also mentioned acts of intimidation suffered one month before his death.<sup>252</sup> In addition, based on interviews with neighbors and a member of family A, conducted by an investigator of the Ombudsman's Office on February 6, 2005, the Departmental Assistant of the Office of the Human Rights Ombudsman established that "on the night of December 20, approximately five to seven heavily armed men, wearing Guatemalan Army uniforms (*kaibiles*), arrived in two vehicles one [...] with military license plates and another [...] with no license plates, and [remained] all night in front of and around the house where the wake was being held for the mortal remains of Mr. [A.A.] [...]."<sup>253</sup> The Ministry of National Defense was unable to determine

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<sup>250</sup> Cf. Interview with B.A. on December 21, 2004, conducted by the investigating agent assigned by the Criminal Investigation Service of Precinct 31 of the National Civil Police of Escuintla (File of attachments to submission brief, page 917); Complaint filed by B.A. on December 22, 2004, before the Departmental Assistant of the Office of the Human Rights Ombudsman (File of attachments to submission brief, pages 896 and 897); Interview with B.A. on December 23, 2004, conducted by the investigator of the Office of the Human Rights Ombudsman (File of attachments to submission brief, pages 901 and 902); Interview with B.A. on January 25, 2005, conducted by the DICRI investigator (File of attachments to submission brief, pages 1062 and 1063); Statement rendered by B.A. before the Assistant Prosecutor of Santa Lucía Cotzumalguapa on February 10, 2005 (File of attachments to submission brief, pages 823 and 824), and Statement rendered by B.A. before the Assistant Prosecutor of Human Rights on May 11, 2005 (File of attachments to submission brief, page 870).

<sup>251</sup> Cf. Interview with B.A. on January 25, 2005, conducted by the investigator of the DICRI (File of attachments to submission brief, pages 1063 and 1064); Statement rendered by B.A. before the Assistant Human Rights Prosecutor on May 11, 2005 (File of attachments to submission brief, pages 868 and 869), and Statement rendered by E.A. before the Agent of the Human Rights Prosecutor on May 11, 2005 (File of attachments to submission brief, page 866).

<sup>252</sup> Cf. Statement rendered by B.A. before the Assistant Human Rights Prosecutor on May 11, 2005 (File of attachments to submission brief, pages 868 and 869).

<sup>253</sup> Cf. Letter of March 17, 2005, from the Departmental Assistant of the Office of the Human Rights Ombudsman of Escuintla to the Minister of National Defense (File of attachments to submission brief, page 921).

whether military patrols had taken place that day and in that location, or whether it had vehicles with the characteristics reported.<sup>254</sup>

153. Based on the facts described, the Court considers that, as of December 20, 2003, Mrs. B.A. and members of her family found themselves in a situation of real and imminent danger to their personal integrity. In particular, the Court notes that on November 26, 2003, she reported having been threatened due to her work and that in 2004 she reported a new threat (*supra* para. 150); that in the days following Mr. A.A.'s death she suffered constant intimidation by groups of unknown individuals who were heavily armed and who appeared at night (*supra* paras. 151 and 152); that she was a human rights defender; and that her work and activities at the time of the events involved the defense of human rights (*supra* para. 132). All this occurred in a context of vulnerability for human rights defenders in Guatemala (*supra* para. 78). Taking into account the circumstances surrounding the facts of this case, as well as the specific situation facing Mrs. B.A., the Court considers that there are reasonable grounds to conclude that the situation of risk in which she found herself could be specifically linked to the fact that she was a human rights defender and with her work and activities at the time of the events, which placed her in a situation of special vulnerability.

154. In this case, there is also evidence that the State had prior knowledge of a specific risk to the personal integrity of Mrs. B.A. and her family. Indeed, Mrs. B.A. reported the threats she received in 2003 and 2004 to the Public Prosecution Service, the competent authority responsible for adopting the appropriate measures in this case. In addition, the presumed acts of intimidation against her and her family, which occurred during the nine days after Mr. A.A.'s death, were reported precisely at the beginning of those nine days, to the Office of the Human Rights Ombudsman, which informed the National Civil Police of Escuintla, and by the municipal Mayor. Likewise, on repeated occasions during the five months after Mr. A.A.'s death, B.A. informed the Public Prosecution Service about the complaint she had filed on November 26, 2003, as well as about the presumed acts of intimidation that occurred one month prior to his death and during the nine days afterwards. During those five months she also informed agents of the National Civil Police of Escuintla and of the Office of the Human Rights Ombudsman about the threat she had received in 2003 and the complaint filed on November 26, 2003, before the Public Prosecution Service (*supra* paras. 150 to 152).

155. On this point, and with regard to the complaints reported to the Office of the Human Rights Ombudsman and the municipal Mayor, the Court recalls that State authorities who are aware of a situation of special risk have a responsibility to decide or determine whether the person being threatened or harassed requires protection measures, or to refer the matter to the competent authority for that purpose and to offer the person at risk timely information on the measures available. The assessment of whether or not a person requires protection measures and what those measures should be, is the State's obligation, and should not be limited to requiring the victim to apply to "the competent authorities", without knowing exactly which authority is best able to address his situation, since it is the State's responsibility to establish measures of coordination between its institutions and officials for that purpose.<sup>255</sup>

156. With respect to the measures adopted by the State, in the first place, the Court finds that, despite the complaints filed before the Public Prosecution Service and the information reported to it on several occasions (*supra* paras. 150 and 152), the latter did not adopt any measures to protect Mrs. B.A. and her family, and did not inquire about their situation or the level of risk to which they were exposed. Therefore, the action by the Public Prosecution Service was neither adequate nor effective in counteracting the risk to the safety of those individuals. Moreover, the Court deems it necessary to refer to the response by the Office of the Human Rights Ombudsman, the National Civil Police and the municipal Mayor, to the risk existing during the nine days following Mr. A.A.'s death, once they had knowledge of it. The Court notes that, even though the Departmental Assistant of the Ombudsman's Office asked different units of the National Civil Police to provide security measures for Mrs. B.A. and her family on December 22 and 23, 2004 (*supra* para.

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<sup>254</sup> Cf. Letter of March 28, 2005, from the Minister of National Defense to the Departmental Assistant of the Office of the Human Rights Ombudsman of Escuintla (File of attachments to submission brief, page 923).

<sup>255</sup> Cf. *Case of Vélez Restrepo and Relatives v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248, para. 201, and *Case of Luna López v. Honduras, supra*, para. 127.



151), there is no record that any measures of protection were implemented.<sup>256</sup> The only measure of support provided was through the action of the Mayor of Santa Lucía, when agents of the Municipal Transit Police carried out patrols in the area and accompanied the family during the nine days of prayers following Mr. A.A.'s death (*supra* para. 151).

157. In the Court's view, the States must establish special measures of adequate and effective protection.<sup>257</sup> For the measures to be adequate, they must be suitable to deal with the danger facing an individual and, to be effective, they must be able to produce the results for which they were conceived.<sup>258</sup> The Court considers that, in order to comply with the requirement of suitability in the case of human rights defenders, the State must ensure that special measures of protection are: a) in keeping with the functions performed by the defenders;<sup>259</sup> b) the level of risk must be assessed in order to adopt measures and monitor those that are in force;<sup>260</sup> and c) it must be possible to modify such measures in accordance with changes in the level of danger.<sup>261</sup> Thus, the type of protective measures offered must be decided in consultation with the human rights defenders in order to ensure a timely and focused intervention, proportionate to the danger that the defender could face. Furthermore, particular attention should be paid to a gender-based approach<sup>262</sup> within the risk-assessment procedure, because it could reveal a differentiated level of danger, and could have an impact on the implementation of measures of protection. To ensure that the measures are effective, the following elements are essential: a) an immediate response by the State as soon as it becomes aware of the existence of the danger,<sup>263</sup> to ensure that the measures are timely; b) that those involved in the protection of defenders have the necessary training to perform their functions and

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<sup>256</sup> According to statements rendered by Mrs. B.A., initially, the police did not provide protection to her family, because they "had very few vehicles, [...] no gas and [...] and it was too difficult for them to protect us, [since] they had a duty to an entire population." However, the Court has no evidence to be able to confirm this point. *Cf.* Statement of B.A. (File of attachments to submission brief, disk 2, minute 1:28).

<sup>257</sup> In this regard, in the context of the implementation of Provisional Measures, the Court has indicated that States have a special duty to protect those who work in non-governmental organizations, and to provide effective and adequate guarantees for human rights defenders to enable them to freely carry out their activities, preventing actions that limit or obstruct their work. *Cf. Matter of the Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 9, 2006, Considering para. 14, and *Matter of Danilo Rueda*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of May 28, 2014, Considering para. 16.

<sup>258</sup> The Court takes into account the expert analysis conducted by the Inter-American Commission of Human Rights, through the IACHR's Rapporteurship on Human Rights Defenders, in its Second Report on the Situation of Human Rights Defenders in the Americas (2012), page 232, para. 521.

<sup>259</sup> *Cf. Case of Nogueira de Cavalho et al. v. Brazil, supra*, para. para. 77, and *Case of Luna López v. Honduras, supra*, para. 127.

<sup>260</sup> *Cf.* Expert opinion rendered by Luis Enrique Eguren Fernández, on January 23, 2014 (Merits file, page 683), and Second Report on the Situation of Human Rights Defenders in the Americas (2012), para. 493. In certain cases, and depending on the specific circumstances, the safety of the relatives of human rights defenders must also be assessed, and they should be included in any protection measures requested. *Cf.* Report submitted by Mrs. Margaret Sekaggya, Special Rapporteur of the Secretary General on Human Rights Defenders, 13<sup>th</sup> Period of Sessions of the Commission on Human Rights, December 30, 2009, para. 61; Report submitted by Mrs. Margaret Sekaggya, Special Rapporteur of the Secretary-General on Human Rights Defenders, 25<sup>th</sup> Session of the Human Rights Commission, 23 December 2013, para. 88; United Nations General Assembly Resolution approved by the Human Rights Council at the 13<sup>th</sup> Session, April 15, 2010, and United Nations General Assembly Resolution approved by the Human Rights Council in the 68<sup>th</sup> Session, January 30, 2014, para. 19.

<sup>261</sup> *Cf.* Expert opinion of Luis Enrique Eguren Fernández rendered by affidavit on January 23, 2014 (Merits file, page 683), and IACHR Second Report on the Situation of Human Rights Defenders in the Americas (2012), page 233, para. 524.

<sup>262</sup> *Cf.* Expert opinion rendered by Hina Jilani before the Inter-American Court at the public hearing held on February 5, 2014; IACHR Second Report on the Situation of Human Rights Defenders in the Americas (2012), page 229, para. 512; Report submitted by Mrs. Margaret Sekaggya, Special Representative of the Secretary-General on Human Rights Defenders, 63<sup>rd</sup> Session of the Commission on Human Rights, 14 August 2008, Key Messages in relation to human rights Defenders, para. 9; Report submitted by Mrs. Margaret Sekaggya, Special Representative of the Secretary General on Human Rights Defenders, 16<sup>th</sup> Session of the Commission on Human Rights, 20 December 2010, para. 110; United Nations General Assembly Resolution approved on December 18, 2013 (68/181). Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: Protection of Human Rights Defenders, pages 4-8; United Nations General Assembly Resolution approved by the Human Rights Council in its 68<sup>th</sup> Session, January 30, 2014, para. 19; European Council, June 2004, European Union Guidelines on Human Rights Defenders. Introduction, para. 6, and the European Council's Conclusion regarding the first review of the implementation of "European Union Guidelines on Human Rights Defenders", June 7, 2006, EU Missions, at the initiative of and/or under the coordination of the local residence, para. 33.

<sup>263</sup> *Cf.* IACHR Report on the Situation of Human Rights Defenders in the Americas (2006), para. 339.

understand the importance of their actions;<sup>264</sup> and c) the measures must be kept in effect for as long as the victims of violence or threats require them.<sup>265</sup>

158. It is clear that, despite the reaction of the Municipal Transit Police, the measures ordered were neither adequate nor effective in addressing the circumstances of this specific case, since their manner and timing did not enable Mrs. B.A. to continue with her work and activities as a human rights defender; moreover, there was no risk assessment and no possibility of eventually modifying such measures. In addition, those responsible for providing the protection lacked training. In analyzing these omissions, the Court considers that it is of special significance that Mrs. B.A. was a human rights defender whose family had suffered the enforced disappearance of Y. A. by State agents in 1983, and for which she sought justice; that at the time family A was considered "subversive" by the security forces, for which reason its members were forced to move around within Guatemala, to Mexico and to the United States; and that this family also suffered the violent death of Mr. A.A. (*supra* para. 83).

159. In turn, the Court must analyze the context in which the facts of this case took place, as a fundamental aspect of the duty to provide prevention and protection. The Court considers it proven that, despite the fact that the State had full knowledge - at least from 2001 and on repeated occasions after that date - based on the reports of various international and national organizations, that human rights defenders in Guatemala were in a vulnerable situation (*supra* paras. 76 and 78), it did not adopt adequate and effective protection measures in respect of Mrs. B.A. and her family, according to the circumstances of the case and as soon as it had knowledge of the real and immediate danger facing them. Having regard to the criteria that define the State's obligation to provide protection against human rights violations, the State had a duty to act with diligence in response to the situation of special danger facing Mrs. B.A. and her family. This is particularly so, because in her specific case there were reasonable grounds to suppose that the motive for the acts of intimidation against her were related to her work at the time of the events, and that she was a human rights defender. Given the State's indifference, the Court considers that Guatemala failed in its duty to protect those individuals against the violation of their rights, and that this failure to provide guarantees is particularly serious given that the State was aware of the context.

160. Therefore, the Court concludes that the State failed in its obligation to guarantee the right to personal integrity of Mrs. B.A. and her family, through the adoption of adequate and effective special measures of protection, in violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof. Furthermore, given that N.A., J.A. and K.A. were children at the time of the events of this case (*supra* para. 97), the Court concludes that, in application of the principle of *iura novit curia*,<sup>266</sup> the violations committed against them also occurred in relation to Article 19<sup>267</sup> of the Convention. The

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<sup>264</sup> Cf. Expert report rendered by Hina Jilani before the Inter-American Court at the public hearing held on February 5, 2014. Also, the protective measures must not be provided by security officials who, according to the beneficiaries, are involved in the actions reported. Cf. IACHR Report on the Situation of Human Rights Defenders in the Americas (2006), para. 134, and IACHR Second Report on the Situation of Human Rights Defenders in the Americas (2012), page 233, para. 525. It is also important to emphasize that witness protection programs must not be used as substitutes for programs for the protection of human rights defenders. Cf. Report submitted by Mrs. Margaret Sekaggya, the Secretary-General's Special Representative on Human Rights Defenders, 13<sup>th</sup> Session of the Commission on Human Rights, December 30, 2009, para. 73.

<sup>265</sup> Cf. IACHR Report on the Situation of Human Rights Defenders in the Americas (2006), para. 134.

<sup>266</sup> The Court has ruled according to the *iura novit curia* principle, solidly supported by international case law, on numerous occasions. Cf., among other cases: *Case of the Mapiripán Massacre of v. Colombia. Preliminary Objections*. Judgment of March 7, 2005. Series C No. 122, para. 28; *Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 2, 2004. Series C No. 112, paras. 124 to 126; *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs*. Judgment of July 8, 2004. Series C No. 110, para. 178; *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107, para. 142; *Case of Maritza Urrutia v. Guatemala. Merits, Reparations and Costs*. Judgment of November 27, 2003. Series C No. 103, para. 134; *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 128, and *Case of "Five Pensioners" v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 153.

<sup>267</sup> Article 19 of the American Convention states: "Every minor child has the right to the measures of protection required by his condition as a minor, on the part of his family, society and the State." In this regard, the Inter-American Court has considered that, in general terms, a child means "every person who has not reached 18 years of age." *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 42, and *Case of Furlan and Relatives v. Argentina. Preliminary Objections, Merits, Reparations and*

Court will examine the alleged lack of an effective investigation of the complaints filed by Mrs. B.A. and her family in Chapter VIII.4, concerning judicial guarantees and judicial protection.

## VIII.2. RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE, IN RELATION TO THE OBLIGATION TO GUARANTEE RIGHTS

161. In this Chapter, the Court will examine the alleged violation of the right to freedom of movement and residence.<sup>268</sup>

### A) Arguments of the Commission and of the parties

162. The **Commission** argued that the State violated the right to freedom of movement and residence to the detriment of B.A. and her children L.A., N.A. and M.A.; of her mother, C.A.; of her sister E.A. and her children, J.A. and K.A., and of her brothers F.A. and G.A. First, it mentioned that following the forced disappearance of Y.A., family A suffered the violation of this right, as declared by the Court in the *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*. It also argued that family A was forcibly displaced and had to leave Santa Lucía Cotzumalguapa for the second time after the death of A.A., as a consequence of the alleged lack of investigation of the threats prior to his death, the impunity surrounding his murder, the progressive acts of harassment, the attacks against them and fear of being killed, as well as the absence of effective measures of protection after the nine days of prayers, in violation of Article 22 of the American Convention, in relation to Article 1(1) thereof. Specifically, it stated that B.A., together with her children and her mother C.A., had temporarily fled to Mexico in search of better security conditions, while E.A., along with her children, had been displaced and had taken refuge in another part of Guatemala. It also held that F.A. and G.A. stayed in Mexico because they were unable to realize their plan return to Guatemala owing to the facts of this case. At the same time, the Commission argued that these violations affected the personal integrity of the individuals mentioned.

163. The **representatives** agreed with the arguments presented by the Commission and added that "the situation of harassment and the grave danger in which the family found itself [...] was known by various state authorities; despite this, they did not provide adequate protection." They also argued that the fear of being a target of new attacks forced the members of family A to move away from their homes and settle in different places, "owing to the lack of investigation of the murder and the subsequent threats, and the lack of adequate and effective protection measures by the State [...]". Consequently, B.A., E.A. and their respective children were currently in a situation of internal displacement. At the same time, the representatives argued that the displacement of those individuals also affected their personal integrity.

164. The **State** denied that it had violated family A's right to freedom of movement and residence. It indicated that its domestic legislation guarantees those rights and that family A. had decided to leave their place of residence freely and without any type of constraint or restriction, and had moved to a place that they considered suitable, in order to remove themselves from the supposed threats and intimidations. Regarding these threats, the State reiterated that the family had never filed a complaint, and therefore it could be not be claimed that the State knew about those threats. Moreover, it added that it is not possible to conclude that those rights were violated because of the supposed situation of impunity surrounding the case of Mr. A.A., since such rights are not closely related and are of a different nature. In its final written arguments, the State referred to a report issued by the General Office of Immigration, on April 22, 2013, which stated that there

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*Costs*. Judgment of August 31, 2012. Series C No. 246, para. 123. The Court reiterates that cases in which the victims of human rights violations are children are especially grave, since they are holders of the rights established in the American Convention, and also enjoy the special measures of protection contemplated in Article 19, which must be defined according to the particular circumstances of each case. *Cf. Case of Gelman v. Uruguay, supra*, para. 121, and *Case of Furlan and Relatives v. Argentina, supra*, para. 125.

<sup>268</sup> Article 22(1) of the American Convention establishes that: "1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it, subject the provisions of the law."

were no records showing that C.A., B.A. and her children had gone to Mexico, other than the record of B.A.'s departure to Mexico in 2002. It added that there is evidence that she was back in the country in 2005. Therefore, a contradiction existed between what the representatives stated, and what really happened, since the representatives were not telling the truth. The State also held that the alleged victims could not claim the violation of Article 22 of the American Convention since they had refused the protection offered by the State. As to the alleged violation of their right to personal integrity due to the supposed displacement suffered, the State argued that it "cannot be held responsible for the decisions taken by the family in search of better conditions."

## B) Considerations of the Court

165. The Court has stated that freedom of movement is an essential condition for the free development of a person.<sup>269</sup> The Court also agrees with the position expressed by the United Nations Human Rights Committee in General Comment No. 27, which establishes that the right of movement and of residence consists, *inter alia*, of the following: a) the right of all those who are lawfully within a State to move freely within it, and to choose their place of residence, and b) the right of a person to enter his or her own country and to remain in it. Furthermore, the enjoyment of this right does not depend on any particular purpose or reason for the person wishing to move around or remain in a place.<sup>270</sup> Similarly, the Convention protects a person's right not to be forcibly displaced within a State Party, and not to be expelled from the territory of the State in which he or she is lawfully present.<sup>271</sup>

166. The Court has pointed out that the rights to freedom of movement and residence may be violated either formally or by *de facto* restrictions, if the State has not established the conditions or provided the means to exercise these rights.<sup>272</sup> This occurs, for example, when a person is the victim of threats or harassment and the State does not provide the necessary guarantees to ensure that he can move around and live freely in the territory concerned,<sup>273</sup> even when the threats and harassment originate from non-state actors.<sup>274</sup> Similarly, the Court has indicated that the failure to effectively investigate acts of violence can propitiate or perpetuate exile or enforced displacement.<sup>275</sup>

167. Furthermore, in agreement with the international community, the Court has reaffirmed that the obligation of the State of origin to protect the rights of displaced persons involves not only the duty to adopt measures of prevention, but also to provide the conditions required to allow for a voluntary, dignified and safe return to their usual place of residence or their voluntary resettlement in another part of the country. To this end, their full participation in the planning and management of their return or reinsertion must be guaranteed.<sup>276</sup>

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<sup>269</sup> Cf. *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 15, 2005. Series C No. 124, para. 110, and *Case Barrios Family v. Venezuela. Merits, Reparations and Costs*. Judgment of November 24, 2011. Series C No. 237, para. 162.

<sup>270</sup> Cf. *Case of the Moiwana Community v. Suriname, supra*, para. 110, and *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No.111, para 115. See, United Nations Human Rights Committee, General Comment No. 27 of November 2, 1999, paras. 1, 4, 5 and 19.

<sup>271</sup> Cf. *Case of the Mapiripán Massacre supra*, para. 188, and *Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No.270, para. 219.

<sup>272</sup> Cf. *Case of the Moiwana Community v. Suriname, supra*, paras. 119 and 120, and *Case of the Río Negro Massacres v. Guatemala, Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 4, 2012. Series C No. 250, para. 175.

<sup>273</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia, supra*, para 139, and *Case of the Río Negro Massacres v. Guatemala, supra*, para 175.

<sup>274</sup> Cf. *Case of the Barrios Family v. Venezuela, supra*, para. 162.

<sup>275</sup> *Case of the Moiwana Community v. Suriname, supra*, paras. 119 and 120, and *Case of Vélez Restrepo and Relatives v. Colombia, supra*, para 220.

<sup>276</sup> Cf. *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, Reparations and Costs*. Judgment of October 25, 2012. Series C No. 252, para. 188, and *Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, supra*, para. 220.

168. In Chapter VIII(1), the Court concluded that the State failed in its obligation to guarantee the right to personal integrity of Mrs. B.A. and her family, through the adoption of timely measures of protection, in violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof. From the body of evidence it is clear that, as a consequence of the situation of special danger they faced, the lack of protective measures and the fear they felt,<sup>277</sup> at the end of the nine days of prayers after Mr. A.A.'s death, on December 31, 2004, Mrs. B.A. and her sister E.A. began to "pack up the [contents] of their three homes,"<sup>278</sup> that is, their own homes and the home of their father A.A., and left the village of Cruce de la Esperanza and the Municipality of Santa Lucía Cotzumalguapa, and "fled to Escuintla" accompanied by the Municipal Transit Police of Santa Lucía "as far as the neighborhood between Santa Lucía and Siquinalá." In the words of Mrs. B.A., "from there we continued our journey [...] with three removals [and] three families [...] fleeing in search of our relatives."<sup>279</sup>

169. Once outside of Santa Lucía, Mrs. B.A., along with her children L.A. and N.A., aged 20 and 14 years of age respectively, and her mother C.A., decided to seek refuge in Mexico.<sup>280</sup> Mrs. B.A.'s son, M.A., who was 18 years of age, was left in the care of D.A. For her part, E.A. and her children J.A. and K.A., aged 12 and 7 years respectively, settled in another part of the country, where they rented a house (*supra* para. 98). The parties did not provide any evidence that E.A. and her children had returned to their home in the village of Cruce de la Esperanza.

170. As to the State's argument that the representatives did not tell the truth when they stated that B.A., her mother C.A., and her children L.A. and N.A., were forced to flee to Mexico temporarily, because there is evidence that B.A. was in the country in 2005 (*supra* para. 164), the file shows that on several occasions B.A. cooperated with the investigations opened by the Public Prosecution Service into the facts of this case, and that she was in Guatemala, specifically, on the following dates: January 21, 2005, to file a criminal complaint, on January 25, 2005, to be interviewed by the DICRI investigator, on February 10, and May 11, 2005 to render statements before the prosecutors in charge of the investigation, and on June 9, 2005, when she was handed copies of the investigation file on Mr. A.A.'s death (*supra* paras. 103, 105, 112 and 123). In addition, the immigration records provided by the State do not show departures to Mexico by the individuals mentioned in 2004 or 2005.<sup>281</sup> However, the evidence shows that on February 24, 2005, Mrs. B.A., her mother C.A. and her children, L.A. and N.A., requested refugee status from the Interior Ministry of the Mexican Government, through the Mexican Commission for Aid to Refugees in the State office of Chiapas, at the Protection Office in Tapachula.<sup>282</sup> On July 6, 2005 in Tapachula, Chiapas, B.A., her mother C.A. and her son L.A. received documents issued by the Subdirector of Immigration of the Mexican Interior Ministry, granting them permission to remain in that country for a period of 365 days with the status of "non-immigrant refugee[s]", which expired on June 20, 2006.<sup>283</sup> Although there is no record of N.A., the Court recalls that at the time he was 14 years old and remained with his mother during that time.

<sup>277</sup> Cf. Interview with B.A. on April 5, 2005 (File of attachments to submission brief, pages 1063 and 1064); Statement rendered by B.A. before the Special Human Rights Prosecutor on May 11, 2005 (File of attachments to submission brief, pages 868 to 869); Testimony of B.A. of December 12, 2010 (File of attachments to submission brief, pages 1351, 1352 and 1368), and Statement rendered by B.A. before the Inter-American Court at the public hearing held on February 5, 2014.

<sup>278</sup> Cf. Statement rendered by B.A. on December 17, 2010 (File of attachments to brief submitting the case, disk 2, minute 1:31:06); Statement of E.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minute 47:40); Statement of C.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minute 24:44); Testimony of B.A. of December 12, 2010 (File of attachments to submission brief, pages 1368 and 1370), and Statement rendered by B.A. before the Inter-American Court at the public hearing held on February 5, 2014.

<sup>279</sup> Cf. Statement rendered by B.A. before the Inter-American Court at the public hearing held on February 5, 2014; Statement rendered by E.A. of January 1, 2005 (File of attachments to submission brief, disk 1, minute 48:05); Statement rendered by C.A. on January 1, 2005 (File of attachments to submission brief, disk 1, minutes 24:44; 48:05); Statement rendered by B.A. on December 17, 2010 (File of attachments to submission brief, disk 2, minute 1:31:06); Statement rendered by B.A. on December 12, 2010 (File of attachments to submission brief, page 1370), and interview with B.A. of April 5, 2005 (File of attachments to submission brief, pages 1063 and 1064).

<sup>280</sup> Cf. Statement rendered by B.A. before the Inter-American Court at the public hearing.

<sup>281</sup> Cf. Immigration records (File of attachments to the answer brief, pages 7626 to 7932).

<sup>282</sup> Cf. Record of application for refugee status (File of attachments to submission brief, page 1412).

<sup>283</sup> Cf. Immigration document issued to B.A. on July 6, 2005 (File of attachments to pleadings and motions brief, page 2112); Immigration document issued to C.A. (File of attachments to pleadings and motions brief, page 2114), and Immigration document issued to L.A. by the Subdirector of Immigration of Chiapas (File of attachments to pleadings and motions brief, page 2108).

171. Finally, although the evidence does not indicate the specific period of time that they remained in Mexico, it is clear that B.A., her mother C.A., and her children L.A. and N.A., were in that country to initiate and follow up on the paperwork for their applications for asylum, and that on July 6, 2005, they obtained “non-immigrant refugee status”, granting them permission to remain in that country. Therefore, it is evident that they remained in Mexico for a period of time. Also, from the body of evidence it is clear that, by February 2006, C.A., B.A. and her children L.A. and N.A., had returned to the Municipality of Santa Lucía Cotzumalguapa, where they rented a house. In other words, after leaving the village of Cruce de la Esperanza on December 31, 2004, they did not return to their usual place of residence (*supra* paras. 97 and 99).

172. Consequently, the Court considers that, after Mr. A.A.’s death, the State did not provide adequate measures of protection to ensure that the aforementioned members of family A would not be forced to move within Guatemala or to Mexico.

173. The Commission and the representatives alleged the lack of adequate and effective protection measures following the nine days of prayers held for Mr. A.A. In particular, the Commission argued that in 2008, the State offered to initiate an application for the protection of the relatives, that is, more than three years after Mr. A.A.’s death. For its part, the State held that the alleged victims refused to receive the protection offered them, without indicating what type of measures it had offered (*supra* para. 164).

174. During the public hearing, B.A. explained that it was “through COPREDEH [that] she was offered a police officer,” and although she could not recall the exact dates, it was “around 2007, 2008, because of the constant threats, I was offered security [measures consisting of] sending me a [...] police officer whom I didn’t know, and I had to provide him with a place to sleep, food and wherever I went I had to pay for his fares. So, how could I accept this? In the first place, not knowing who the police officer was, because it was not someone permanent but one who keeps changing. In the second place, I myself barely had enough [money] to rent a room or two rooms – where was this person going to sleep?”<sup>284</sup> For its part, the State indicated that it “offered the presumed victim measures of protection and free security, which she rejected, arguing that she did not trust the State’s security and considered that her life would be in even greater danger.” It added that, “we didn’t even manage to do the risk analysis, because she refused to receive protection; therefore, she cannot say that she was not offered an agent for her protection, since she could possibly have been provided with another measure of protection such as perimeter security.” It further argued that B.A. failed in her duty to tell the truth before the Court, “given that the risk assessment to provide security and protection measures is a task carried out by the Individual Protection and Security Division of the National Civil Police, and is not a function of COPREDEH [...], therefore, it [...] could not have indicated which measures of protection they were going to provide, and much less, that these would have a financial cost.” Again, the State did not specify the measures offered, their details or how they would be implemented. Finally, it held that [B.A.] “could also [have] requested protection under the Law for the Protection of Procedural Subjects and Persons Connected with the Administration of Criminal Justice.”

175. In this regard, the file shows that, during the proceeding before the Inter-American Commission, the State, through the Presidential Commission on Human Rights (COPREDEH), explained in a brief dated October 2, 2006, that B.A. had not asked to join the Witness Protection Program, and that it was feasible for the Interior Ministry to provide provisional protection in coordination with the Defenders’ Unit of COPREDEH, in case “the threats reported by the petitioner continue,” provided that the petitioner agreed and cooperated.<sup>285</sup> Subsequently, from 2008, and on four different occasions, Guatemala offered to request personal security and protection measures for Mrs. B.A., whenever she considered it appropriate, which were not accepted by her because she felt it could put her life at greater risk.<sup>286</sup> For their part, the representatives submitted four briefs in response to the offer made by the State. From the information available in these briefs, it is

<sup>284</sup> Cf. Statement rendered by B.A. before the Inter-American Court at the public hearing held on February 5, 2014.

<sup>285</sup> Cf. Brief of October 2, 2006 (File of the proceedings before the Inter-American Commission, pages 400 and 401).

<sup>286</sup> Cf. Brief of June 23, 2009 (File of the proceedings before the Inter-American Commission, page 298); Brief of March 27, 2009 (File of the proceedings before the Inter-American Commission, page 331); Brief of April 14, 2009 (File of the proceedings before the Inter-American Commission, pages 320 and 321), and Brief of June 17, 2011 (File of the proceedings before the Inter-American Commission, page 100).

possible to ascertain that the State offered to provide Mrs. B.A. with three types of protection consisting of: the assignation of personal protection, protection at a fixed place and perimeter surveillance, which would be provided by police agents.<sup>287</sup>

176. For the Court, two aspects are fundamental in relation to the alleged measures of security and protection offered by the State. First, the specific offer was made in 2008, that is, at least three years after family A was forced to leave. Therefore, during that period, it is clear that the State failed in its duty to provide the necessary conditions to enable those individuals to return voluntarily to their places of residence. Secondly, the information provided by the representatives makes it clear that in 2008 the State offered, at least, to "assign personal protection, protection in a fixed position and perimeter surveillance" (*supra* para. 175). The evidence does not indicate how those measures were to be implemented in terms of time, means and place, as well as their duration. Consequently, it is not possible to determine whether these measures were intended to facilitate a voluntary, dignified and safe return to their usual place of residence, or to guarantee their protection at the place where they stayed outside the village of Cruce de la Esperanza, or how they would guarantee the victims' full participation in planning and arranging their return or reinsertion. Nor is it clear whether these measures were to be implemented only in favor of B.A., or whether they would include her mother C.A., her children L.A. and N.A., her sister E.A., and her sister's children, J.A. and K.A.

177. The lack of evidence to dispute the ineffectiveness of the State's alleged offer of measures of security and protection, together with B.A.'s statement and the absence of information by the State, allow the Court conclude that the State did not adopt sufficient and effective measures to guarantee the members of family A, who were forcibly displaced, a safe and dignified return to their usual places of residence or voluntary resettlement in another part of the country, ensuring their full participation in the planning and management of a process of return or reinsertion.

178. In conclusion, given that B.A., her mother C.A., her children L.A. and N.A., and her sister E.A. and her children, J.A. and K.A., were forced to leave their usual places of residence and move away owing to the particular situation of danger they faced, the lack of protective measures and the fear they felt, and that the State failed in its obligation to provide the necessary conditions to facilitate their voluntary, dignified and safe return to their usual places of residence, or their voluntary resettlement in another part of the country, the Court declares the violation of Article 22(1) of the American Convention, in relation to Article 1(1) thereof. Moreover, given that there were children among these victims of enforced displacement, namely N.A., J.A. and K.A. (*supra* para. 169), the Court concludes that the violations in their regard also occurred in relation to Article 19 of the Convention in application del principio *iura novit curia*.

179. As to F.A. and G.A., the children of A.A., who allegedly remained in Mexico because they were unable to fulfill their plan to return to Guatemala, in the *Case of Gudiel Álvarez et al. ("Diario Militar")* the Court declared the violation of Article 22(1) of the Convention to the detriment of those individuals, due to the fact that they were unable to return and that their displacement continued after March 9, 1987. Thus, the Court has already concluded that the State "failed to comply with its obligation to provide the necessary conditions to facilitate a voluntary, dignified and safe return" for those victims.<sup>288</sup>

180. The Court also considers that in this case it is not necessary to examine the arguments of the Commission and the representatives regarding the possible impacts of displacement on the personal integrity of Mr. A.A.'s relatives. The possible effects generated by that displacement will be taken into account in establishing the corresponding reparations.

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<sup>287</sup> Cf. Brief of June 6, 2008 (File of the proceedings before the Inter-American Commission, page 386); Brief of May 6, 2009 (File of the proceedings before the Inter-American Commission, page 294); Brief of June 23, 2009 (File of the proceedings before the Inter-American Commission, page 298), and Brief of August 8, 2011 (File of the proceedings before the Inter-American Commission, page 37).

<sup>288</sup> Cf. *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, *supra*, para. 308.

### VIII.3. RIGHT TO PARTICIPATE IN GOVERNMENT, IN RELATION TO THE OBLIGATION TO GUARANTEE RIGHTS

#### A) Arguments of the Commission and of the parties

181. The *Commission* argued that the State did not guarantee Mr. A.A. "the exercise of [his] political rights in the position he held," and did not investigate his murder with special diligence and thoroughness, despite the indications that he had been killed in retaliation for his work as a community organizer and a human rights defender, in his position in public office, as well as his quest for justice to honor the individuals who disappeared during the conflict. It argued that the lack of investigation, together with the killing of several social leaders in the area, suggested a situation of impunity and a lack of protection which would have a threatening effect upon individuals seeking to defend human rights through their leadership in the community.

182. With respect to Mrs. B.A., the Commission held that the time of the events, she worked as the Secretary of the same COCODE to which her father belonged, a position of a political nature in which she represented the citizens. According to the Commission, "after the failure to investigate the facts related to the death of [A.A.] and the progressive harassment, family A was forced to leave Santa Lucía[,] and consequently [B.A.] had to give up her political post in the COCODE." The Commission also noted that a causal link exists between the resignation of B.A. and the failure to clarify the facts related to her father's death; therefore, it considered that the State failed to guarantee B.A. the continued exercise of her political rights. For these reasons, the Commission concluded that the State is responsible for the violation of Article 23 of the Convention, in relation to Article 1(1) thereof, to the detriment of A.A. and B.A.

183. The *representatives* argued that "the murder of [A.A.], as well as the threats and intimidation, and the subsequent departure of various members of his family, prevented them from continuing with the numerous projects they promoted in the community of Cruce de la Esperanza and the normal activities of the Community Development Council. Moreover, [...since] that was the first of several murders of people associated with the Mayor's office, it affected the continuity of different development projects in the community undertaken by the Municipality, and implied a violation of the political rights of the population [...]." According to the representatives, these events had repercussions "on the entire community and, particularly, on his daughter [B.A.], who was prevented from freely exercising her right to defend human rights since she had to leave the positions in which she carried out those activities." The representatives also argued that, "given the lack of due diligence in the investigation of the murder of [A.A.], and of the previous and subsequent threats made against family [A], the State violated the political rights of [A.A.] and [B.A.] and of the community, affecting the work of public representation carried out by both."

184. The *State* argued that it had not violated the political rights of Mr. A.A. or his daughter, since "both have had as much leadership as they wished in their community's political activities." It added that both "have been able to take part in the conduct of public affairs, directly or through freely elected representatives (both have worked in COCODE); they have had the freedom to vote and be elected in genuine periodic elections [...], and have had access, under general conditions of equality, to the public service of [the] country." It also stated that the arguments of the Commission and the representatives claiming that Mr. A.A.'s death was not investigated, "have no connection whatsoever with the true essence of the protection and guarantee of political rights [...]."

#### B) Considerations of the Court

185. This Court has considered that Article 23 of the Convention protects not only a person's right to be elected to public office, but also the right to have a real opportunity to serve in the position to which he or she was elected. To this end, the State has a responsibility to adopt effective measures that guarantee the necessary conditions for the



full exercise of that right.<sup>289</sup> Indeed, the right to participate in government specifically implies that citizens not only have the right, but also the opportunity to participate in the conduct of public affairs.<sup>290</sup>

186. Article 23 of the American Convention establishes that rights holders should have political rights, but also adds the term “opportunities.” This means that States should take positive steps to ensure that everyone who is a formal holder of political rights has a real opportunity to exercise them, addressing any situations of special vulnerability affecting the holders of this right.<sup>291</sup> Therefore, it is imperative that the State create optimum conditions and mechanisms for the effective exercise of political rights.<sup>292</sup> The Court emphasizes, as it has on other occasions, that these general conditions of equality refer both to access to public office through popular election as well as through appointment or designation.<sup>293</sup>

187. The Court has already established that, at the time of his death, Mr. A.A.’s served as Mayor of the Community Development Council (COCODE) of Cruce de la Esperanza, while his daughter, Mrs. B.A., held the position of Secretary of the same COCODE (*supra* paras. 87 and 90). The COCODE’s formed part of the Guatemala’s System of Development Councils created through Decree 11-2002 (Law on Urban and Rural Development Councils), as the main vehicle for citizen participation in public affairs (*supra* para. 80). This system consisted of five levels: national, regional, departmental, municipal and community. In accordance with Decree 11-2002, the community level consisted of a Community Assembly “made up of local residents of the same community” and a Coordinating Body elected by the Community Assembly, in charge of implementing the programs and projects approved.<sup>294</sup> In turn, this coordination body consisted of a Community Mayor, who presided it, and a maximum of 12 representatives. There is no dispute as to the political nature of the positions held by A.A. and B.A. within this system.

188. Furthermore, in 2004, Mrs. B.A. was also employed by the Municipality of Santa Lucía Cotzumalguapa, in the position of Social Organization Officer (*supra* para. 89). Her work involved “organizing each canton, hamlet, village, neighborhood [and] subdivision [...] in the municipality, as well as helping to organize unions, trade associations, transport and other popular organizations, provide them with civic training and influence the political life of the municipality and of the nation in general [...]”.<sup>295</sup> Thus, the Court notes that her position meant that she was involved in the conduct of public affairs. Moreover, during the hearing held before this Court, Mrs. B.A. explained that she had been appointed to that position, and that “every four years elections are held and they can freely dismiss you.” In other words, when new municipal authorities took office, it was possible that she could lose her position. Consequently, the Court considers that this post was also of a political nature.

189. With regard to the possible effects on Mr. A.A.’s political rights, this Court recalls that the violation of the right to life attributable to the State may, in turn, result in violations of other rights enshrined in the American Convention.<sup>296</sup> However, given that there is not sufficient evidence in this case to declare the State’s failure in its obligation to protect the right to life of Mr. A.A. in the exercise of his work as a human rights defender (*supra* para. 149), likewise, there are not sufficient grounds to establish that the State failed in its obligation to guarantee the exercise of his political rights. As mentioned previously, the alleged lack of an effective investigation into Mr. A.A.’s death will be examined in Chapter VIII (4) *infra*, concerning judicial guarantees and judicial protection.

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<sup>289</sup> Cf. *Case of Yatama v. Nicaragua*, *supra*, para. 201, and *Case of Luna López v. Honduras*, *supra*, para. 142.

<sup>290</sup> Cf. *Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 25, 2010, Series C No. 212, para. 107, and *Case of Luna López v. Honduras*, *supra*, para. 142.

<sup>291</sup> See, *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213, para. 173, and *Case of Chitay Nech et al. v. Guatemala*, *supra*, para. 106.

<sup>292</sup> Cf. *Case of Yatama*, *supra*, para. 195, and *Case of Luna López v. Honduras*, *supra*, para. 143.

<sup>293</sup> Cf. *Case of Yatama*, *supra*, para. 200, and *Case of Luna López v. Honduras*, *supra*, para. 143.

<sup>294</sup> Cf. Decree 11-2002, Law of Urban and Rural Development Councils, Articles 13, 14, 16 and 17 (Merits file, pages 1656 to 1662).

<sup>295</sup> Cf. Statement rendered by B.A. on December 12, 2010 (File of attachments to submission brief, page 1353).

<sup>296</sup> Cf. *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, para. 147, and *Case of Luna López v. Honduras*, *supra*, para. 141.

190. With respect to Mrs. B.A., the Court has already established that she faced a situation of real and imminent danger and that the State did not provide her with adequate and effective measures of protection, despite being aware of her situation. This, in turn, forced her to leave the village of Cruce de la Esperanza and the Municipality of Santa Lucía Cotzumalguapa and resulted in her displacement within Guatemala and to Mexico (*supra* para. 169). This Court has also determined that the State did not provide the necessary guarantees to facilitate Mrs. B.A.'s voluntary dignified and safe return to her usual place of residence, i.e. the village of Cruce de la Esperanza, where she held the positions of Secretary of COCODE and Social Organization Officer (*supra* para. 171).

191. In these circumstances, given the nature of Mrs. B.A.'s work as Social Organization Officer in the Municipality of Santa Lucía Cotzumalguapa, her displacement necessarily implied an interruption in her political work from this position, which she was unable to resume until February 16, 2006 (*supra* para. 99). Furthermore, given that in order to serve as Secretary of the COCODE of Cruce de la Esperanza, Mrs. B.A. was required to live in that village - to which she still has not been able to return- the Court considers that she was unable to continue to exercise her political rights from this public position.

192. Therefore, the Court considers that the State did not guarantee the necessary conditions to enable Mrs. B.A. to continue to exercise her political rights from the political positions she held. Consequently, the State is responsible for the violation of Article 23(1) of the American Convention, in relation to Article 1(1) thereof, to her detriment.

193. As to the representatives' argument that Mrs. B.A. was prevented from continuing to freely exercise her right to defend human rights as a consequence having to leave the positions in which she carried out those activities, the Court considers that the obligation to guarantee that right has been sufficiently addressed in the analysis of the obligation to protect the personal integrity of Mrs. B.A. (*supra* paras. 153 to 160).

#### VIII-4. RIGHT TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS

194. In this Chapter, the Court will examine the alleged violation of the right to judicial guarantees<sup>297</sup> and to judicial protection,<sup>298</sup> in relation to the investigation into the violent death of Mr. A.A. and the alleged threats made to family A.

##### A) Arguments of the Commission and of the parties

195. The *Commission* argued that Guatemala violated Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of the relatives of A.A., given that the domestic investigations and proceedings had failed to provide effective remedies to guarantee access to justice, establish the truth of the facts, investigate and punish all those responsible and provide reparation for the consequences of the violations. The Commission offered four sets of arguments, which were comprehensively developed during the proceedings before the Court, namely: i) the lack of due diligence in the investigation of the death of A.A.; ii) the lack of due diligence in following logical lines of investigation; iii) the lack of protection for the individuals who testified in the case, and iv) the failure to investigate within a reasonable period. It also pointed out that the absence of a full and effective investigation, which in turn produced suffering and anguish because of not knowing the truth, in itself affected the psychological and moral integrity of the relatives of A.A.

196. The *representatives* added that the investigation of Mr. A.A.'s death could not be described as thorough, given the constant failure to implement timely or appropriate

<sup>297</sup> Article 8(1) of the American Convention establishes that: "1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him, or for the determination of his rights and obligations of a civil, labor, fiscal or any other nature."

<sup>298</sup> Article 25(1) of the American Convention establishes that: "1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the Constitution or laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

mechanisms for its development and the search for the truth. Thus, several failings arose within the investigation, since the process did not make use of all the means of evidence available, including those proposed by the relatives, who pointed out that they had to propel the investigation forward at different stages. They also indicated that the investigation remained in the initial stages and in the most absolute impunity. The representatives further argued that none of the three hypotheses that emerged during the investigation were conclusively proven or ruled out, not because of the complexity of the case, but because of negligent action by the State. In this regard, they specified each of the failings that they attributed to the State. Furthermore, they held that the State did not investigate the threats and harassment suffered by the family of A.A., both before and after his death, which were known to the authorities, and that at no time did the State take into account the alleged gravity of the situation they faced after his death, which could constitute a lack of due diligence. On this point, they explained that, although it is true that the victim's relatives did not immediately file a complaint before the Public Prosecution Service concerning the alleged threats, intimidation and harassment they suffered, the State knew about these incidents because they had been reported to the Office of the Human Rights Ombudsman. It was evident, then, that the information contained in the file regarding the possible connection with A.A.'s death was ignored. Likewise, the investigating body would have known about it through subsequent statements rendered before the Prosecutor's Office by members of family A. In addition, the representatives indicated that, as consequence of this denial of justice, "the psychological and moral integrity of the members of family [A] has been seriously affected [...]."

197. The **State** pointed out that the rights to judicial guarantees and judicial protection are duly regulated under domestic law. It added that it could not have violated Mr. A. A.'s rights, since he had never attempted to make use of the judicial bodies to exercise them in connection with the events that led to his death. It also argued that within its organization, the State clearly provides for the respective judicial guarantees for the direct relatives of the victims, and that B.A. would have had access to all the remedies before the competent bodies to file her complaints, applications, reports and recommendations. It held that it could not be accused of omissions or a lack of diligence in the investigation, since it had carried out numerous procedures to clarify the facts. However, it was unable to proceed with the trial because it had not been possible to attribute A. A.'s death to any individual. This was not due to a lack of will, or a lack of diligence, but rather to the complexity of the matter and the range of possible causes found by the Public Prosecution Service. According to the State, the procedures established by law at the time of the events were fully observed. It also emphasized that, had it been unwilling to investigate, legal means were available within the proceeding that could have been used to complete the investigation, since according to Guatemalan law, if the prosecutor in charge of the investigation or the Supervising Judge considers that there is insufficient evidence to bring charges within a reasonable time, the case may eventually be suspended, provisionally closed or archived.

198. The State also affirmed that, "although the procedures carried out at the time of the facts were not perfect, with the passage of time the State has gradually corrected these weaknesses, adopting a number of measures that today [would make...] the procedure for removing the body and the method of collecting evidence more uniform and ordered." In addition, it expressed concern that the Commission should assess the investigations based on the United Nations Manual for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol), "as though it were a well-known case of extrajudicial execution in which the participation of State agents was unquestionable." Finally, the State argued that although the petitioners had adduced that the supposed threats suffered by the presumed victims after Mr. A.A.'s death were not investigated, they did not file any complaints to report this to the State, as required by law, but did so through third parties.

## **B) Considerations of the Court**

199. The Court has established that, pursuant to the American Convention, the States Parties are obliged to provide effective legal remedies to the victims of human rights

violations (Article 25),<sup>299</sup> remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)),<sup>300</sup> all this within the general obligation of the States to guarantee the free and full exercise of the rights recognized by the Convention to all persons under their jurisdiction (Article 1(1)).<sup>301</sup> Similarly, it has stated that the right of access to justice must guarantee, within a reasonable time, the right of alleged victims or their relatives to learn the truth about what happened and ensure that those responsible are investigated, tried and, if applicable, punished.<sup>302</sup>

200. The Court has established in its consistent case law that the obligation to investigate is an obligation of means and not of results, which must be assumed by the State as its own legal duty, not as a mere formality preordained to be unsuccessful, or as a simple action responding to private interests<sup>303</sup> that depends on the procedural initiative of the victims or their relatives, or on the offer of evidence by private individuals.<sup>304</sup> The investigation must be serious, impartial and effective, and must be designed to determine the truth and to pursue, capture, prosecute and eventually punish the perpetrators.<sup>305</sup> This obligation remains "regardless of the agent to whom the violation may eventually be attributed, even private individuals, because if their acts are not properly investigated, they would, to a certain extent, be supported by the public authorities, which would involve the international responsibility of the State."<sup>306</sup> Moreover, due diligence requires the investigating body to undertake all necessary actions and inquiries to achieve the desired result. Otherwise, the investigation is not effective under the terms of the Convention.<sup>307</sup>

201. The Court notes that in this case, the investigations into the violent death of A.A. and the threats to family A remain in the hands of the Public Prosecution Service. On this point, the Court's case law establishes that the guarantees recognized in Article 8(1) of the Convention do not apply solely to judicial proceedings.<sup>308</sup> In particular, regarding the actions of the authorities in charge of the investigations, the Court has established that, depending on the circumstances of the case, it may be necessary to analyze the procedures that relate to and constitute the grounds for judicial proceedings, particularly the investigative procedures, upon which the results of the opening and progress of these proceedings depend.<sup>309</sup> Of course, in such cases the analysis of the guarantees of Article 8(1) in the context of the actions of the Public Prosecution Service, *mutatis mutandis* is applied, as appropriate.

202. The Court further notes that the Office of the Human Rights Ombudsman of Escuintla also conducted an investigation and reached its conclusions (*supra* paras. 121 and 122). In this regard, the Court has stated that the "historical truth" documented in special reports, or the tasks, activities and recommendations issued by special

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<sup>299</sup> Cf. *Case of Fairén Garbí and Solís Corrales v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 2, para. 90, and *Case of Liakat Ali Alibux v. Suriname, supra*, para. 30.

<sup>300</sup> Cf. *Case Godínez Cruz v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 3, para. 92, and *Case of Liakat Ali Alibux v. Suriname, supra*, para. 30.

<sup>301</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, supra*, para. 91, and *Case of Liakat Ali Alibux v. Suriname, supra*, para. 30.

<sup>302</sup> Cf. *Case of Bulacio v. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of Osorio Rivera and Family v. Peru. Preliminary Objections, Merits, Reparations and Costs*.

Judgment of November 26, 2013. Series C No. 274, para. 200.

<sup>303</sup> Cf. *Case of Velásquez Rodríguez. Merits, supra*, para. 177, and *Case of García and Relatives v. Guatemala, supra*, para. 132.

<sup>304</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case García and Relatives v. Guatemala, supra*, para. 132.

<sup>305</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 7, 2003. Series C No. 99, para. 127, and *Case of García and Relatives v. Guatemala, supra*, para. 135.

<sup>306</sup> *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Luna López v. Honduras, supra*, para. 155.

<sup>307</sup> Cf. *Case of the Serrano-Cruz Sisters v. El Salvador. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C No. 120, para. 83, and *Case of Albán Cornejo et al. v. Ecuador. Merits Reparations and Costs*. Judgment of November 22, 2007. Series C No. 171, para. 62.

<sup>308</sup> Cf. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74, para. 105, and *Case of Barbani Duarte et al. v. Uruguay. Merits, Reparations and Costs*. Judgment of October 13, 2011. Series C No. 234, para. 118.

<sup>309</sup> Cf. *Case of Garibaldi v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 23, 2009. Series C No. 203, para. 120, and *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216, para. 159.

commissions or ombudsman's offices, such as in this case, do not complement or replace the State's obligation to establish the truth and investigate crimes through judicial processes.<sup>310</sup> Therefore, without diminishing the efforts of the State and the actions undertaken by the Ombudsman's Office, the Court considers that the analysis of the State's obligation to conduct diligent, thorough and effective investigations of a crime must be circumscribed to the actions undertaken in the criminal sphere.

*B.1. Regarding the violent death of A.A.*

203. In order to determine whether the State fully discharged its obligation to investigate the facts of this case, it is necessary to examine the various steps it took after the discovery of Mr. A.A.'s lifeless body, with the aim of elucidating the facts and identifying those responsible for his violent death. The Court will examine the dispute between the parties under the following headings: a) due diligence in the initial procedures of the investigation; b) due diligence in relation to the logical lines of investigation, in the gathering and processing of evidence, and reasonable time; c) protection for justice operators, investigators, witnesses and relatives of victims, and d) conclusions.

*B.1.1. Due diligence in the initial procedures of the investigation*

204. The Court has established that, in the context of an investigation into a violent death, efficiency should be evident from the first procedures carried out with full diligence.<sup>311</sup> As to the management of the crime scene, the handling of the victim's body, the autopsy, and maintaining the chain of custody for every item of forensic evidence, in its case law<sup>312</sup> and following the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol), the Court has held that certain basic and essential procedures must be carried out to preserve the elements of proof and evidence which could contribute to the success of the investigation. In this regard, it has specified the guiding principles that should be observed when investigating a violent death. Consequently, the Court considers that the State's argument questioning the evaluation of the investigations in light of the Minnesota Protocol (*supra* para. 198) is unfounded.

205. The Court has specified that the State authorities who conduct an investigation of this nature must, at least, attempt to: i) identify the victim; ii) gather and preserve evidence related to the death, so as to assist in a potential criminal investigation of those responsible; iii) identify possible witnesses and take their statements regarding the death under investigation; iv) determine the cause, manner, place and time of death, as well as any pattern or practice that may have caused the death, and v) distinguish between natural death, accidental death, suicide and homicide. It is also essential that competent professionals thoroughly investigate the crime scene, carry out autopsies and analyses of human remains, in a rigorous manner, and using the most appropriate procedures.<sup>313</sup>

206. In addition, international standards indicate that, regarding the crime scene, investigators must, at the very least: photograph the crime scene and any other physical evidence, and the body as it was found and after it was moved; gather and conserve all samples of blood, hair, fibers, threads and other clues; examine the area to look for footprints or any other trace of evidence and prepare a detailed report with any observations regarding the scene, the measures taken by the investigators and the storage of all the evidence collected. The Court has also established that when investigating a crime scene, the area around the body must be cordoned off and access to it forbidden, except to the investigator and his team.<sup>314</sup>

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<sup>310</sup> Cf. *Mutatis mutandis*, *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 150, and *Case of The Dos Erres Massacre v. Guatemala*, *supra*, para. 232.

<sup>311</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras*, *supra*, para. 127, and *Case of Luna López v. Honduras*, *supra*, para. 159.

<sup>312</sup> Cf. *Case of Luna López v. Honduras*, *supra*, para. 151, and *Case of Castillo González et al. v. Venezuela*, *supra*, para. 152.

<sup>313</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras*, *supra*, para. 127, and *Case of Castillo González et al.*, *supra*, para. 152.

<sup>314</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No.205, para. 301, citing the *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, Doc. E/ST/CSDHA/12 (1991).

207. Likewise, due diligence in the legal and medical investigation of a death requires that the chain of custody for each item of forensic evidence be safeguarded.<sup>315</sup> The Court has specified that this involves keeping a precise written record, complemented, as applicable, by photographs and other graphic elements, to document the history of each item of evidence as it passes through the hands of the different investigators responsible for the case. The chain of custody can extend beyond the trial, sentencing and conviction of the accused, given that old evidence, duly preserved, could help exonerate someone who has been erroneously convicted. The exceptions to the foregoing are the positively identified remains of victims, which may be returned to their families for burial, on condition that they cannot be cremated and may be exhumed for new autopsies.<sup>316</sup>

208. The Court has confirmed the following irregularities in the initial procedures of the investigation:

- a) The file contains no information as to how investigators learned of the discovery of the body, i.e. the identity of the person(s) who reported the crime and the circumstances in which the body was found. It does not establish whether details were taken of the vehicle parked at the crime scene, whether the area was protected or cordoned off or whether inspections were conducted with the necessary thoroughness to identify details such as the state of the clothing on the body, or if there were any blood stains, hairs, fibers, threads or other clues on the victim's body. Therefore, the crime scene was not managed correctly.
- b) The personal effects found on A.A., the bicycle he was riding and a bag with the logo of the local family grocery store and its contents, were handed over to his son G.A., who went to the site and identified the body.<sup>317</sup> In other words, they were not collected as evidence.
- c) Mr. A.A.'s clothing "was not packaged nor were details taken [of it]" and it was discarded.<sup>318</sup> On this point, it is important to emphasize that on May 4, 2005, the Assistant Prosecutor of Santa Lucía Cotzumalguapa informed the agent of the Human Rights Prosecutor that "[t]he victim was taken to the morgue with the same clothing he wore" and that "[n]one of the victim's clothes were removed." Specifically, he stated "[a]t a simple glance no clues were found on the items of clothing; however this detail can only be determined by an expert in the matter" (*supra* para. 111). Consequently, since no evidence was collected, there was no opportunity to conduct an expert assessment to analyze those items of clothing.
- d) Despite the fact that the Assistant Prosecutor of Santa Lucía Cotzumalguapa had ordered the body to be taken to the local morgue for the legal autopsy (*supra* para. 102), an officer of the National Civil Police of Santa Lucía Cotzumalguapa who went to the crime scene explained that "because the morgue was under construction, [the body of] the victim was taken to the Santísima Trinidad funeral home in Santa Lucía Cotzumalguapa,"<sup>319</sup> in a vehicle driven by an employee of the funeral home,<sup>320</sup> with no evidence that it was guarded. Thus, the chain of custody for A.A.'s body and the evidence on it was broken.
- e) When the investigating agent assigned by the Criminal Investigation Service of Precinct 31 of the National Civil Police of Escuintla arrived at the crime scene, "the body had already been removed." Consequently, based on the information available at that time, and without performing a visual inspection, a preliminary report on the

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<sup>315</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 301, citing the *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, Doc. E/ST/CSDHA/12 (1991).

<sup>316</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 305.

<sup>317</sup> Cf. Letter of December 20, 2004, from the Chief of Substation No. 31-43 of Escuintla to the District Prosecutor of the Public Prosecution Service (File of attachments to submission brief, page 940); Brief of May 4, 2005 of the Assistant Prosecutor of Santa Lucía Cotzumalguapa, to the Assistant of the Office of the Human Rights Prosecutor of the Public Prosecution Service (File of attachments to submission brief, page 855), and Statement rendered by an agent of the National Civil Police on May 9, 2005 (File of attachments to submission brief, pages 860 to 862).

<sup>318</sup> Cf. Extended Autopsy Report submitted on May 13, 2005 (File of attachments to submission brief, pages 880 to 881).

<sup>319</sup> Cf. Statement rendered by an agent of the National Civil Police on May 9, 2005 (File of attachments to submission brief, pages 860 to 862).

<sup>320</sup> Cf. Letter of December 20, 2004, from the Chief of Substation No. 31-43 of Escuintla to the District Prosecutor of the Public Prosecution Service (File of attachments to submission brief, page 940).

investigation was prepared on December 21, 2004 (*supra* para. 103). Thus, no proper report was prepared giving details of any observations at the crime scene, or the actions taken by investigators and the handling of the evidence collected. Nor were any photographs taken at the crime scene to adequately document the history of each item of evidence.

- f) Although experts of the Crime Scene Department of the Public Prosecution Service prepared a sketch of the site where Mr. A.A.'s body was found (*supra* para. 110), it was prepared belatedly, more than four months after the events, and did not specify the items found at the crime scene.

209. In this regard, the Court emphasizes that the correct management of the crime scene is the starting point for an investigation and, therefore, it is crucial in clarifying the nature, circumstances and characteristics of the crime, as well as those involved in it. Consequently, it must be managed by professionals who understand the importance of their actions and are trained in the preservation of a crime scene, the activities that form part of it, and in the gathering and preservation of the evidence.

210. The Court also finds flaws in the manner in which the results of the legal autopsy performed on Mr. A.A.'s body were presented in the first report on December 22, 2004, determining the cause of death. An extended report, dated May 10, 2005, specified the approximate time of death, the characteristics of the gunshot wounds, the distance at which the weapon was fired, the trajectory of the bullets in the body, the basic and direct cause of death and the manner of death. According to the extended report, dated August 3, 2006, the two bullet fragments extracted from the body were sent to the Public Prosecution Service for their respective analysis, and a third bullet fragment could not be extracted through the conventional autopsy because no radiological equipment was available to locate it (*supra* para. 107). Therefore, although the autopsy was carried out on December 20, 2004, it was not until August 3, 2006, that the information on the cause, manner, place and approximate time of death became available. In other words, during a period of one year and seven months the results were presented in an incomplete, fragmented manner and without using the appropriate procedures.

211. Similarly, the Court notes inconsistencies in establishing the time of Mr. A.A.'s death. In the preliminary report of the investigation of December 21, 2004, the investigating agent of the Criminal Investigation Service of Precinct 31 of the National Civil Police of Escuintla gave the probable time of death as 10:45 hours. This is consistent with the Assistant Prosecutor's record of the removal of the body, on December 20, 2004, which states that this procedure was carried out at 11:30 hours. However, Mr. A.A.'s death certificate shows the time of death as 12:30 hours,<sup>321</sup> while the extended autopsy report of May 10, 2005, stated that at the time of the autopsy (13:00 hours.) approximately 3 or 4 hours could have elapsed since his death.<sup>322</sup> In this regard, no action was taken to correct these inconsistencies, since the rectification proceeding was not activated in accordance with the legal requirements in force at the time.<sup>323</sup> All this has hindered efforts to clearly establish the approximate time of Mr. A.A.'s death.

212. Consequently, the Court concludes that the following irregularities occurred in this case: i) the circumstances in which the body was found were not specified; ii) the crime scene was not managed correctly, nor was the body removed and handled properly; iii) certain items of evidence were not collected at the crime scene; iv) the chain of custody for items of forensic evidence was broken; (v) no proper report of the investigation was prepared; and vi) there were irregularities in preparing the sketch at the site where the body was found; there were weaknesses and inconsistencies in the manner in which the

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<sup>321</sup> Cf. Death certificate of Mr. A.A. (File of attachments to submission brief, page 847).

<sup>322</sup> Cf. Report of December 21, 2004 (File of attachments to submission brief, pages 916 to 918); Proceedings of December 20, 2004 before the Assistant of the District Prosecutor's Office of Santa Lucía Cotzumalguapa (File of attachments to submission brief, page 939); Death certificate of A.A. (File of attachments to submission brief, page 847), and Extended Autopsy Report No. 225/04, Forensic Medicine, Judicial Investigation Body (File of attachments to submission brief, pages 880 and 881).

<sup>323</sup> In this regard, during the public hearing, a Prosecutor assigned to the case explained that, according to the Voluntary Jurisdiction Law, Decree Law 107, "to make that type of correction, a special procedure must be followed. I recall [...] that at the time, our civil procedural law established that corrections of form could not be made *de officio* and that corrections of substance had to be authorized by a judge, and as a result nothing was done." Cf. Statement rendered by E.M., a prosecutor assigned to the case, before the Inter-American Court at the public hearing held on February 5, 2014.

results of the legal autopsy performed on the body were presented; and in establishing the time of death.

213. Given that there is no evidence to show that procedures were carried out to correct these irregularities and, more specifically, the rectification proceeding was not activated in accordance with the legal requirements in force at the time (*supra* para. 211), which could have provided an effective mechanism for that purpose, the Court finds that in this case it was not possible to correct the initial investigative procedures. For all the foregoing reasons, due diligence and thoroughness of the investigation was impaired.

*B.1.2. Due diligence in relation to the logical lines of investigation, in gathering and processing of evidence, and reasonable time*

214. The Court has established that, in order to ensure effectiveness in the investigation of human rights violations, omissions must be avoided in the gathering of evidence and in following the logical lines of investigation.<sup>324</sup> In this regard, the Court has specified that, when the violent death of a person is involved, the investigation must be conducted in a manner that ensures the proper analysis of the theories regarding the perpetrators.<sup>325</sup> On this point, the Court recalls that it is not for this Court to analyze theories about the perpetrators of the facts arising from the investigation of the facts, and therefore to determine individual responsibilities, a task that is the responsibility of the domestic criminal courts, but rather to assess the actions or omissions of State agents, according to the evidence presented by the parties.<sup>326</sup> Similarly, it is not for the Court to replace the domestic jurisdiction by establishing the specific mode of investigation and prosecution to be followed in a particular case in order to obtain a better or more effective result. Rather, it is for the Court to determine whether or not the steps taken at the domestic level were in violation of the State's international obligations under Articles 8 and 25 of the American Convention.<sup>327</sup> The Court recalls that a consequence of a lack of diligence in an investigation is that, as time passes, the possibility of collecting and presenting evidence in order to clarify the facts and determine the corresponding responsibilities is unduly limited, with the State thereby contributing to impunity.<sup>328</sup>

215. The Court notes that the criminal investigation into A.A.'s death was based on three preliminary theories. First, that his death could have resulted from a dispute with a local group because of his political activities, that is, for political and ideological reasons. Secondly, that his death could have been motivated by conflicts related to the administration of the "Republic of Mexico" Community Self-Management School in the village of Cruce de la Esperanza. Thirdly, that Mr. A.A. was killed because he had witnessed the death of a young man in that area. The first two theories arose in 2004 and the third in 2006.<sup>329</sup> The State mentioned that there was another theory that associated A.A.'s murder with the alleged filing of the complaint in the *Case of Gudiel Álvarez et al. ("Diario Militar")* before the Inter-American Commission, which Mr. A.A. supposedly signed fifteen days before his death. However, there is no evidence to support this hypothesis.

<sup>324</sup> Cf. *Case of The Serrano-Cruz Sisters v. El Salvador*, *supra*, paras. 88 and 105, and *Case Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 257.

<sup>325</sup> Cf. *Mutatis mutandis*, *Case of Kawas Fernández v. Honduras*, *supra*, para. 96.

<sup>326</sup> Cf. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, *supra*, para. 87, and *Case of Gutiérrez and Family v. Argentina*, *supra*, para. 78.

<sup>327</sup> Cf. *Case of Nogueira de Carvalho et al. v. Brazil*, *supra*, para. 80.

<sup>328</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010 Series C No. 217, para. 172. "The Court has defined impunity as an overall lack of investigation, pursuit, arrest, prosecution and conviction of those responsible" for human rights violations. Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Preliminary Objections*. Judgment of January 25, 1996. Series C No. 23, para. 173, and *Case Manuel Cepeda Vargas v. Colombia*, *supra*, nota 184.

<sup>329</sup> Cf. Statement rendered by E.M., a Prosecutor assigned to the case, before the Inter-American Court at the public hearing held on February 5, 2014, and Report prepared by the Agent of the Office of the Human Rights Prosecutor addressed to the Presidential Commission for the Coordination of Human Rights Policies (File of attachments to pleadings and motions brief, pages 7322 to 7327). During the public hearing, a Prosecutor assigned to the investigation described the elements he had to confirm or rule out those hypotheses. On the first hypothesis, he indicated that "no witness appeared to support that hypothesis, other than the statements of Mrs. [B.A.] and of her sister [E.A.]." Regarding the second hypothesis, he stated that "the actual reports by the financial entities and the statements of the teachers confirmed that indeed there had been no misappropriation [of funds] and that Mr. [A.A.]'s administration had expired two years before his death." Regarding the third hypothesis, he explained that various investigative procedures undertaken "lead us to the hypothesis that the death of Mr. [A.A.] was because he observed and was potentially a witness to a murder."



216. First, the Court considers that the investigations carried out did not take into account the context in which the facts took place, or the fact that A.A. was a human rights defender, or his work and activities at the time of his death (*supra* para. 131). While it is true that on March 22, 2005, the Office of the Human Rights Prosecutor received the case file, which was then processed by that office's special Unit for Crimes against Human Rights Activists, at least until 2009 (*supra* para. 116 and 122), there is no evidence to show that the authorities in charge of the inquiries followed clear and logical lines of investigation that would have taken those aspects into account. Therefore, although the evidence shows that investigators "proceeded to investigate the background of the deceased, including his personal, community and other relations", this effort was limited to compiling interviews with his relatives,<sup>330</sup> treating Mr. A.A.'s case in isolation, which did not help to determine the truth or the corresponding responsibilities.

217. Second, the Court confirms a delay of one year and a half in carrying out the ballistics tests on the three bullet shells found at the crime scene and the two bullet fragments extracted from the body. Furthermore, there is no evidence that tests were completed on the bullet shells found. (*supra* para. 108).

218. Third, the Court notes omissions in the gathering of evidence. Although the Assistant Prosecutor, on March 1, 2006, asked the DICRI investigators to "interview Mrs. [V], possibly with the surname [J]", "investigate a possible baker, who according to reports could be a witness", and "interview Mrs. [M.E.]"<sup>331</sup>, there is no record of a response to those requests or that the prosecutor insisted on the interviews being carried out.

219. Fourth, the Court notes the limited investigative activity and the failure to follow logical lines of investigation regarding the hypothesis that A.A.'s death was associated with political and ideological reasons and conflicts over the administration of a community school (*supra* para. 215), despite the fact that during the investigation the following evidence was gathered regarding the motive:

a) In statements made on December 20, 22 and 23, 2004, and January 25, February 10 and May 11, 2005, to the authorities in charge of the investigation, Mrs. B.A. consistently held that Mr. A.A.'s death was due to political reasons and accused L.L. and M.M. of being responsible. In this regard, she explained that L.L., "a former member of the Guatemalan Army", "was President of the Committee of the "Republic of Mexico" Community Self-Management School and was dismissed for mismanaging the funds," and therefore, A.A. assumed that position. She reported that on the day of his dismissal, in November 2003, while she was at a wake in the company of several friends, L.L. called her on her cell phone and threatened her, her father and her son. For his part, M.M., "who worked for the Guatemalan Republican Front (FRG)", sought to "exercise powers that did not belong to him" given that A.A. served as "Community Mayor of Cruce de la Esperanza."<sup>332</sup>

b) On December 23, 2004, the then municipal Mayor of Santa Lucía Cotzumalguapa informed the investigator assigned by the Office of the Human Rights Ombudsman that in his role as community Mayor, A.A. "ha[d] various problems with a man called [M.M.][,] who recently assumed the powers of Deputy Mayor which did not belong to him, because the Deputy Mayor was [A.A.]", and that Mr. M.M. "[was] a supporter and work[ed] for the FRG political party and Mr. [A.A.] dismiss[ed] him from his self-

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<sup>330</sup> Cf. Report of June 12, 2006 submitted by the Agent Fiscal to the Executive Secretariat of the Public Prosecution Service (File of attachments to submission brief, pages 965 to 967).

<sup>331</sup> Cf. Brief of March 1, 2006 prepared by the Assistant Prosecutor of the Office of the Human Rights Prosecutor addressed to the Criminal Investigations Specialists of the Public Prosecution Service (File of attachments to submission brief, pages 948 to 949).

<sup>332</sup> Cf. Interview with B.A. conducted by the investigating agent assigned by the Criminal Investigation Service of Precinct 31 of the National Civil Police of Escuintla, on December 21, 2004 (File of attachments to submission brief, pages 916 to 918); Complaint filed by B.A. anonymously on December 22, 2004 (File of attachments to submission brief, pages 896 and 897); Interview with B.A. conducted by the investigator assigned by the Office of the Human Rights Ombudsman on December 23, 2004 (File of attachments to submission brief, pages 901 to 905); Interview with B.A. conducted by the DICRI investigator on January 25, 2005 (File of attachments to submission brief, pages 1060 to 1065); Statement rendered by B.A. before the Assistant to the District Prosecutor of Santa Lucía Cotzumalguapa on February 10, 2005 (File of attachments to submission brief, pages 821 to 825), and statement rendered by B.A. before the Assistant Human Rights Prosecutor on May 11, 2005 (File of attachments to submission brief, pages 868 to 870).

appointed position and that is why there were conflicts between them.”<sup>333</sup> It should be noted that the investigation file prepared by the Ombudsman’s Office forms part of the criminal investigation file (*supra* para. 122).

c) In an interview on January 20, 2005, E.A.’s partner told the DICRI investigator that “the only problems that [Mr. A.A.] had were with Mr. [...] [L.L.]”, and those problems began when A.A. “was President of the Committee of the village of Cruce de la Esperanza, and founder of the “Republic of Mexico” Community Self-Management School in that village.” He recalled that “[a]round 2001, Mr. [L.L.] was appointed President of the Committee, and before his term of office ended [...] he was audited, and irregularities were found, so he was immediately removed by the residents.” Then A.A. assumed the presidency, and “since then [L.L.] has been on bad terms with him, even on the day he was dismissed from the Committee, when it was nearly night time, and [they] were at a wake accompanied by Mrs. [B.A.]”, she “said that she was frightened because Mr. [L.L.] had phoned her and threatened her, her son and the deceased man.” He added that in the village “there is someone called [M.M.], who is in close contact with Mr. [L.L.], and he was also envious of the deceased.”<sup>334</sup>

d) In an interview on January 20, 2005, a local resident told the DICRI investigator that “[L.L.] [...] always had problems with the deceased, because Mr. [A.A.] [...] was chairman of the Committee and founded the school. After he had completed his term, Mr. [L.L.] was appointed as President, but before his term expired, an internal audit was carried out which discovered irregularities [...so he] was dismissed from the post.” He added that “on the day Mr. [L.L.] was fired, [he] and Mrs. [B.A.], and other people whose names [he does] not recall, were going to a wake [...], when Mrs. [B.A.], received a call on her cell phone, and was terrified.” When he asked her about the call, “she said that Mr. [...] [L.L.], had called and threatened that they were going to pay for it.”<sup>335</sup>

e) According to a report by the DICRI investigator, on January 20, 2005 “several villagers of Cruce de la Esperanza were interviewed [...] who did not identify themselves for fear of reprisals, but were willing to confirm that [...] they knew about a person called [L.L.]” who “always had problems with the deceased, maybe because he was envious.” The villagers added that they knew that Mr. [L.L.], had “even threatened the family of the deceased, and we were afraid he would carry out the threats, not only because he is not from this village, but also because he acts with military machismo.”<sup>336</sup>

220. Despite the foregoing, there is no record in the file that procedures were carried out to determine whether this evidence might be linked to the motive of death. Specifically, there is no record that the individuals identified by the DICRI investigators were summoned to testify before the Public Prosecution Service, so as to obtain further information, or that a procedure was ordered to take the statements of those who did not identify themselves out of fear. There is also no record that L.L. and M.M. were summoned to testify, in order to obtain further information on the accusations made against them regarding “their possible intellectual responsibility.”<sup>337</sup> In this regard, the prosecutor’s

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<sup>333</sup> Cf. Memorandum of the investigation of December 23, 2004, prepared by the investigator assigned by the Office of the Human Rights Ombudsman (File of attachments to submission brief, pages 901 to 905).

<sup>334</sup> Cf. Report of April 5, 2006 submitted to the Assistant Prosecutor of Santa Lucía Cotzumalguapa (File of attachments to submission brief, pages 1060 to 1065).

<sup>335</sup> Cf. Report of April 5, 2006 submitted to the Assistant Prosecutor of Santa Lucía Cotzumalguapa (File of attachments to submission brief, pages 1060 to 1065).

<sup>336</sup> Cf. Report of April 5, 2006 submitted to the Assistant Prosecutor of Santa Lucía Cotzumalguapa (File of attachments to submission brief, pages 1060 to 1065).

<sup>337</sup> L.L. and M.M. were not summoned to testify, even though in a report of April 5, 2005, the Criminal Investigations Specialist of the DICRI attached the criminal complaint filed on November 26, 2003 by Mrs. B.A. against L.L. and suggested that the Prosecutor of Santa Lucía Cotzumalguapa “summon Mr. [L.L.] by the appropriate means.” Furthermore, despite that suggestion, on May 17, 2005 the Assistant Prosecutor requested that the investigation focus “only on [the] full identification” of both persons. In this regard, although the Criminal Investigation Experts of the DICRI provided the identification, I. D. numbers and job descriptions of those persons on August 30, 2005, to the Assistant Prosecutor, they were not summoned. Cf. Report of April 5, 2006 submitted to the Assistant District Prosecutor of Santa Lucía Cotzumalguapa (File of attachments to submission brief, pages 1060 to 1065); Request for procedures sent to the Department of Criminal Investigation by the Office of the Human Rights Prosecutor, on May 17, 2005 (File of attachments to the submission brief, pages 877 to 879); Report of 30 August, 2005, prepared by Criminal Investigations Specialists of the Public Prosecution Service (File of attachments to

agent assigned to the investigation explained that the decision not to interview these individuals until there was strong evidence against them, was taken "first, because it was inappropriate, second, because it could be premature and, third, it was potentially imprudent." He explained that it was "inappropriate, because if they have already been referred to me as possible suspects, upon interviewing them it is my constitutional obligation, and it is the right of these individuals, to be informed of the reason for the interview; consequently, they could have access to the same file and so it would be premature, because they could find out about the status of the investigation and in time influence potential witnesses, or intimidate them. And, theoretically, if they were responsible, it could be imprudent because they could attack potential witnesses."<sup>338</sup> The Court considers that the gravity of this last omission is irremediable, given that the suspects died in 2010 and 2012 (*supra* para. 120).

221. In addition, the investigation was not linked to the criminal complaint filed on November 26, 2003, by Mrs. B.A. against L.L., despite the fact that the DICRI investigator notified the Prosecutor's Office of Santa Lucía Cotzumalguapa and sent a report on April 5, 2005, which forms part of the criminal investigation file (*supra* para. 105). Moreover, in the context of the investigation and on repeated occasions, B.A. reported that she had filed said complaint and associated it with Mr. A.A.'s death (*supra* paras. 146 and 154). There is no record that the investigating body tried to obtain confirmation thereof.

222. Fifth, with respect to the theory that Mr. A.A.'s death was motivated by the fact that he had witnessed the death of a young man in the area, there were also delays and certain omissions in gathering evidence. In this regard, by May 17, 2005, at least, investigators suspected the involvement of two young "gang members", nicknamed "Queso" and "El Gato" in the homicide (*supra* para. 113), and on November 21, 2006, several lines of investigation were opened with the aim of identifying them and three other individuals nicknamed "Chelelo", "Salomón" and "Susy." Furthermore, on March 26, 2008, "El Gato", "Chelelo" and "Salomón" were positively identified and, because they were "presumed" to have participated in the crime, raid, inspection and search procedures were carried out on June 17, 2008, but "with negative results."<sup>339</sup>

223. In this regard, the Court notes the delay in conducting the raid, inspection and search procedures, which took place nearly eighteen months after investigators were ordered to identify the individuals, considered as suspects. This could render the procedure ineffective, given its untimeliness in the sphere or context of the action. Similarly, the Court notes that there is no record that investigators followed, or completed, the two lines of inquiry opened to identify the two remaining suspects, "Queso" and "Susy", or that they linked together the results obtained until that moment. Nor is there any record that the three individuals who were identified, namely, "Gato", "Chelelo" and "Salomón", were summoned to testify before the Public Prosecution Service to obtain further information on the charges against them, or on details of the existence and identity of "Queso" and "Susy" and the possible relationship between them.<sup>340</sup> Similarly, they did not explore whether they had links with the material or intellectual authors of the crime. Indeed, there is no record that efforts were made to establish, at least, whether Mr. A.A.

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submission brief, pages 931 to 934), and Report of March 1, 2006, of the Assistant Human Rights Prosecutor to the Criminal Investigations Specialists of the DICRI (File of attachments to submission brief, pages 948 to 949).

<sup>338</sup> Cf. Statement rendered by E.M., to the Prosecutor assigned to the case, before the Inter-American Court at the public hearing held on February 5, 2014.

<sup>339</sup> Cf. Request from the Office of the Human Rights Prosecutor to the Criminal Investigations Specialists of March 1, 2006 (File of attachments to submission brief, page 948); Request from the Office of the Human Rights Prosecutor to the Criminal Investigations Specialists of November 21, 2006 (File of attachments to submission brief, page 1122); Request of the Office of the Human Rights Prosecutor to the Criminal Investigations Specialists of April 8, 2008 (File of attachments to submission brief, page 1135); Report of the Criminal Investigations Specialists to the Office of the Human Rights Prosecutor of April 10, 2008 (File of attachments to submission brief, pages 1177 to 1178); Resolution of June 16, 2008, issued by the Court of First Instance for Criminal Matters, Drug trafficking and Crimes against the Environment of the Municipality of Santa Lucía Cotzumalguapa (File of attachments to submission brief, pages 1273 to 1276), and Procedures of inspection, raid and search of June 17, 2008 (File of attachments to submission brief, pages 1291 to 1306).

<sup>340</sup> According to the evidence, on February 3, 2009, at the request of the Assistant Prosecutor, the investigator of the DICRI interviewed "Chelelo", who only provided information on Mr. A.A., and on February 24, 2009, the DICRI investigators reported on his work, life style and working relations. Cf. Request of the Office of the Human Rights Prosecutor to the Criminal Investigations Specialists of November 24, 2008 (File of attachments to submission brief, page 1307), and Report of the Criminal Investigations Specialists to the Human Rights Prosecutor of February 24, 2009 (File of attachments to submission brief, pages 1308 to 1309).

was present in the area on the date and time of the young man's death, or whether he often traveled in that area.

224. Sixth, there is evidence that at least by May 24, 2006, and March 3, 2007, two more individuals known as "Nito" and "Selvin" had been linked to the crime, (*supra* para. 113), and for this reason an investigation was opened to identify them. However, there is no record of any investigative activity in relation to the person known as "Nito". As to the individual known as "Selvin", on March 26 and April 10, 2008, the DICRI Investigators provided information about his identity and the exact address of a house he frequented, and on June 17, 2008, they carried out a raid, inspection and search procedure, but "with negative results."<sup>341</sup> There is no record of any subsequent procedure, or that these individuals were summoned to testify before the Public Prosecution Service to obtain further information on the accusations against them.

225. Finally, the Court considers that, even though efforts were made to investigate the facts of Mr. A.A.'s death, there were omissions and delays in the procedures to gather evidence and the logical lines of investigation were not followed fully and thoroughly. Therefore, the investigation conducted in the domestic jurisdiction has not been diligent, thorough and effective.

226. Finally, the Court notes that, although nearly 10 years have elapsed since the events of this case occurred, and since the investigation began, the facts have not been clarified and truth of what happened has not been determined, affecting the right of Mr. A.A.'s relatives to obtain justice within a reasonable period. Therefore, the Court considers that a prolonged delay, as has occurred in this case, constitutes, in principle, a violation of judicial guarantees. The Court does not consider it necessary to analyze this point further.

#### *B.1.3. Protection for justice operators, investigators, witnesses and relatives of victims*

227. The Court recalls that in order to ensure due process, the State must take all necessary measures to protect justice operators, investigators, witnesses and family members of victims from harassment and threats aimed at hindering the proceedings, preventing the elucidation of the facts and concealing those responsible.<sup>342</sup> Otherwise, those who investigate and those who could be witnesses would feel intimidated and frightened, and this would have a significant impact on the effectiveness of the investigation.<sup>343</sup> Indeed, the threats and intimidation suffered by witnesses in the domestic proceedings cannot be examined in isolation, but should be analyzed in the context of obstructions to the investigation of the case. Consequently, such acts become another means of perpetuating impunity and preventing the truth of what happened from being known.<sup>344</sup> Furthermore, the Court considers that for an investigation to be effective, those responsible for it must be independent, both from a hierarchical and institutional point of view and also in practical terms, from the individuals implicated in the facts investigated.<sup>345</sup>

228. From the file it is evident that a number of irregularities occurred during the criminal investigation, which reflect the fear felt by several witnesses identified in the case,<sup>346</sup> some of whom were closely associated with common crime in the area, which directly impacted the gathering and processing of evidence.

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<sup>341</sup> Cf. Request of the Office of the Human Rights Prosecutor to the Criminal Investigations Specialists of November 21, 2006 (File of attachments to submission brief, page 1122); Report of the Criminal Investigations Specialists to the Office of the Human Rights Prosecutor of March 26, 2008 (File of attachments to submission brief, pages 1169 to 1174); Report of the Criminal Investigations Specialists to the Human Rights Prosecutor of 10 April, 2008 (File of attachments to submission brief, pages 1177 and 1178), and the inspection, raid and search procedures of June 17, 2008 (File of attachments to submission brief, pages 1304 to 1306).

<sup>342</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 199, and *Case of Gutiérrez and Family v. Argentina*, *supra*, para. 118

<sup>343</sup> Cf. *Case of Kawas Fernández v. Honduras*, *supra*, para. 106, and *Case of Gutiérrez and Family v. Argentina*. *supra*, para. 118.

<sup>344</sup> Cf. *Case of The Dos Erres Massacre*, *supra*, para. 234, and *Case of Gutiérrez and Family v. Argentina*. *supra*, para. 119.

<sup>345</sup> Cf. *Case of Baldeón García v. Peru. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147, para. 95, and *Case of Gutiérrez and Family v. Argentina*. *supra*, para. 119.

<sup>346</sup> On this point, the Court considers it pertinent to recall that the use of circumstantial evidence, evidence and presumptions is legitimate, provided that the conclusions are consistent with the facts. Cf. *Case of Velásquez Rodríguez v. Honduras, Merits*, *supra*, paras. 130, and *Case of the Supreme Court of Justice (Quintana Coello et al.) v.*

229. First, on December 20, 2004, the day of the events and some hours after the murder, the investigating agent assigned by the Criminal Investigation Service of Precinct 31 of the National Civil Police, interviewed a local resident, E.E., who stated that at approximately 11:00 hours and "in the company of a sister-in-law, [M.I.]", she had seen A.A. passing by on his bicycle: "behind [him] there were two young guys, also on bicycles, but I couldn't see them too well because people were burning sugarcane leaves and you couldn't see properly because of the smoke. I didn't see the men's faces, I only remember that one of them was wearing a red T-shirt, but I didn't take any notice."<sup>347</sup> Approximately a year and a half later, on May 24, 2006, in a statement to the DICRI investigators, this witness changed her account and stated that: "at around 10:30 or 11:00 hours, I saw Mr. [A.A.] near the railway line, riding his bicycle, as he always does." When she was asked whether she had seen any other individuals behind Mr. A.A., she replied that she could not see "because that day people were burning sugarcane and there was a lot of smoke", adding that she did "not hear any gunshots."<sup>348</sup>

230. Second, on May 24, 2006,<sup>349</sup> M.I. informed the DICRI investigators that: "[o]n December 20, at around 11:00, when I was walking along [...] with Mrs. [E.E.] [...] I saw Mr. [A.A.], leaving the road [...] heading toward his home; behind him, I noticed two guys on bicycles, about 15 meters away, one was light-skinned, the other tall and dark, about 1.60 meters tall. They were between 28 and 30 years old. One wore a blue T-shirt with a red cap, and the other a red T-shirt with a blue cap." She added that one of the individuals "has the characteristics of someone known by the [...] alias of Nito." Subsequently, on March 3, 2007,<sup>350</sup> and January 16, 2014,<sup>351</sup> she stated before the Assistant Prosecutor and before this Court, respectively, that: "my sister-in-law told my mother that the man known as Selvin killed Mr. [A.A.] but I have no idea why he did it." She added, "that's what I was going to say at the prosecutor's office and I was already getting changed, but that morning Mrs. [E.A.] called me and told me not to go, but she didn't say why, and I remember that she also said that if the investigators came, not to tell them that, because they say that Selvin has weapons." She also stated that "my mother told me not to get involved in this case anymore because Selvin is really dangerous because he's a criminal." In addition, before this Court this witness admitted "[m]y sister-in-law denies all this now, but because she's afraid" and "now I'm scared to talk."

231. Third, the Court has confirmed that although in the interviews and statements taken, witnesses mentioned the presence of several people at the crime scene and near the body, subsequently and aside from the statements of the two witnesses mentioned in the preceding paragraphs (*supra* paras. 229 and 230), five individuals were identified and interviewed. All said they had not seen what had happened.<sup>352</sup>

232. Fourth, on January 20, 2005, the DICRI investigator interviewed several villagers from Cruce de la Esperanza, in Santa Lucía Cotzumalguapa, Escuintla, who provided consistent information, but "for fear of reprisals did not identify themselves" (*supra* para. 219).

233. Fifth, the former Prosecutor's agent assigned to the investigation explained that in order to take the statement of a female witness, on May 24, 2006, considering that the area was "conflictive and dangerous" and "because it was the first contact that the [DICRI] investigators had with the [witness], [he ordered] the investigators to accompany

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Ecuador. *Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2013. Series C No. 266, para. 173.

<sup>347</sup> Cf. Official letter 16-2004 of the District Prosecutor's Office of the Public Prosecution Service, Santa Lucía, Cotzumalguapa, of December 21, 2004 (File of attachments to submission brief, pages 916 to 918).

<sup>348</sup> Cf. Report prepared on June 21, 2006, by the Criminal Investigations Specialists of the Public Prosecution Service (File of attachments to submission brief, pages 1152 to 1156).

<sup>349</sup> Cf. Report prepared on June 21, 2006, by the Criminal Investigations Specialists of the Public Prosecution Service (File of attachments to submission brief, pages 1152 to 1156).

<sup>350</sup> Cf. Statement of March 13, 2007 (File of attachments to submission brief, pages 1211 to 1213).

<sup>351</sup> Cf. Statement of M.I. rendered by affidavit on January 16, 2014 (Merits file, pages 654 to 662).

<sup>352</sup> Cf. Statement rendered by an agent of the National Civil Police of Santa Lucía Cotzumalguapa (File of attachments to submission brief, pages 860 to 862); Interview conducted by the DICRI investigators on January 20, 2005 (File of attachments to submission brief, pages 1060 to 1065); Interview conducted by the DICRI investigators on July 26, 2005 (File of attachments to submission brief, page 932); Interview conducted by the DICRI Investigators of July 26, 2005 (File of attachments to submission brief, page 933); Interview conducted by the DICRI investigators on July 26, 2005 (File of attachments to submission brief, page 933); Interview conducted by the DICRI investigators on May 24, 2006 (File of attachments to submission brief, page 1153), and Interview conducted by the DICRI investigators on May 24, 2006 (File of attachments to submission brief, page 1153).

the [female] Assistant Prosecutor [...], because they already knew the area.” He also explained that there were delays in carrying out raids in this case, because “it was a very closed community and when you go there, people either fear that you’re a criminal or else they’re afraid of being “snitches” and suffering the consequences of any information that they might give us. For that reason, approaching a house in that area was extremely dangerous for us and for the inhabitants themselves.” Likewise, he stated that :

[I]n the file there could be around 16, 17 formal, written interviews, apart from other interviews that are not documented - as occurs in any investigation where you approach a local [resident] and ask questions, and you can see he’s afraid to answer. The fear is palpable. In general, a culture of terror exists in Guatemala. In Guatemala, there is a ‘no witness’ culture. I recall an experience I had during that investigation when I went to identify some houses, and left [the Assistant Prosecutor] there so that she could interview people and some neighbors asked me why I had left her there alone.”<sup>353</sup>

234. Furthermore, he explained that “the culture of terror” “generally [affects] witnesses” and “also implies that they don’t give us all the information about the crime”, and “it generates impunity, impunity at all levels.”<sup>354</sup> On this point, and with regard to the Departmental Assistant of Escuintla, the State is aware that in his 2004 Annual Report, the Human Rights Ombudsman of Guatemala confirmed an increase “in acts of violence, common crime or organized crime,” and that “[m]any people who have been victims of an act of violence do not report it to the justice operators, owing to ignorance, fear or mistrust.”<sup>355</sup> The Court recalls that in the *Case of Chitay Nech et al. v. Guatemala*, it noted that “several reports that analyze the internal conflict in Guatemala and the subsequent situation confirm that the denial of justice and impunity persist, due to the phenomena of terror and intimidation that developed, with cumulative and lasting effects, which prompted the population not to report human rights violations to the authorities, even when the levels of violence were declining.”<sup>356</sup>

235. Finally, the file contains certain evidence that allows the Court to conclude that, in this case, witnesses and deponents feared the consequences of any information they might give; however, there is no record of the State having provided the necessary measures of protection once it became aware of these facts, in order to ensure the safety of investigators, witnesses and the relatives of the victims in the investigation, particularly, when on at least one occasion, there was an express request for protection for a witness.<sup>357</sup> The manner in which this situation affected the witnesses and deponents meant that some of them did not provide information to the investigators regarding the facts, thereby affecting the effectiveness of the investigation and contributing to the impunity in which this case remains until today, nearly 10 years later.

#### B.1.4. Conclusions

236. In relation to the investigation into Mr. A.A.’s death, the Court has found irregularities in the initial investigative procedures which cannot be corrected in this specific case. The subsequent procedures were also characterized by the State’s lethargy in the conduct of the investigation, since there were omissions and delays in gathering and

<sup>353</sup> Cf. Statement rendered by E.M., a prosecutor assigned to the case before the Inter-American Court at the public hearing held on February 5, 2014.

<sup>354</sup> Cf. Statement rendered by E.M., a prosecutor assigned to the case before the Inter-American Court at the public hearing held on February 5, 2014.

<sup>355</sup> Cf. Annual Report 2004, of the Human Rights Ombudsman Guatemala, January 2005, p. 210. Available at: <http://www.pdh.org.gt/archivos/descargas/Documents/Reports%20Anuales/report2004.pdf>.

<sup>356</sup> Cf. *Case of Chitay Nech et al. v. Guatemala*, *supra*, para. 174. Citing, among others, IACHR, *Justice and Social Inclusion: the Challenges of Democracy in Guatemala*, OAS/Ser.L/V/II.118, Doc. 5 rev. 1, December 29, 2003 Available at: <http://www.IACHR.oas.org/pdf%20files/GUATEMALA.2003.pdf>.

<sup>357</sup> The file shows that COPREDEH requested information on the reasons why the Public Prosecution Service had not offered judicial protection to the witness offered by the family of A.A. In response, on April 2, 2009 the Prosecuting Agent explained: “On the one hand [,] this institution does not have jurisdiction to decide on judicial protection; this is the direct responsibility of the judicial body [.] [O]n the other hand [,] for a person to be considered for the Witness Protection Program he must fulfill the requirements established in the rules, including: the statement of this witness must be decisive for ordering an arrest, filing charges or obtaining the conviction of a suspect because he has directly witnessed the events and he has stated that his testimony carries risk[.] and there is evidence of this. [I]n this case nobody has claimed to have directly witnessed the event in which Mr. [A.A.] died, for which reason nobody [has been] included in that program.” Cf. Report of April 2, 2009, addressed to the Coordinator of the Secretariat of Technical Coordination (File of attachments to submission brief, pages 1320 and 1321), and Report of April 2, 2009, addressed to the Office of the Human Rights Prosecutor (File of attachments to submission brief, pages 1326 and 1327).

processing the evidence, and a lack of diligence and thoroughness in following the logical lines of investigation. Moreover, the Public Prosecution Service did not summon any of the six individuals identified as suspects to testify in the context of the investigation. For their part, the witnesses and deponents in this case feared suffering the consequences of any information they might give, since the State did not provide the necessary measures of protection once it became aware of the facts. Therefore, nearly 10 years after the events of this case occurred, and since the investigation began, the violent death of Mr. A.A. remains in the most absolute impunity, beyond any reasonable time.

237. Consequently, the Court finds that the investigation conducted in the domestic jurisdiction has not been diligent, serious and effective and considers it proven that the State failed to comply with the provisions of Articles 8(1) and 25 of the Convention, in connection with Article 1(1) thereof, to the detriment of the relatives of A.A.

238. Finally, the Court considers that in this case it is not necessary to examine the arguments of the Commission and the representatives regarding the possible impact of the impunity surrounding Mr. A.A.'s murder on the personal integrity his relatives. The effects that this impunity may have produced will be taken into account when establishing the corresponding reparations for the violations declared.

#### *B.2. Regarding the alleged threats to family A*

239. With respect to the complaint filed by Mrs. B.A. on November 26, 2003, at the Prosecutor's Office of Santa Lucía Cotzumalguapa, in which she reported that she and her son had been threatened by Mr. L.L., from the record it is clear that the only investigative action was carried out in the context of the criminal investigation connected with Mr. A. A.'s death, on April 5, 2005, when the DICRI investigator sent a copy of the investigation file and suggested to the Assistant Prosecutor of the Prosecutor's Office of Santa Lucía Cotzumalguapa, that L.L. be summoned to testify (*supra* para. 105). There is no record that the criminal investigation into this complaint continued.

240. As to the complaint filed before the Public Prosecution Service on January 21, 2005, concerning a supposed attack on January 14, 2005, there is merely a record of its existence. Given that it was not possible identify any witness, the case was dismissed on February 28, 2008, by the Court of First Instance of Santa Lucía Cotzumalguapa (*supra* para. 123).

241. In this regard, the Court notes that even though the Ombudsman's Office reached the conclusion that there was evidence of intimidation and surveillance against family A (*supra* para. 151), there is no record that this information was linked to the investigations undertaken in this case. To summarize, none of the investigations carried out attempted to obtain further evidence aimed at clarifying the facts and identifying those responsible.

242. The Court considers that the investigation into the presumed threats made against family A was characterized by a lack of due diligence. Furthermore, in this case, the time that has elapsed greatly exceeds what could be considered a reasonable period for the State to begin the appropriate investigative actions. This failure to investigate during such a long period amounts to a flagrant denial of justice and a violation of the right to judicial protection of the presumed victims. Consequently, the Court finds that the State failed to discharge its obligation to investigate the alleged threats with the required diligence, thoroughness and effectiveness, in violation of Articles 8(1) and 25 of the Convention, to the detriment of the relatives of A.A.

## **IX REPARATIONS**

### ***(Application of Article 63(1) of the American Convention)***

243. Based on the provisions of Article 63(1) of the American Convention,<sup>358</sup> the Court has established that any violation of an international obligation which has caused damage entails the duty to provide adequate reparation, and that this provision "reflects a

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<sup>358</sup> Article 63(1) of the American Convention establishes that: "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

customary norm that is one of the fundamental principles of contemporary International Law regarding the responsibility of the State.<sup>359</sup>

244. In consideration of the violations of the Convention declared in the preceding Chapters, the Court will now proceed to examine the requests for reparation submitted by the Commission and the representatives, in light of the criteria established in the Court's case law regarding the nature and scope of the obligation to make reparations, in order to adopt the measures required to repair the damage caused to the victims.<sup>360</sup>

245. Considering that the Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the damage confirmed, as well as the measures requested to repair that damage, it must observe that concurrence to rule appropriately and according to law.<sup>361</sup> Consequently, the Court will not consider those measures of reparation requested by the Commission and the representatives which have a causal nexus with the alleged violation of Article 4 of the Convention, to the detriment of A.A.

246. The Court notes that, in their pleadings and motions brief, the representatives merely requested measures of reparation, without arguing the causal link between those measures and the human rights violations alleged in this case. The representatives did submit arguments in this regard during the public hearing and in their final written arguments, that is, outside the procedural deadline established for these purposes. Furthermore, in its final written arguments, the State presented new arguments concerning the reparations requested in this case. In this regard, this Court recalls that, pursuant to Article 40(2)(d) of its Rules of Procedure, the representatives' claims, including those concerning reparations, must be included in the initial brief of pleadings and motions (*supra* para. 5). Moreover, in accordance with Article 41(1)(d) of the Rules, the State's observations regarding the reparations and costs requested must be included in the answer brief. Consequently, the new arguments presented in the final written arguments of the representatives and the State, respectively, concerning the reparation measures requested, are deemed to be time-barred; therefore this Court will not examine or consider these, except in the case of requests for costs and expenses incurred after the submission of the pleadings and motions brief and the State's corresponding observations (*supra* paras. 5, 10 and 11).<sup>362</sup>

#### **A) Injured Party**

247. In accordance with Article 63(1) of the Convention, the Court considers an Injured Party anyone who has been declared a victim of a violation of any of the rights enshrined therein. Therefore, this Court considers B.A., C.A., D.A., E.A., F.A., G.A., I.A., J.A., K.A., L.A., M.A. and N.A. as "Injured Party."

#### **B) Obligation to investigate the facts and identify, judge and, if applicable, punish those responsible**

248. The **Commission** asked the Court to order the State to "expeditiously undertake and complete an impartial, comprehensive and effective judicial investigation, in order to establish the circumstances resulting in [Mr. A.A.'s] death; exhaustively pursue the logical lines of investigation related to the case and identify all those involved at the different levels of decision-making and execution, and apply the corresponding sanctions." It also asked the Court to require the State to "[o]rder the appropriate administrative, disciplinary or punitive measures in response to the actions or omissions of the state officials who contributed to the denial of justice and the impunity surrounding the case."

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<sup>359</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, supra*, para. 412.

<sup>360</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 25 to 27, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, supra*, para. 415.

<sup>361</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, supra*, para. 414.

<sup>362</sup> Cf. *Case of Liakat Ali Allibux v. Suriname, supra*, para. 140.



249. The **representatives** requested that the State be ordered to: a) “[u]ndertake an impartial, complete and effective investigation to identify the material and intellectual perpetrators of [A.A.’s] murder, and of the threats and acts of intimidation suffered by his family”; b) “[a]scertain whether the violent events that took place subsequently (murders of other community leaders or of individuals supposedly involved in the killing of [A.A.]) are related to that event, in order to determine whether criminal organizations are behind these acts”; c) “[s]trengthen the mechanisms for the protection of individuals whose statements have a significant impact on the investigations and who are therefore at risk”, and d) “[o]rder administrative, disciplinary or punitive measures corresponding to the denial of justice, and the consequent impunity.”

250. The **State** argued that “a full investigation has been carried out” and “therefore it should not be required [...] to implement actions it has already carried out [...] as a measure of compensation.” In this regard, it held that its officials had acted within the framework of the law at all times; otherwise, it was up to the interested parties to file the corresponding complaint, in accordance with Guatemalan law. The State also indicated that “the investigation will remain open insofar as it is legally possible to obtain a positive result, and if so, those responsible will be prosecuted and punished [...].”

251. This Court has already established that, in this case, the State did not fully discharge its obligation to investigate the death of Mr. A.A., given the lack of due diligence evidenced during the initial procedures of the investigation, with respect to the logical lines of inquiry and the gathering of evidence (*supra* para. 236). Furthermore, it found that the witnesses and deponents in this case feared the consequences of providing information to the investigation, and that the latter was not conducted within a reasonable time (*supra* paras. 235 and 236). The Court has also established that the threats against family A were not investigated with the required diligence, thoroughness and effectiveness (*supra* para. 242). On other hand, the Court notes that the State said that it would keep open the investigation into Mr. A.A.’s death, in order to prosecute and punish those responsible (*supra* para. 250).

252. Accordingly, the Court orders the State to conduct, with due diligence and within a reasonable time, the necessary investigations and criminal proceedings in accordance with domestic legislation, in order to individualize, identify and, if applicable, punish those materially and intellectually responsible for Mr. A.A.’s death and for the threats suffered by his relatives, and to establish the truth of what happened, based on the criteria indicated for the investigation in such cases (*supra* paras. 199 to 242). Therefore, the State must: a) ensure that the different judicial organs involved in the case are provided with the necessary human and material resources to perform their tasks adequately, independently and impartially and that the individuals involved in the investigation, including victims, witnesses and justice operators, have full security guarantees;<sup>363</sup> b) ensure that the relatives of Mr. A.A. are granted full access and capacity to act in all stages of these investigations, in accordance with domestic law and with the provisions of the American Convention,<sup>364</sup> and c) publicize the results of these processes so that society is made aware of the facts of this case and those responsible.<sup>365</sup>

253. Furthermore, as on previous occasions,<sup>366</sup> the Court orders the State to examine possible procedural and investigative irregularities related to this case, in line with the pertinent disciplinary standards and, if applicable, sanction the conduct of the relevant public officials, without requiring the victims to file complaints for those purposes.

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<sup>363</sup> Cf. *Case of The Dos Erres Massacre v. Guatemala*, *supra*, para. 231, and *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 251.

<sup>364</sup> Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela. Merits, Reparations and Costs*. Judgment of July 5, 2006. Series C No. 150, para. 139, and *Case of Gutiérrez and Family v. Argentina*, *supra*, para. 233.

<sup>365</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 233, and *Case of The Dos Erres Massacre v. Guatemala*, *supra*, para. 256.

<sup>366</sup> Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 215, and *Case of J. v. Peru*, *supra*, para. 392.

## C) Comprehensive measures of reparation: restitution, rehabilitation, satisfaction and guarantees of non-repetition

### C.1. Restitution

254. The *representatives* asked the Court to ensure that the members of family A who wish to return to their village can do so in conditions of safety. Neither the *Commission* nor the *State* referred to this specific point.

255. In this case, the Court established that on December 31, 2004 C.A., B.A. and their children L.A. and N.A., as well as E.A. and her children J.A. and K.A., left their places of residence due to a lack of protection from the State (*supra* paras. 168 and 169). It also confirmed that Mrs. B.A. returned to Santa Lucía, but did not return to her home (*supra* para. 171). However, the Court does not have information regarding the current places of residence of Mrs. B.A. or of the other individuals mentioned. Mrs. C.A. died on June 4, 2010.

256. In order to contribute to obtain redress for displaced victims, the Court considers that the State must guarantee adequate conditions of safety so that B.A., E.A., L.A., N.A., J.A. and K.A., can return to their places of residence, if appropriate and if they so wish, without this representing an additional expense for the beneficiaries of this measure. The Court grants these individuals a period of one year, as of the notification of this Judgment, to inform the State of their intention to return, if that is the case. If, within this period, the victims express their wish to return to their places of residence, a period of two years will be granted so that the victims and the State can agree on the pertinent arrangements for the State to comply with this measure of reparation, such as paying the removal expenses of the family members and their belongings. If, on the contrary, the victims do not express their wish to return within a period of one year, the Court will consider that they have relinquished this measure of reparation.

### C.2. Rehabilitation

257. The *representatives* asked the Court to order the State to “[e]nsure appropriate medical and psychological treatment for the direct and indirect victims [...] through a private insurance scheme.” The *State* pointed out that the relatives of Mr. A.A. had not expressed their wish to receive psychological support. It also held that “there is no evidence that the deterioration in the health [of the relatives] is due to this case [...] or that] it has deteriorated in general.” Similarly, it affirmed that it has a public health system and that “in no way would it be possible to compensate victims through private entities.” Furthermore, it pointed out that “the State has already been ordered to compensate this family for the ‘*Diario Militar*’ case, in which they also claimed to have suffered psychological damage.” The *Commission* did not refer to this point.

258. In this regard, the Court has evidence confirming that the members of family A suffered consequences as a result of the impunity surrounding A.A.’s death,<sup>367</sup> and that E.A., K.A. and J.A. suffered as a result of having to leave their community and, in the case of B.A., L.A. and N.A.,<sup>368</sup> as a consequence of their forced displacement to Mexico. Therefore, the Court considers that the State must provide, through its specialized health institutions, and free of charge, immediate, adequate and effective psychological and psychiatric treatment required by the victims, with their prior informed consent and for the time necessary, including the free provision of medicines. The respective treatment must be provided, insofar as possible, at the health centers nearest to their places of residence.<sup>369</sup> The victims have a period of six months, counted from the notification of this Judgment, to request said treatment from the State.

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<sup>367</sup> Cf. Psychosocial Evaluation of H.M. (File of attachments to submission brief, pages 1412 to 1428). Regarding the State’s objection that the “psychosocial report [of Mrs. H.M.] was not carried out with the sufficient depth required for an expert report of this nature, since interviews with 22 persons lasting between 1 and 2 hours are not sufficient to determine the psychosocial damage that the family of [A.A.] may have suffered,” the Court confirms that the State did not indicate the reasons why this methodology was inadequate, nor did it provide evidence to support this statement; therefore it considers these arguments to be unfounded.

<sup>368</sup> Cf. Psychosocial Evaluation of H.M. (File of attachments to submission brief, pages 1425 and 1426).

<sup>369</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 51, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, *supra*, paras. 425 and 426.

259. The Court also notes that in the Judgment delivered in the case of *Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, it ordered the State to provide psychological or psychiatric treatment to B.A., D.A., E.A., F.A. and G.A., among other victims, if they so requested.<sup>370</sup> Accordingly, the Court wishes to clarify that the psychological and psychiatric treatment ordered in this Judgment may be provided jointly with that offered in the case of *Gudiel Álvarez et al. ("Diario Militar")*.

### C.3. Satisfaction

260. The **representatives** requested that the Court order the State to publish this Judgment "at least in the Official Gazette and in the two newspapers with the widest national circulation." The **State** "acknowledg[ed] that as part of the obligations acquired upon accepting the Court's contentious jurisdiction [...], it must publish any Judgments delivered against it." However, it "consider[ed] that there is no reason why it should incur additional publishing expenses, [since] the Judgments are published in its own media [...]" The **Commission** did not refer to this point.

261. As it has done in other cases,<sup>371</sup> the Court considers it pertinent to order the State to publish, within a period of six months from notification of this Judgment: a) an official summary of this Judgment prepared by the Court, once, in the official Gazette; b) an official summary of the Judgment prepared by the Court, once, in a newspaper with wide national circulation, and c) the Judgment in its entirety, keeping the names of the victims confidential, and available for at least one year on an official website of the State of Guatemala.

### C.4. Guarantees of non-repetition

#### C.4.1. Public policy for the protection of human rights defenders

262. The **Commission** and the **representatives** asked the Court to order the State to adopt measures of a legislative, institutional, judicial or, in the case of the representatives, administrative nature, aimed at reducing the risks faced by human rights defenders. The **State** reiterated that it was not proven that Mr. A.A. was a human rights defender or that his death was "related to his supposed role as a defender [...]" It also held that it "has already adopted the measures required in this regard by the Commission [...]"

263. In relation to the adoption of measures to reduce the risks faced by human rights defenders, this Court has established that the State has planned and/or implemented various measures aimed at addressing those risks (*supra* note 74). However, Guatemala did not provide the Court with information about their effectiveness. Consequently, the State must implement, within a reasonable time, a public policy for the protection of human rights defenders, taking into account, at least, the following requirements:<sup>372</sup>

- a) the participation of human rights defenders, civil society organizations and experts in the formulation of standards for the regulation of a program for the protection of the group in question;
- b) the protection program should adopt a comprehensive and inter-institutional approach to this problem, based on the risk posed by each situation and adopt immediate measures to address complaints by defenders;
- c) the creation of a risk analysis model to adequately determine the risk and the protection needs of each defender or group;
- d) the creation of an information management system on the status of the prevention and protection of human rights defenders;
- e) the design of protection plans in response to specific risks faced by each defender and to the nature of his/her work;
- f) the promotion of a culture of legitimization and protection of the work of human rights defenders, and
- g) the provision of sufficient human and financial resources to respond to the real needs for protection of human rights defenders.

<sup>370</sup> Cf. *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, *supra*, para. 339 and Annex.

<sup>371</sup> Cf. *Case Cantoral Benavides*, *supra*, para. 79, and *Case of Luna López v. Honduras*, *supra*, para. 230.

<sup>372</sup> Cf. *Case of Luna López v. Honduras*, *supra*, para. 243.

264. Similarly, the State must present annual reports within a period of one year on the actions taken to implement said policy.

#### *C.4.2. General obligation to respect and guarantee rights*

265. From the body of evidence it is clear that on several occasions, between 2005 and 2014, B.A., E.A. and C.A. repeatedly reported that they had suffered surveillance, intimidation and harassment, one or two months prior to the death of A.A., after his death, and even on recent occasions.<sup>373</sup> However, there is no record showing that those alleged acts were denounced or reported to a state authority. This Court notes that the victims in this case requested that their identities be kept confidential for “fear of suffering attacks on their lives and physical integrity.” Accordingly, the Court recalls that Article 1(1) of the Convention establishes the general obligation of States Party to respect the rights and freedoms enshrined therein and to guarantee their free and full exercise to all persons subject to their jurisdiction. This obligation applies not only in relation to the power of the State but also in relation to the actions of private third parties. Consequently, the State is required to guarantee the rights of individuals and, in particular, of the victims in this case, who report being subject to threats or harassment or who fear for their lives and personal integrity, through the existing domestic mechanisms.

#### **D) Compensation for pecuniary and non-pecuniary damages**

266. In its case law, the Court has developed the concept of pecuniary damage and has established that it contemplates “loss or detriment to the victims’ income, the expenses incurred as a result of the facts and the consequences of a monetary nature that have a causal nexus with the facts of the case.”<sup>374</sup> Similarly, the Court has developed the concept of non-pecuniary damage and has established that this “may include both the suffering and distress caused to victims by the violation and impairment of values that are highly significant to them, as well as other suffering that cannot be assessed in financial terms.”<sup>375</sup> Given that it is not possible to assign a specific monetary value to non-pecuniary damage, for the purposes of providing comprehensive reparation to the victim, it can only be compensated through payment of a sum of money or the delivery of goods or services that can be quantified in monetary terms, which the Court will determine by applying judicial discretion in a rational and equitable manner.<sup>376</sup> The Court also reiterates the compensatory nature of the indemnities; their nature and amount depend on the damage caused, and therefore they are not supposed to enrich or impoverish the victims or their heirs.<sup>377</sup>

#### *D.1. Arguments of the Commission and of the parties*

267. The **Commission** asked the Court to order the State to provide reparation for the human rights violations declared in the Merits Report, “both in the material and moral aspects.” The **representatives** requested that the State be ordered to pay compensation for pecuniary damages, specifically: a) the funeral expenses of A.A.; b) “[e]xpenses resulting from exile [,] including the transfer of the family members and their belongings and the expenses incurred during their stay (rents, schooling, legal expenses for

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<sup>373</sup> Cf. Statement rendered by B.A. before the Inter-American Court at the public hearing held on February 5, 2014; Written statement rendered by B.A. of December 12, 2010 (File of attachments to submission brief, pages 1351, 1352 and 1368); Statement rendered by B.A. (File of attachments to submission brief, disk 2, minute 1:05:17); Statement rendered by E.A. (File of attachments to submission brief, disk 1, minute 42:39), and Statement rendered by C.A. (File of attachments to submission brief, disk 2, minute 1:05:17).

<sup>374</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, supra*, para. 441.

<sup>375</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, supra*, para. 441.

<sup>376</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs, supra*, para. 53, and *Case Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2010 Series C No. 218, para. 310.

<sup>377</sup> Cf. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 25, 2001. Series C No. 76, para. 79, and *Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 19, 2014. Series C No. 277, para. 295.

processing their migratory status, etc.)"; c) expenses generated by their return from exile; d) "[c]osts of medical and/or psychological treatment for different family members, as well as the expenses incurred for the respective treatments", and e) lost earnings, including the income that A.A. received monthly and the "income earned monthly by the relatives (children and grandchildren) who lost their jobs as a result of their forced displacement." In addition, they requested that the Court order the payment "of monetary compensation for moral damage, calculated according to equity and based on the psychological assessment submitted to the Inter-American Commission."

268. The **State** argued that it is not responsible for providing any form of compensation to the family of Mr. A.A., since it does not consider itself responsible for the violations alleged in this case. It emphasized that the representatives did not provide any evidence of the pecuniary damage suffered by the victims and that "no type of pecuniary reparation is owed for moral damage," since it "has conducted a serious and diligent investigation [...] to determine what happened to them." In addition, the relatives "have never requested psychological help from the State or indicated that they have an impediment to their emotional recovery."

#### *D.2. Considerations of the Court*

##### *D.2.1. Pecuniary damages*

269. First, having determined that there was no proven violation of Article 4 of the Convention to the detriment of Mr. A.A. (*supra* para. 149), the Court considers that it is not appropriate to order the State to provide reimbursement for the expenses incurred as a consequence of his death, including funeral expenses and loss of earnings of Mr. A.A.

270. On the other hand, with respect to the pecuniary damage presumably caused by the displacement of E.A., J.A. and K.A. from their community, and of C.A., B.A., L.A. and N.A. outside of Guatemala, and by the return of B.A. from Mexico, the Court finds that the representatives did not specify the nature of the expenses incurred by these events, beyond indicating in general terms that they included "rents, schooling, legal expenses for processing their migratory status, etc.," as well as the loss of the monthly income earned by the daughters and grandchildren of Mr. A.A. in their community. In this regard, the representatives did not indicate the approximate amounts of those expenses, or who paid for them. Nor did they specify which family members suffered a loss of income, or how much these individuals earned at the time when they were forced to leave their places of residence. In this regard, the Court notes that N.A., son of B.A., and J.A. and K.A., children of E.A., were minors at the time when they were displaced (*supra* para. 178). The representatives did not argue the reasons for which the schooling costs should be included in this item. Similarly, the Court finds that the representatives did not provide documents that demonstrate the alleged pecuniary damage.

271. Nevertheless, the Court presumes, as it has done in previous cases, that C.A., B.A., E.A. and L.A., at least, incurred various expenses due to their displacement. Therefore, it deems it pertinent to order the reimbursement of the sum of USD \$30,000.00 (thirty thousand dollars of the United States of America) for pecuniary damages in favor of each of these individuals, with an additional sum of USD \$10,000.00 (ten thousand dollars of the United States of America) for those who were displaced outside of Guatemala. Likewise, the Court presumes that Mrs. E.A. and Mrs. B.A. incurred additional expenses resulting from their own displacement and that of their children, which should be reimbursed. Consequently, it orders an additional amount of USD \$5,000.00 (five thousand dollars of the United States of America) for B.A., who traveled with one child, and of USD \$10,000.00 (ten thousand dollars of the United States of America) for E.A., who traveled with two children.

272. As to the request that the victims be reimbursed for "[e]xpenses for medical and/or psychological treatment for the different family members," the Court notes that the representatives did not specify who had received said treatment, or when or how often

they requested it. Nor did they indicate how this was related to the facts of this case; therefore, the Court does not consider it pertinent to order compensation for this item.

#### D.2.2. Non-pecuniary damages

273. With regard to non-pecuniary damages, in this case the Court takes note of the suffering caused to C.A.<sup>378</sup>, D.A., E.A., B.A., F.A., G.A., I.A., J.A., K.A., L.A., M.A. and N.A., as a result of the impunity surrounding the death of Mr. A.A. (*supra* paras. 236 and 258), and therefore establishes, in equity, the payment of the sum of USD \$7,000.00 (seven thousand dollars of the United States of America) to each of the individuals mentioned. Likewise, it takes note of the anguish suffered by C.A., B.A., E.A., L.A., N.A., J.A. and K.A. as a result of their displacement (*supra* paras. 178 and 258), and therefore orders, in equity, the payment of the sum of USD \$5,000.00 (five thousand dollars of the United States of America) to each of the individuals mentioned. The non-pecuniary damage caused to these persons will be taken into account to determine the corresponding compensation.

#### E) Costs and expenses

274. The **representatives** asked the Court to order the “[r]eimbursement of the procedural expenses incurred in processing the case at the domestic and international levels [, as well as] future expenses generated by the litigation of the case before the Court and its subsequent implementation [...]” They argued that the State should cover the costs “of legal representation and other expenses incurred by UDEFEGUA in monitoring and supporting the case.” They also requested the reimbursement of expenses incurred after the presentation of the pleadings and motions brief, related to their appearance at the public hearing held in this case and the sending of Luis Enrique Eguren’s expert opinion from Spain.<sup>379</sup>

275. In its answer brief, the **State** emphasized that the representatives “have not submitted any documents proving expenditures, nor have they demonstrated how the supposed expenses are related to the evidence they provided.” It added that, “it is impossible that the relatives of [A.A.] have incurred any expenses in obtaining justice in the domestic courts, since they themselves argue[d] in the brief that they could not participate as joint plaintiffs and consequently they did not have access to the file prior to the legislative reforms.” It also reiterated that the State “had the good will to submit the case to a friendly settlement, but the petitioners refused to accept [it, which] is one of the reasons why the case has taken longer [...], and the expenses have increased.” Finally, it objected to the evidentiary documents submitted by the victims’ representatives together with their final written arguments, because, according to the State, “these have nothing to do with the facts disputed in this case, given that the brief in which they were included refers to the schedule for the parties to prepare their final arguments.” The **Commission** did not refer specifically to this point.

276. The Court reiterates that, according to its case law,<sup>380</sup> costs and expenses form part of the reparations, given that the efforts made by the victims to obtain justice, both at the domestic and the international levels, imply expenses that must be compensated when the State’s international responsibility is declared in a Judgment.

277. Regarding the reimbursement of expenses, the Court must prudently assess their scope, including the costs related to the proceedings before the domestic courts, and those incurred in the course of the proceedings before the Inter-American system, bearing in mind the circumstances of the specific case and the nature of the international

<sup>378</sup> Cf. Statement rendered by C.A. (File of attachments to submission brief, pages 1423 and 1424).

<sup>379</sup> They requested the reimbursement of USD \$785.00 for the cost of accommodation in San José, Costa Rica, from February 2 to 7, 2014; “USD \$ 1,410.51 for travel expenses of the victim and the representatives by air from Guatemala to San José”; “USD \$159.29 for travel by bus and taxi within the city of San José”; “USD \$ 410,92 for food from February 2-7” of 2014; USD \$ 88.36 for exit taxes from Costa Rica, and USD \$ 139.26 for sending the expert report of Luis Enrique Eguren from Spain.

<sup>380</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 39, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, *supra*, para. 449.

jurisdiction for the protection of human rights. This assessment must be based on the principle of fairness, taking into account the expenses indicated by the parties, as long as their *quantum* is reasonable.<sup>381</sup>

278. The Court confirms that the representatives did not present proof of the expenses incurred in their pursuit of justice for family A before the Guatemalan authorities. However, the Court is aware of the efforts made by B.A. and E.A. in the investigations initiated in Guatemala regarding the facts of this case (*supra* paras. 101, 103, 106, 112, 123, 152 and 170). Consequently, the Court orders the State to pay, in equity, the sum of USD \$2,000.00 (two thousand dollars of the United States of America) to Mrs. E.A and the sum of USD \$3,000.00 (three thousand dollars of the United States of America) to Mrs. B.A., for costs incurred in the domestic sphere.

279. As to the expenses incurred before the Inter-American System, the Court has confirmed that the representatives submitted receipts related to expenses incurred in attending the public hearing before this Court, and to send the affidavit of the expert witness Luis Enrique Eguren.<sup>382</sup> Consequently, the Court orders the State to reimburse the victims' representatives the sum of USD \$3,439.22 (three thousand, four hundred and thirty-nine dollars and twenty-two cents of the United States of America). Furthermore, despite the fact that the representatives did not provide evidence regarding other expenses incurred before the organs of the Inter-American System, the Court considers it reasonable to presume that additional expenses arose in the approximately 9 years during which the case was being processed. Therefore, it orders the State to reimburse the representatives in the amount of USD \$5,000.00 (five thousand dollars of the United States of America) for costs and USD \$12,000.00 (twelve thousand dollars of the United States of America) for fees. The Court may order the State to reimburse the victims or their representatives for subsequent expenses that are reasonable and duly proven, during the stage of monitoring compliance with this Judgment.<sup>383</sup>

#### **F) Other measures of reparation requested**

280. The representatives also asked the Court to order the State to: a) organize a public act in acknowledgment of its international responsibility; b) organize "acts to honor the memory of [A.A.] [...]"; c) guarantee access to the training programs for members of the family who had to abandon these to ensure their safety; d) "repair the damage caused to the community by completing the housing and road paving projects", and e) "provide funds to enable the family [A] to continue with the projects begun by [A.A.], and to continue with his civic and political work in defense of human rights, through the creation of a foundation that addresses school absenteeism and drop-out rates among girls and adolescents in the municipality[, as well as ] the historical memory."

281. In this regard, the Court considers that the measures of reparation ordered in this Judgment are sufficient, having regard to the facts and the human rights violations established.

#### **G) Method of compliance with the payments ordered**

282. The State shall make payment of the indemnities for pecuniary and non-pecuniary damages and the reimbursement of costs and expenses established in this Judgment directly to the individuals specified herein, within one year from the date of notification of this Judgment, under the terms of the following paragraphs.

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<sup>381</sup> Cf. *Case of Garrido and Balgorria. Reparations and Costs*, *supra*, para. 82, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, *supra*, para. 450.

<sup>382</sup> Includes costs of accommodation, transport, food, airport exit taxes from San José, Costa Rica, and postal costs for sending package. Total confirmed: Q15,534.23 Guatemalan quetzales (approximately USD \$1,990.63); USD \$997.50; ₡172,352.00 Costa Rican colones (approximately USD \$312.89), €101.65 euros (approximately USD \$138.20). The Court will not take into account the following: an undated receipt for USD \$38.72, a presumed receipt for a meal dated February 4, 2014, which is illegible, and a voucher for the purchase of dollars.

<sup>383</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra*, para. 291, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, *supra*, para. 454.

283. If the beneficiaries should die before the respective indemnities are paid, such amounts shall be paid directly to their heirs, according to the provisions of the applicable domestic legislation.

284. The State shall discharge its pecuniary obligations by tendering payment in dollars of the United States of America or in Guatemalan currency, calculated according to the exchange rate between both currencies in effect at the New York stock exchange, United States of America, on the day prior to payment.

285. If, for reasons attributable to the beneficiaries of the compensation, it is not possible for them to receive the amounts ordered within the period indicated, the State shall deposit those amounts in an account held in the beneficiaries' names or in a certificate of deposit in a Guatemalan financial institution and under the most favorable financial terms allowed by the legislation in force and customary banking practice in Guatemala. If, after ten years, the compensation has not been claimed, these amounts shall be returned to the State with the accrued interest.

286. The amounts allocated in this Judgment as compensation and as reimbursement of costs and expenses shall be delivered to the victims in their entirety in accordance with the provisions of this Judgment, without deductions derived from future taxes.

287. Should the State fall into arrears with its payments, it shall pay interest on the amount owed, corresponding to the banking default interest rates in Guatemala.

## X

### OPERATIVE PARAGRAPHS

288. Therefore,

#### THE COURT

#### DECIDES,

unanimously,

1. To dismiss the preliminary objection filed by the State regarding the failure to exhaust domestic remedies, under the terms of paragraphs 20 to 25 of this Judgment.

unanimously,

2. To dismiss the preliminary objection filed by the State regarding the supposed violation of its right to defense in the proceedings before the Inter-American Commission on Human Rights, in accordance with paragraphs 28 to 31 of this Judgment.

#### DECLARES,

unanimously, that:

3. The State violated the right to personal integrity recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of B.A., C.A., E.A., D.A., F.A., G.A., I.A., J.A., M.A., N.A., L.A. and K.A., and in relation to Article 19 of the Convention to the detriment of J.A., N.A. and K.A., who were children at



the time of the events of this case, under the terms of paragraphs 150 to 160 of this Judgment.

unanimously, that:

4. The State violated the right to freedom of movement and residence, recognized in Article 22(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of C.A., B.A., her children L.A. and N.A.; and E.A. and her children J.A. and K.A.; as well as in relation to Article 19 of the American Convention to the detriment of J.A., N.A. and K.A., who were children at the time of the events of this case, under the terms of paragraphs 165 to 180 of this Judgment.

unanimously, that:

5. The State violated the political rights recognized in Article 23(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of B.A., in accordance with paragraphs 185 to 193 of this Judgment.

unanimously, that:

6. The State violated the rights to judicial guarantees and judicial protection, recognized in Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of B.A., C.A., E.A., D.A., F.A., G.A., I.A., J.A., M.A., N.A., L.A. and K.A., in accordance with paragraphs 199 to 242 of this Judgment.

by three votes in favor and two against, that:

7. There are not sufficient elements to declare the State's failure to fulfill its obligation to protect the life of A.A., recognized in Article 4(1) of the American Convention, in relation to Article 1(1) thereof, under the terms of paragraphs 144 to 149 of this Judgment.

Dissenting votes of Judges Roberto F. Caldas and Eduardo Ferrer Mac-Gregor Poisot

by three votes in favor and two against, that:

8. There are not sufficient grounds to declare a violation of the political rights recognized in Article 23(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of A.A., under the terms of paragraph 189 of this Judgment.

Dissenting opinions of Judges Roberto F. Caldas and Eduardo Ferrer Mac-Gregor Poisot

## **AND ORDERS,**

unanimously, that:

9. This Judgment constitutes *per se* a form of reparation.

10. The State shall conduct with due diligence and within a reasonable time, the pertinent investigations and criminal proceedings in accordance with domestic legislation, in order to individualize, identify and, if applicable, punish those materially and intellectually responsible for Mr. A.A.'s death and for the threats suffered by his relatives, and to establish the truth of what happened, based on the criteria indicated for the investigation of such cases, pursuant to paragraph 252 of this Judgment. Similarly, the State shall examine possible procedural and investigative irregularities related to this case, in line with the pertinent disciplinary standards and, if applicable, sanction the conduct of the relevant public officials, without requiring the victims to file complaints for those purposes, pursuant to paragraph 253 of this Judgment.

11. The State shall guarantee adequate conditions of security so that B.A., E.A., L.A., N.A., J.A. and K.A., can return to their places of residence, if appropriate, and if they so wish, without this implying an additional expense for the beneficiaries of this measure, under the terms of paragraph 256 of this Judgment.

12. The State shall provide, through its specialized health institutions, and free of charge, immediate, adequate and effective psychological and psychiatric treatment required by the victims, with their prior informed consent and for the time necessary, including the free provision of medicines, pursuant to paragraphs 258 and 259 of this Judgment.

13. The State shall issue the publications indicated in paragraph 261 of the Judgment, within six months of the notification of this Judgment, under the terms ordered therein.

14. The State shall submit annual reports describing the steps it has taken to implement, within a reasonable time, an effective public policy for the protection of human rights defenders, in accordance with paragraphs 263 and 264 of this Judgment.

15. The State shall pay, within one year of the notification of this Judgment, the amounts established in paragraphs 271 and 273 thereof, as compensation for pecuniary and non-pecuniary damages, and reimbursement of costs and expenses, under the terms of paragraphs 278 and 279 of this Judgment.

16. The State shall submit a report to the Court on the measures adopted in compliance with its provisions, within one year from the notification of this Judgment.

17. The Court shall monitor full compliance with this Judgment, in exercise of its authority and in compliance with its obligations under the American Convention on Human Rights, and will consider this case closed once the State has fully complied with all the provisions established herein.

Judges Roberto F. Caldas and Eduardo Ferrer Mac-Gregor Poisot informed the Court of their joint dissenting opinion, which accompanies this Judgment.

Done in Spanish in San José, Costa Rica, on August 28, 2014.

Humberto Antonio Sierra Porto  
President

Roberto F. Caldas

Manuel E. Ventura Robles

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri  
Secretary

So ordered,

Humberto Antonio Sierra Porto  
President

Pablo Saavedra Alessandri  
Secretary

**JOINT PARTIALLY DISSENTING OPINION OF JUDGES ROBERTO F. CALDAS AND  
EDUARDO FERRER MAC-GREGOR POISOT**

**CASE OF HUMAN RIGHTS DEFENDER et al. v. GUATEMALA**

**JUDGMENT OF AUGUST 28, 2014  
(PRELIMINARY OBJECTIONS, MERITS, REPARATIONS AND COSTS)**

1. We issue this partially dissenting opinion to explain the reasons for which we disagree with the provisions of Operative Paragraphs 7 and 8 of the Judgment delivered on August 28, 2014, in the *Case of Human Rights Defender et al. v. Guatemala* (hereinafter "the Judgment"), by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"). In these paragraphs, the Court states that there are not sufficient elements to declare the State's failure to fulfill its obligation to protect the life of A.A., or to declare the violation of the political rights of A.A., recognized in Articles 4(1) and 23.1, respectively, of the American Convention on Human Rights (hereinafter "the American Convention" or "the Pact of San José of Costa Rica"). In this opinion, we will set forth the reasons why we consider that the Court should have ruled that Guatemala committed a violation of Articles 4(1) and 23(1) of the American Convention, to the detriment of the Human Rights Defender A.A.

2. On several occasions, the Court has referred to the violation of rights recognized in the American Convention to the detriment of human rights defenders<sup>1</sup>, and has considered that said status is defined by the work carried out, regardless of whether that person is a private citizen or a public servant.<sup>2</sup> However, this is the first time that the Court has developed the concept of a human rights "defender", in light of various international sources.<sup>3</sup> Indeed, as argued in the Judgment to which this opinion refers, human rights defenders are all those who promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. These activities must be carried out peacefully, and may be exercised intermittently or occasionally, since the condition or status of human rights defender is not necessarily permanent.<sup>4</sup>

3. In this specific case, the Court considered that, in 2004, Mr. A.A., together with his daughter B.A., carried out activities that defined them as human rights defenders.<sup>5</sup> However, the majority of the Inter-American Court considered that it "d [id] not have

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<sup>1</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, of 2008. Series C No. 192; *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, and *Case Luna López v. Honduras. Merits, Reparations and Costs*. Judgment of October 10, 2013. Series C No. 269.

<sup>2</sup> Cf. *Case Luna López v. Honduras. Merits, Reparations and Costs*. Judgment of October 10, 2013. Series C No. 269, para. 122.

<sup>3</sup> Cf. para. 129 of the Judgment.

<sup>4</sup> Cf. para. 129 of the Judgment.

<sup>5</sup> Cf. paras. 130 to 132 of the Judgment.

sufficient elements to prove that the State knew, or should have known, of a situation of real and immediate danger to Mr. A.A.'s life prior to his death."<sup>6</sup> We disagree with that reasoning, because we consider that the State of Guatemala did know, or should have known, about the situation of danger in which A.A. found himself and, therefore, should have protected his life, thereby guaranteeing his political rights.

4. For the sake of greater clarity, we will divide this opinion as follows: (1) the violation of Article 4(1) of the American Convention to the detriment of A.A. (paras. 5 to 15); (2) the violation of Article 23(1) of the American Convention to the detriment of A.A. (paras. 16 to 20); and (3) Conclusion (paras. 21-25).

### **1. Violation of Article 4(1) of the American Convention to the detriment of A.A.**

5. In the Judgment, the Inter-American Court makes it explicit that "the State's obligation to guarantee the rights to life and personal integrity of an individual is increased in the case of a human rights defender."<sup>7</sup> Furthermore, the Court considered that, in order to determine whether that increased obligation existed in this specific case, it was necessary to establish that the authorities knew, or should have known, of the danger, and that they failed to take the necessary measures, within the scope of their respective powers which, judged reasonably, might have been expected to prevent or avoid that risk.<sup>8</sup> Mindful of this increased obligation, we the undersigned consider that there were indeed sufficient elements to conclude that the State knew, or at least should have known, about the situation of real and immediate danger to the life of A.A., which we will set forth below.

6. In the first place, as acknowledged in the Judgment, at the time of the events of this case, human rights defenders in Guatemala faced a situation of vulnerability. This was especially true for those working to protect or promote economic, cultural and social rights, and those seeking truth and justice for human rights violations committed during the internal armed conflict, which took place between 1962 and 1996.<sup>9</sup> The Court should have considered this context when assessing the evidence and the arguments, and in the subsequent determination of the State's international responsibility.<sup>10</sup> In our view, Mr. A.A. formed part of this vulnerable group, and there is sufficient evidence to determine that the State knew, or should have known, of the dangerous situation facing this human rights defender, who required special attention on the part of the State for the protection of his rights.

7. Secondly, the security forces and state authorities considered the family of A.A. to be "subversive." For this reason, after the enforced disappearance of A.A.'s son, the members of that family were displaced both within Guatemala and abroad, between 1983 and 1987,<sup>11</sup> and only decided to return to the country after the signing of the Peace Accords.<sup>12</sup> As a result, the international responsibility of Guatemala was declared in the case of *Gudiel Álvarez ("Diario Militar") v. Guatemala* to the detriment of the

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<sup>6</sup> Para. 149 of the Judgment.

<sup>7</sup> Para. 142 of the Judgment.

<sup>8</sup> Cf. para. 143 of the Judgment.

<sup>9</sup> Cf. para. 78 of the Judgment.

<sup>10</sup> Cf. para. 73 of the Judgment.

<sup>11</sup> Cf. para. 83 of the Judgment, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits Reparations and Costs*. Judgment of November 20, 2012. Series C No. 253, para. 308.

<sup>12</sup> Cf. *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits Reparations and Costs*, *supra*, para. 308.

members of that family, and in particular of Mr. A.A. In our view, this also constitutes evidence showing that the State, at the very least, should have known about the situation of special vulnerability facing this human rights defender; about the fact that he had been declared a victim in another proceeding before this Court; and that he was trying to ensure compliance with the Judgment.

8. Thirdly, on November 26, 2003, a little more than a year prior to the date of A.A.'s death, his daughter B.A. filed a complaint before the Prosecutor's Office of Santa Lucía Cotzumalguapa. In the complaint she stated that a former *kaibil* who had ideological differences with her family had called her and threatened that he was going to harm her and her son. She added that this person had threatened her sister on a previous occasion.<sup>13</sup> The majority of the Inter-American Court considered that the absence of an express reference to the father in the complaint implied that there was not sufficient evidence to assert that the State should have known of the danger to his life. It reinforced its position by noting that B.A. had signed, and therefore had endorsed, the content of that complaint.<sup>14</sup>

9. We consider that this interpretation by the Court is excessively formalistic. As this Court has pointed out, in an international tribunal whose purpose is the protection of human rights, the proceedings are endowed with special characteristics that distinguish it from proceedings of domestic law. Although it is less formal and more flexible than the latter, it must still ensure legal certainty and the procedural balance of the parties.<sup>15</sup> Thus, in this specific case, all the evidence should have been assessed as a whole, in light of the context of vulnerability that affected human rights defenders at the time of the events.

10. With respect to the aforementioned complaint of November 2003, the Court notes that: (i) both the plaintiff B.A. and her father A.A. were involved in defending economic, social and cultural rights in their community at the time of the events, and were also seeking justice for the forced disappearance of a family member; (ii) both were identified as members of a "subversive" family; (iii) both held positions of public influence at the time of Mr. A.A.'s death (Secretary and Mayor of the Community Development Council of the village of Cruce de la Esperanza, respectively); and (iv) the threat made in November 2003 referred precisely to the election of the Education Committee (COEDUCA) of the "Republic of Mexico" Community Self-Management School, where B.A. worked alongside her father and of which Mr. A.A. had previously been President.<sup>16</sup> Indeed, given the context of the case, it seems reasonable to conclude that the threat, made by a former *kaibil*, was not only directed against her and her son, but also against her father.

11. In the fourth place, we should not overlook the fact that the former Municipal Mayor of Santa Lucía Cotzumalguapa was aware of the threats made against A.A. In a statement made on December 5, 2010, the Mayor expressly recognized that "[A.A.] was one of the community leaders threatened,"<sup>17</sup> since "his knowledge of human development and his work methodology, characterized by promoting community unity and seeking advice from professionals in various disciplines of science, was accepted and produced satisfaction in the community, because of the works achieved under his leadership, but it caused a lot of discontent and anger among leadership figures whose

<sup>13</sup> Cf. para. 91 of the Judgment.

<sup>14</sup> Cf. para. 146 of the Judgment.

<sup>15</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 42, and *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194, para. 95.

<sup>16</sup> Cf. paras. 84 and 91 of the Judgment.

<sup>17</sup> Para. 147 of the Judgment.

leadership was strongly associated with the *caudillismo* (war-lordism) and corruption of the past, especially those linked to the repressive apparatus of the period of armed conflict.<sup>18</sup> Moreover, two days after the death of A.A., the Municipal Mayor acknowledged that he had been aware of “problems” between the deceased and M.M., a supporter of the *Frente Revolucionario Guatemalteco*, because the latter had proclaimed himself Deputy Mayor of three communities, including the village of Cruce de la Esperanza, where Mr. A.A. legitimately held that position.<sup>19</sup> In addition, during the public hearing before the Court, B.A. confirmed that she had approached the Municipal Mayor to make her complaints prior to the death of her father.<sup>20</sup>

12. Despite the Municipal Mayor’s admission that he was aware of that situation, the majority of the Inter-American Court considered that this was insufficient to conclude that the State knew about the situation of real danger to Mr. A.A.’s life. However, we consider that the State was clearly aware of that danger, and that it was negligent in offering him the necessary protection, especially taking into account the specific context of danger facing human rights defenders, a group that included Mr. A.A.

13. Finally, in fifth place, the Court considered that “Mrs. B.A. has been consistent in her statements made after Mr. A.A.’s death”, in affirming that the threat was made against her, her son and her father.<sup>21</sup> Nevertheless, the Judgment completely dismisses the value of that consistency because of the fact that she had signed the complaint. It does not consider the possibility that there might have been a transcription error by State officials,<sup>22</sup> as alleged by the representatives of the victims, and does not assess this point together with other elements in the records, and in light of the context of vulnerability that affected human rights defenders in Guatemala at the time of the facts.

14. In fact, it is pertinent to emphasize that these evidentiary elements should not be interpreted in isolation, but instead assessed as a whole and always in light of the context in which they occurred. Therefore, we who sign this minority opinion consider that, based on a comprehensive interpretation of those elements, and always conscious of the pattern of vulnerability affecting human rights defenders in Guatemala, it is not conceivable to affirm that State officials did not have sufficient elements to believe that there was a real and imminent danger to the life of A.A.

15. Based on the foregoing arguments, and considering that it was reasonable to conclude that the State knew, or at least should have known, about the situation of real and immediate danger, and that it had reasonable opportunities to prevent or avoid that danger, the requirements were indeed met to declare the State responsible for failing to fulfill its positive obligation to guarantee human rights by taking the necessary measures to prevent the violations, as it has done in other cases.<sup>23</sup> Indeed, the State

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<sup>18</sup> Statement of the former Municipal Mayor, December 5, 2010 (File of attachments to the submission brief, pages 794 and 795).

<sup>19</sup> Cf. para. 148 of the Judgment.

<sup>20</sup> Cf. Statement rendered by B.A. before the Inter-American Court at the public hearing held on February 5, 2014.

<sup>21</sup> Cf. para. 146 of the Judgment; Interview with B.A. conducted on December 23, 2004 by the investigator of the Human Rights Ombudsman (File of attachments to the submission brief, page 902); Interview with B. A. conducted on January 25, 2005, by the criminal investigations specialists of the Public Prosecution Service (File of attachments to the submission brief, page 1063); Statement rendered by B. A. on February 10, 2005 at before the Prosecutor of Santa Lucía Cotzumalguapa (File of attachments to the submission brief, page 823); Private statement of December of 2010 (Attachments to the submission brief, disk 2, minute 59:23 to 1:00), and Statement rendered by B.A. before the Inter-American Court at the public hearing held on February 5, 2014.

<sup>22</sup> Cf. para. 146 of the Judgment.

<sup>23</sup> *Mutatis mutandis*, Case of Luna López v. Honduras, paras. 124 and 138.

failed in its obligation to protect the human rights defender A.A., and therefore this constitutes a violation of the guarantee of his right to life by the State of Guatemala.

## **2. Violation of Article 23(1) of the American Convention to the detriment of A.A.**

16. Continuing with its premise that there was no violation of the right to the life to the detriment of A.A., the majority of the Inter-American Court subsequently concluded that there was no violation of his political rights, recognized in Article 23 of the American Convention, "given that there is not sufficient evidence in this case to declare the State's failure in its obligation to protect the right to life of Mr. A.A. in the exercise of his work as a human rights defender [...], likewise, there are not sufficient grounds to establish that the State failed in its obligation to guarantee the exercise of his political rights."<sup>24</sup>

17. However, following the thread of the argument of this dissenting minority, and considering that in our opinion there was indeed a violation of A.A.'s right to life, the obstacle envisaged in the Court's reasoning is removed; therefore, it would certainly be appropriate to consider whether there was a violation of the rights recognized in Article 23 of the American Convention to his detriment.

18. Indeed, as stated in the Judgment, the States must provide positive measures to guarantee that everyone who is a formal holder of political rights has the real opportunity to exercise them, addressing any situations of particular vulnerability affecting the holders of this right. Therefore, it is imperative that the State create optimum conditions and mechanisms to ensure the full exercise of political rights.<sup>25</sup> In this case, the Court established that, at the time of this death, Mr. A.A. held a political position as Community Mayor of the Community Development Council (COCODE) of Cruce de la Esperanza, part of Guatemala's system of Development Councils created through the Law on Urban and Rural Development Councils, as the main vehicle for citizen participation in public affairs.<sup>26</sup>

19. Moreover, it should be noted that at the time of the events, the Municipal Mayor acknowledged that Mr. A.A.'s death "was not something isolated, since other leaders with leadership qualities similar to Mr. [A.A.] have also been murdered or intimidated into leaving their homes for promoting informed participation."<sup>27</sup> He also mentioned other cases of violence and threats against community leaders that occurred during the 2004-2007 period. In addition, one of the individuals indicated by family A as a suspect in his death was considered thus because of conflicts related to the positions held by Mr. A.A. Indeed, one of the suspects had problems with Mr. A.A., because he proclaimed himself Deputy Mayor of the community in which Mr. A.A. actually held this position.<sup>28</sup>

20. Thus, in this particular context, Mr. A.A.'s death implied the definitive interruption of his work in his position as Community Mayor of the COCODE of Cruce de

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<sup>24</sup> Para. 189 of the Judgment.

<sup>25</sup> Cf. para. 186 of the Judgment.

<sup>26</sup> Cf. para. 187 of the Judgment.

<sup>27</sup> Statement of the then Municipal Mayor of December 5, 2010 (File of attachments to the submission brief, page 796).

<sup>28</sup> Cf. para. 148 of the Judgment.



la Esperanza. Consequently, this dissenting minority considers that, by not protecting A.A. against the real and imminent danger to his life, the State did not guarantee the necessary conditions so that A.A. could continue to exercise his political rights in the political position he held. Consequently, the State failed to fulfill its obligation under Article 23(1) of the American Convention, in relation to Article 1(1) thereof.<sup>29</sup>

### 3. Conclusion

21. As the signatories of this opinion, we believe that the State failed in its obligation to protect the life of A.A.. Based on an overall assessment of the foregoing evidence, and in light of the context of vulnerability for human rights defenders in Guatemala at the time of the events, particularly for those specializing in economic, social and cultural rights, and those seeking justice for violations committed in the past, we consider that the State, at the very least, should have known that Mr. A.A. faced real danger.

22. Even if it were true that the threat made against B.A. only referred to herself and her son, it was reasonable to conclude that this danger also extended to her father, particularly bearing in mind that A.A. also worked for the defense of economic, social and cultural rights, sought justice for the enforced disappearance of his son and held an important position of political leadership with influence in his community.

23. Similarly, it is reasonable to conclude that, in the context of vulnerability facing human rights defenders at the time of the events,<sup>30</sup> the "increased protection" which is explicitly established in the Judgment for this vulnerable group, should have operated for the benefit of Mr. A.A. This is especially true, bearing in mind that various Guatemalan authorities had knowledge of the threats made against family A and considering, moreover, that the Inter-American Court had declared Mr. A.A. a victim in a previous case for acts attributable to the State itself.<sup>31</sup> Therefore, all these elements taken together warranted special protection of his life by the State.

24. In this case, the lack of protection on the part of the State not only resulted in Mr. A.A. being deprived of his life, but also of the opportunity to continue exercising his leadership in his community from a political position.

25. Consequently, we consider that the Inter-American Court should have declared the international responsibility of the Guatemalan State for the violation of the guarantee of the right to life and the exercise of political rights, recognized in Articles 4(1) and 23(1), respectively, of the American Convention, in relation to Article 1(1) thereof, to the detriment of A.A.

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<sup>29</sup> In another Guatemalan case, the Court did recognize the violation of political rights in connection with the right to life, among other rights. In the case of the indigenous leader Florencio Chitay Nech, who held municipal posts during the period of the internal armed conflict and who was a victim of enforced disappearance, the Court declared that the State had violated Article 23 of the American Convention. *Cf. Case of Chitay Nech et al. Vs. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of 25 of mayo of 2010. Series C No. 212, paras. 104 to 117.

<sup>30</sup> *Cf. para. 78 of the Judgment.*

<sup>31</sup> *Cf. Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits Reparations and Costs.*

Roberto F. Caldas  
Judge

Eduardo Ferrer Mac-Gregor Poisot  
Judge

Pablo Saavedra Alessandri  
Secretary