

**Order of the  
Inter-American Court of Human Rights  
of November 20, 2007  
Case of García Prieto et al. v. El Salvador  
(Preliminary Objections, Merits, Reparations and Costs)**

In the *Case of García Prieto et al. v. El Salvador*,

The Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal"), composed of the following judges:\*

Sergio García-Ramírez, President;  
Cecilia Medina-Quiroga, Vice President;  
Manuel E. Ventura-Robles, Judge;  
Leonardo A. Franco, Judge;  
Margarette May Macaulay, Judge; and  
Rhadys Abreu Blondet, Judge;

also present,

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 37(6), 54, 55, 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers the following Judgment.

**I**

**INTRODUCTION TO THE CASE AND SUBJECT-MATTER OF DISPUTE**

1. On February 9, 2006, the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") submitted an application against the State of El Salvador (hereinafter, "El Salvador" or "the State") pursuant to Articles 51 and 61 of the American Convention. This application originated in petition No. 11.697, submitted to the Secretariat of the Commission on October 22, 1996 by José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto, parents of Ramón Mauricio García Prieto Giralt (hereinafter "Ramón Mauricio García Prieto" or "Mr. García Prieto"), and by Carmen Alicia Estrada, widow of García Prieto (hereinafter, Carmen Alicia Estrada or "Ms. Estrada"), as well as by the Human Rights Institute of the Central American University "José Simeón Cañas" ("Instituto de Derechos Humanos de la Universidad Centroamericana 'José Simeón

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\* On January 22, 2007, Judge Diego García-Sayán recused himself from the present case, pursuant to Article 19 of the Statute of the Inter-American Court and Article 19 of the Court's Rules of Procedure. In a communication of June 15, 2007, Judge *ad hoc* Alejandro Montiel Argüello formally communicated to the Court his renunciation as *ad hoc* judge due to circumstances beyond his control.

Cañas", (hereinafter "IDHUCA") and the Center for Justice and International Law (hereinafter, "CEJIL"). On March 9, 1999, the Commission issued its Report on Admissibility, No. 27/99, and on October 24, 2005, the Commission issued its Report on Merits, No. 94/05, in accordance with Article 50 of the Convention.<sup>1</sup> The Commission's Report on Merits contained several recommendations, which the Commission found were not satisfactorily adopted by the State. As a result, the Commission decided to submit the case to the Court's jurisdiction.<sup>2</sup>

2. With respect to the facts of the case, the Commission indicated that on June 10, 1994, Mr. Ramón Mauricio García Prieto was outside the house of some relatives when he was stopped by two individuals with firearms who threatened his life. Later, he was murdered, although the Commission stressed that this act lay outside the jurisdiction of the Court. The Commission added that following the death of Mr. García Prieto the state authorities undertook criminal investigations in order to identify, judge, and possibly punish those responsible. To this end, the criminal proceedings (No. 262/94) were developed before the Fifteenth Court of Peace of San Salvador (*infra* note 38), which were brought to a close on October 7, 1996 with the sentencing of Raúl Argueta Rivas to twenty-six years of prison for the murder of Mr. García Prieto. On August 28, 1997, new proceedings (No. 110/98) were opened before the Thirteenth Court of Peace (*infra* note 42), in order to continue the investigation and determine the facts surrounding the murder of Mr. García Prieto. These proceedings concluded on June 7, 2001 with the sentencing of Julio Ismael Ortiz Díaz to thirty years in prison. Finally, the parents of Mr. García Prieto lodged a complaint before the Office of the Attorney General of the Republic of El Salvador on June 6, 2003, in which they requested that the investigation into the homicide of their son continue. This final investigation has not yet been closed.

3. In addition, the Commission indicated that Mr. José Mauricio García Prieto Hirlemann, Ms. Gloria Giralte de García Prieto and Ms. Carmen Alicia Estrada had been the object of threatening acts and harassment. In response, the Salvadoran authorities took investigative steps in criminal proceeding 110/98. However, by way of a document of August 15, 2000, the Trial Court ordered that the investigation not be continued. Later, on November 15, 2001, prosecutor's investigation number 4799-UDV-2001 was opened, which still has not been closed.

4. In its application, the Commission alleged that the State was responsible for "the acts and omissions in the investigation of the homicide of Ramón Mauricio [García Prieto] [...] which occurred on June 10, 1994 in San Salvador, as well as for the [alleged] threats of which his next of kin were subsequently victim[s] due to their role in the investigation, and for the lack of adequate reparations for the

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<sup>1</sup> In its Report on Merits No. 94/05, the Commission concluded, *inter alia*, that the State violated the right enshrined in Article 4 of the American Convention to the detriment of Ramón Mauricio García Prieto, as well as the rights enshrined in Articles 5, 8, and 25 of the Convention to the detriment of José Mauricio García Prieto Hirlemann, Gloria Giralte de García Prieto and Carmen Alicia Estrada. All these rights were alleged to have been violated in conjunction with Article 1(1) of the Convention.

<sup>2</sup> The Commission originally designated Executive Secretary Santiago A. Canton and Commissioner Clare Kamau Roberts as delegates, and designated Elizabeth Abi-Mershed, Marisol Blanchard Vera, Manuela Cuví Rodríguez, Víctor H. Madrigal Borloz and Nelson Camilo Sánchez León, specialists of the Executive Secretary, as legal advisors. On November 16, 2006, the Commission communicated to the Secretariat that it had designated Executive Secretary Santiago A. Canton, Commissioner Evelio Fernández Arévalo and Commissioner Freddy Gutiérrez Trejo as delegates. On January 12, 2007, the Commission communicated to the Secretariat that it had designated Commissioner Freddy Gutiérrez Trejo as delegate and that it had designated Marisol Blanchard, Lilly Ching and Manuela Cuví Rodríguez as legal advisors.

victims." The Commission indicated that the violations for which it was requesting the Court's ruling "occurred after June 6, 1995, which is the date on which El Salvador [recognized the] contentious jurisdiction" of the Court.

5. The Commission requested that the Court conclude and declare that the State is responsible for the violation of the rights enshrined in Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, all in conjunction with Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of José Mauricio García Prieto Hirlemann, Gloria Giralt de García Prieto, and Carmen Alicia Estrada. As a result of these alleged violations, the Commission requested that the Court order the State to provide certain reparations.

6. In the present case, at the time of the submission of the brief containing pleadings, motions, and evidence (hereinafter, "brief containing pleadings and motions") the alleged victims had not designated a common intervener. As a result, two independent briefs containing pleadings and motions were submitted. One was submitted by Carmen Alicia Estrada, in her own name and as representative of her son Ramón Mauricio García Prieto Estrada. The other was submitted by José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto, parents of Ramón Mauricio García Prieto, as well as by Ite María del Carmen García Prieto Taghioff, Lourdes García Prieto de Patuzzo and Gloria María de los Ángeles García Prieto de Charur (hereinafter, "María de los Ángeles García Prieto de Charur"), sisters of Mr. García Prieto.

7. Mr. Luis Mario Pérez Bennett, representative of Carmen Alicia Estrada and Ramón Mauricio García Prieto Estrada, presented his brief containing pleadings and motions on May 19, 2006. Like the Commission, Mr. Luis Mario Pérez Bennett requested that the Court conclude and declare that the State violated Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, all in conjunction with Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Carmen Alicia Estrada, her minor son Ramón Mauricio García Prieto Estrada and "the other next of kin of Ramón Mauricio García Prieto [...]" without specifying the names of these other family members. He asked the Court to order that the State adopt certain measures of reparation.

8. Likewise, José Mauricio García Prieto Hirlemann, Gloria Giralt de García Prieto, Ite María del Carmen García Prieto Taghioff, Lourdes García Prieto de Patuzzo and María de los Ángeles García Prieto de Charur, represented by CEJIL and IDHUCA,<sup>3</sup> submitted their brief containing pleadings and motions on May 26, 2006. In this brief, they requested that the Court declare that the State violated Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in conjunction with the obligations established in Article 1(1) of the Convention (Obligation to Respect Rights) to the detriment of Ramón Mauricio García Prieto. In addition, they requested that the Court declare that the State violated Article 4 (Right to Life), in relation with Article 1(1) of the Convention to the detriment of Ramón Mauricio García Prieto due to the State's failure to adequately and effectively investigate his death. Furthermore, they requested that the Court declare that the State violated

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<sup>3</sup> By power of attorney, the alleged victims appointed Matilde Guadalupe Hernández de Espinoza, Claudia María Hernández Galindo and Henri Paul Fino Solórzano of IDHUCA, as well as Viviana Krsticevic and Gisela De León of CEJIL as their representatives.

Articles 5 (Right to Humane Treatment), 11(2) (Right to Privacy), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in conjunction with Article 1(1) of the American Convention, to the detriment of José Mauricio García Prieto Hirlemann, Gloria Giralt de García Prieto, María de los Ángeles García Prieto de Charur, Ile María del Carmen García Prieto Taghioff and Lourdes Elizabeth García Prieto de Patuzzo, as well as Carmen Alicia Estrada and Ramón Mauricio García Prieto Estrada. They also requested that the Court order the State to adopt certain measures of reparation.

9. On July 12, 2006, in accordance with Article 23(2) of the Rules of Procedure, the Court designated CEJIL and IDHUCA as common interveners, due to the lack of an agreement in this respect among the alleged victims.<sup>4</sup>

10. On July 24, 2006, the State<sup>5</sup> submitted its preliminary objections, its reply to the application, and its observations with respect to the briefs containing pleadings and motions (hereinafter, "State's reply brief"), in which it requested that the Court declare that it had not violated Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) in conjunction with Article 1(1) (Obligation to Respect Rights) of the American Convention, to the detriment of the next of kin of Ramón Mauricio García Prieto, as was alleged by the Commission. Likewise, the State raised three preliminary objections: lack of jurisdiction *ratione temporis*, the failure to exhaust domestic remedies, and the informality of the application (*infra* para. 30 to 59).

11. On September 8, 2006, the Commission and CEJIL and IDHUCA submitted their briefs with respect to the preliminary objections raised by the State, in which they requested that the Court dismiss the State's preliminary objections and proceed with the merits of the case. Finally, on September 11, 2006, CEJIL and IDHUCA, as common interveners, submitted a brief, prepared by the representative of Ms. Estrada and her son, which contained observations with respect to the State's preliminary objections.

## II

### PROCEEDINGS BEFORE THE COURT

12. The application was served upon the State<sup>6</sup> and the representatives on March 24, 2006. During the proceedings before this Tribunal, in addition to the principal briefs in the case submitted by the parties (*supra* paras. 1, 6, 7, 8, 10 and 11), the President of the Court<sup>7</sup> (hereinafter, "the President") ordered the reception of

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<sup>4</sup> On July 12, 2006, the Secretariat, following the President's instructions, requested that the representatives choose a common intervener in accordance with Article 23(2) of the Rules of Procedure.

<sup>5</sup> On April 21, 2006, the State appointed Oscar Alfredo Santamaria as its agent, and Ambassador Milton José Colindres Uceda as its alternate agent.

<sup>6</sup> When the application was served upon the State, the State was informed of its right to designate an *ad hoc* judge to participate in the deliberation of the case. On May 11, 2006, after being granted an extension, the State designated Mr. Alejandro Montiel Argüello as *ad hoc* judge. On January 25, 2007, Mr. Alejandro Montiel Argüello informed the Court, that, due to circumstances beyond his control, he would be unable to be present at the public hearing of the present case. By a communication dated July 4, 2007, the State asked whether it would be permitted to designate a new *ad hoc* judge. By a communication dated July 9, 2007, the State was informed that it was not possible to grant the request.

affidavits and expert testimony rendered before a notary public by the lay and expert witnesses offered by the Commission, the common intervener, and the State. The parties were given the opportunity to submit their observations with respect to this testimony. In addition, in light of the particular circumstances of the present case, the President convened a public hearing among the Inter-American Commission, the common intervener, and the State, in order to hear the testimony of one of the alleged victims and three other witnesses, and to hear the closing arguments of the parties with respect to the preliminary objections, and the possible merits, reparations and costs in the case. This public hearing was held on January 25 and 26 of 2007 during the LXXIV Regular Period of Sessions of the Court.<sup>8</sup> During the hearing, the State informed the Court of the existence of a “friendly settlement” reached between the State and Carmen Alicia Estrada. The Commission and the common intervener requested that the Court continue with its examination of the merits of the case. In addition, the Secretariat, following instructions from the President, and in accordance with Article 45 of the Rules of Procedure, requested that the State submit certain evidence in order to facilitate adjudication of the case. On February 15, 2007, the State submitted a portion of this evidence. On February 19, 2007, the Secretariat informed the State that it still awaited documents or related information that was not sent on February 15. It should be noted that on the date of the present Judgment these documents have not been received. On February 26, 2007, the Commission, the common intervener, and the State submitted their written closing arguments with respect to the preliminary objections and possible merits, reparations and costs. The State and the common intervener attached several exhibits to their briefs. On March 30, 2007, Sonia Rubio Padilla, Astrid María Valencia, and Francisco Antonio Chicas submitted an *amicus curiae* brief. On June 16, 2007, pursuant to Article 45 of the Rules of the Court and following instructions from the President, the Secretariat requested that the State submit proof of payment of the indemnity established in the “friendly settlement.” On July 4, 2007, the State submitted this proof of payment. On September 20, 2007, the common intervener presented nine journalistic articles published on the internet to be incorporated in the body of evidence of the case as supervening evidence.

### III PROVISIONAL MEASURES

13. On September 25, 2006, the Inter-American Commission<sup>9</sup> requested that the Court order provisional measures on behalf of Gloria Giralte de García Prieto, José

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<sup>7</sup> Order of the President of the Inter-American Court of December 14, 2006. On January 22, 2007 the Secretariat, following instructions of the President, requested that Mr. Benjamín Cuellar Martínez give his sworn testimony before a notary public (affidavit).

<sup>8</sup> At this hearing, the following individuals appeared on behalf of the parties: a) for the Inter-American Commission: Freddy Gutiérrez Trejo, as delegate; Manuela Cuví Rodríguez and Marisol Blanchard as legal advisors; b) for the representatives: Matilde Guadalupe Hernández de Espinoza, representative of IDHUCA; and Gisela De León, Viviana Krsticevic, and Soraya Long, representatives of CEJIL; c) for the State: Oscar Alfredo Santamaría, agent; Milton Colindres Uceda, Ambassador and alternate agent; and Ana Elizabeth Villalta Vizcarra, General Director of Legal Affairs and Human Rights for the Ministry of Foreign Relations; Teresa del Carmen Blanco de Quijano; Jorge Cortéz; and Carlos Argueta, legal advisors.

<sup>9</sup> The Inter-American Commission adopted cautionary measures on June 20, 1997, which were reaffirmed on November 20, 2001.

Mauricio García Prieto Hirlemann, María de los Ángeles García Prieto de Charur, José Benjamín Cuéllar Martínez, Matilde Guadalupe Hernández de Espinoza, Paulino Espinoza and José Roberto Burgos Viale, such that the State “adopt all measures necessary to guarantee the life and personal integrity of the beneficiaries [...]”. On September 26, 2006, the Court ordered the State, *inter alia*, to immediately adopt the measures necessary to protect the life and personal integrity of these individuals, with the exception of Paulino Espinoza, husband of Matilde Guadalupe Hernández.

14. On November 29, 2006, CEJIL and IDHUCA requested that the Court order provisional measures on behalf of Ricardo Alberto Iglesias Herrera based on the allegation that he “suffered an attempt on his life and personal integrity” and that he had been offered by them as an expert witness in the present case. On December 3, 2006, the President ordered that the State adopt urgent measures on his behalf. On January 27, 2006, the Court ordered the State, *inter alia*, to maintain the measures necessary to protect the life and personal integrity of the beneficiaries of the provisional measures indicated in the preceding paragraph, and to broaden the measures to guarantee the life and personal integrity of Ricardo Alberto Iglesias Herrera.

#### IV EVIDENCE

15. In accordance with Articles 44 and 45 of the Rules of Procedure, as well as the Court’s jurisprudence regarding evidence and its assessment, the Court will now proceed to examine and assess the documentary evidence offered by the Commission, the common intervener, and the State at different times during the proceedings, as well as evidence in order to facilitate adjudication of the case requested by the President. The Court will also examine and assess the testimony of witnesses and expert witness opinions rendered through affidavits and before the Court during the public hearing convened for the present case. For this purpose, the Tribunal will employ the rules of competent analysis, within the corresponding legal framework.<sup>10</sup>

##### A) WRITTEN, ORAL, AND EXPERT TESTIMONY

16. Expert and lay testimony was rendered by affidavit by the following individuals:

- a) *José Mauricio García Prieto Hirlemann*, presented by both the Commission and the common intervener, is the father of Ramón Mauricio García Prieto. He testified about efforts undertaken before the Mission of Observers of the United Nations (“Misión de Observadores de las Naciones Unidas”, hereinafter, “ONUSAL”), IDHUCA and the Office of the Ombudsman for the Defense of Human Rights (“Procuraduría para la Defensa de los

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<sup>10</sup> Cf. *Case of the “White Van” (Paniagua-Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, para. 76; *Case of Cantoral Huamani and García Santa Cruz v. Perú. Merits, Reparations and Costs.* Judgment of July 4, 2007. Series C No. 167, para. 32; and *Case of Zambrano Vélez et al. v. Colombia. Merits, Reparations, and Costs.* Judgment of July 4, 2007. Series C No. 166, para. 22.

Derechos Humanos”), as well as efforts undertaken before the National Civil Police (“Policía Nacional Civil”, hereinafter, “PNC”), the Office of the Attorney General of the Republic of El Salvador (“la Fiscalía General de la República de El Salvador”) and the Legislative Assembly in order to bring to justice the alleged material and intellectual authors of the homicide of his son Ramón Mauricio García Prieto. In addition, he testified about the accusations he made before the courts, the National Civil Police, and the Ministry of Defense with the objective that they investigate the threats and intimidating acts of which he and his family have been victim. Likewise, he referred to the physical and psychological injuries he suffered during his struggle for justice.

b) *David Ernesto Morales Cruz*, presented by the Commission and the common intervener, worked as Chief of the Department of Investigations of the central headquarters of the Office of the Ombudsman for the Defense of Human Rights at the time of the events. He testified about the context of violence and impunity existent at the time of the death of Ramón Mauricio García Prieto, the characteristics and activities of the so called “death squads” (“escuadrones de la muerte”), and the several investigations undertaken by the Office of the Ombudsman for the Defense of Human Rights, Mission of Observers of the United Nations (MINUSAL)<sup>11</sup>, the Archdiocesan Legal Aid Clinic (“Oficina de Tutela Legal del Arzobispado”) and the Joint Group for the Investigation of Illegal Armed Groups (“Conjunto para la Investigación de Grupos Ilegales Armados”) in order to investigate this and other representative cases.

c) *María de los Ángeles García Prieto de Charur*, presented by the common intervener, is the sister of Ramón Mauricio García Prieto. She testified about the threats, harassment, surveillance, and anonymous phone calls of which she and her parents have been victim during their struggle for justice. She also testified about the changes in her life due to the death of her brother and the threats her parents and sisters have received, as well as the frustration, impotence, and anguish which the alleged denial of justice in the present case has caused her.

d) *Ile del Carmen García Prieto Taghioff*, presented by the common intervener, is the sister of Ramón Mauricio García Prieto. She testified about how the denial of justice in the case of her brother's homicide, as well as the many threats which she, her sisters, and her parents have suffered, have emotionally affected her and her family, as well as the effects upon the physical health and income of her father.

e) *Lourdes García Prieto de Patuzzo*, presented by the common intervener, is the sister of Ramón Mauricio García Prieto. She testified about the acts of intimidation, harassment, and surveillance suffered by her, her parents, and her sister Ile María García Prieto Taghioff. She also testified about how she and her family had suffered as a result of the alleged denial of justice with respect to her brother's homicide and the multiple threats received by them because of their struggle for justice. Moreover, she addressed the lack of trust that she felt towards the police and the justice system in general, which has generated feelings of impotence, frustration,

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<sup>11</sup> The United Nations Observer Mission, previously “ONUSAL”, adopted the name “MINUSAL” in 1995.

and insecurity. Finally, she testified about the decline in her father's health as a result of this situation and the loss of income and insecurity suffered by her parents.

f) *Alina Isabel Arce*, presented by the common intervener, worked as an agent of the Division for the Protection of Important Individuals ("División de Protección a Personalidades Importantes") of the National Police, Judges and Witnesses Section. She testified about the threats to the security and physical integrity suffered by José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto during the period in which she served them as an agent, and the high level of risk in which the couple found themselves during their struggle for justice in the case of Ramón Mauricio García Prieto's death.

g) *María Julia Hernández*, presented by the common intervener, is Director of the Legal Aid Clinic of the Archdiocese of San Salvador. She testified about the investigations into violations of the right to life undertaken by her office. She stated that these investigations concentrated on the operation of the "death squads" after the end of the Salvadoran internal armed conflict.

h) *Ricardo Alberto Iglesias Herrera*, presented by the common intervener is a lawyer who specializes in human rights. He rendered expert testimony about the alleged general context of impunity for various types of crimes, including grave violations of human rights in El Salvador. He also testified about actions taken by the police and judicial authorities to investigate the death of Ramón Mauricio García Prieto and the investigative steps taken by the Office of the Attorney General of El Salvador with respect to the threats to the García Prieto family which occurred as a result of their struggle for justice in this case.

i) *Mauricio José Ramón Gaborit Pino*, presented by the common intervener, rendered expert testimony about the severity of the psychological effects suffered by José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto caused by the partial impunity in the case of the homicide of their son, Ramón Mauricio García Prieto; by the alleged acts of intimidation and threats of which they have been victim as a result of their struggle for justice; and by the impunity which exists with respect to these acts. Finally, he classified the trauma suffered by each of them according to the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV).

j) *Benjamín Cuéllar Martínez*, presented by the common intervener, is the director of IDHUCA. He testified about the alleged acts of intimidation, threats, and attempted attacks on the lives and physical integrity suffered by him and other IDHUCA attorneys. He related these events to his work on the present case.

k) *Oscar Antonio Castro Ramírez*, presented by the State, worked as assistant prosecutor for the Attorney General during the investigation of the group of prosecutors created to investigate the death of Mr. García Prieto. He testified about the actions requested of and taken by the police and judicial authorities. He also testified about the investigation of one of the material authors who was later found guilty and about the actions taken to further develop the investigation of other material and intellectual authors.



17. During the public hearing, the Court heard the testimony of the following lay witnesses:

a) *Gloria Giralt de García Prieto*, presented by both the Commission and the common intervener, is the mother of Ramón Mauricio García Prieto. She testified about the delays and irregularities in the judicial proceedings, as well as the actions undertaken before the Office of the Attorney General of the Republic of El Salvador, the Ministry of Public Safety, the Office of the Ombudsman for the Defense of Human Rights, and ONUSAL, among other institutions, in order to drive the investigation and trial of those responsible for the death of her son. In addition, she described the threats and acts of intimidation of which she and her family have been victim. She testified about the criminal complaints made to the authorities about these events, the corresponding investigations undertaken, as well as the damages and injuries suffered by her and her family. She also testified about the situation of risk to which she and her family have been subjected during their struggle for justice.

b) *Pedro José Cruz Rodríguez*, presented by the common intervener, acted as assistant prosecutor in the Special Crimes Unit (“Unidad de Delitos Especiales”) of the Attorney General of the Republic (“Fiscalía General de la República”) and as coordinator for that unit. He testified about the irregularities, obstacles, and delays experienced in the prosecutor's investigation of Ramón Mauricio García Prieto's death. In addition, he testified about the actions undertaken and lines of investigation followed with respect to the third material author, the alleged intellectual authorship, and the investigation related to the threats suffered by Ramón Mauricio García Prieto's family as a result of their struggle for justice. Finally, he indicated that he suffered threats as a result of his involvement in the case.

c) *Fredy Ramos*, presented by the State, was a prosecutor in the Special Crimes Unit at the time of the investigation. He testified about the investigation of the death of Ramón Mauricio García Prieto and some of the actions undertaken.

d) *Virginia Lorena Paredes de Dueñas*, presented by the State, testified about the proceedings which she oversaw as a judge in the Third Criminal Court (“Juzgado Tercero de lo Penal”). In addition, she testified about the material and alleged intellectual authors of the homicide of Ramón Mauricio García Prieto and the threats suffered by the García Prieto family. She indicated, among other things, that the work performed by the Office of the Attorney General of the Republic of El Salvador had been diligent and that outside influence or obstacles to her work as a judge were inexistent. Finally, she justified the absence of certain investigative actions.

## *B) EVALUATION OF THE EVIDENCE*

### *Evaluation of the Documentary Evidence*

18. In this case, as in others,<sup>12</sup> the Tribunal recognizes the evidentiary value of the documents submitted by the parties at the appropriate procedural stage which have neither been contested nor challenged, and whose authenticity was not put into doubt.

19. With respect to the documents presented by the State during the public hearing, those sent by the State in order to facilitate adjudication of the case, and the documents presented by the common intervener and the State, as attachments to their written closing arguments, the Tribunal incorporates these into the body of evidence, pursuant to Article 45 of the Rules of Procedure.

20. The State did not submit the documents and information requested with respect to the investigative steps taken in response to the alleged threats reported to the authorities by members of the García Prieto Giralte family; nor did it submit information corresponding to the investigation subsequent to June 19, 2002 or the alleged investigation into the events which occurred at "El Cuco" beach. The Court observes that the parties, and, in this case, the State, must provide the evidence requested by the Court and facilitate the delivery of all probative elements, such that the Tribunal may have the most evidentiary elements necessary to understand the facts of the case and rule upon them.

21. With respect to the testimony rendered by Alina Isabel Arce (*supra* para. 16(f)) and María Julia Hernández (*supra* para. 16(g)) before a notary public, this Tribunal admits their affidavits to the extent they conform with the object of testimony indicated in the Order of the President of December 14, 2006 (*supra* note 12), and will take them into consideration together with the remainder of the body of evidence.

22. The State objected to the testimony rendered by José Mauricio García Prieto Hirlmann (*supra* para. 16(a)), María de los Ángeles García Prieto de Charur (*supra* para. 16(c)), Ite del Carmen García Prieto Taghioff (*supra* para. 16(d)) and Lourdes García Prieto de Patuzzo (*supra* para. 16(e)) before a notary public, on the grounds that their respective depositions were "full of sensitivities, which impeded their impartiality." The Court finds that these depositions may contribute to the Court's determination of the facts of the present case, to the extent they conform to the object of testimony defined in the Order of the President of December 14, 2006 (*supra* para. 12). As a result, the Court will evaluate them applying the rules of competent analysis and taking into account the State's observations. Likewise, this Tribunal notes that because these depositions have been provided by alleged victims or their next of kin who have a direct interest in the case, they cannot be evaluated in isolation, but rather, within the whole of the body of evidence presented during the proceedings.<sup>13</sup> The depositions of the alleged victims or their next of kin are useful when they provide additional information about the consequences of the alleged violations.<sup>14</sup>

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<sup>12</sup> Cf. *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 140; *Case of Cantoral Huamaní and García Santa Cruz*, *supra* note 10, para. 41; *Case of Zambrano Vélez et al.* *supra* note 10, para. 32; and *Case of Escué Zapata*, *supra* note 10, para. 25.

<sup>13</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. 70; *Case of Cantoral Huamaní and García Santa Cruz*, *supra* note 10, para. 44; *Case of Zambrano Vélez et al.* *supra* note 10, para. 40; and *Case Escué Zapata*, *supra* note 10, para. 29.

23. The State also objected to the testimony rendered by David Ernesto Morales Cruz (*supra* para. 16(b)) in his affidavit before a notary public. The State claimed that “his judgments should not have been subjective [...]” Likewise, the State objected to the testimony rendered by José Benjamín Cuéllar Martínez (*supra* para. 16(j)), on the grounds that he had been present during the public hearing. According to the State, his presence led to inequality among the witnesses, and his testimony is subjective. The Court notes that Mr. Cuéllar Martínez was in fact present at the public hearing held on January 25 and 26 of 2007 and that upon the Court’s request of January 22, 2007 he submitted an affidavit. On this issue, the Court will take into account the State’s observations and evaluate the testimony applying the rules of competent analysis, since the Court finds that this testimony may contribute to the Tribunal’s determination of the facts of the present case, to the extent that they conform to the object of testimony defined in the Order of the President of December 14, 2006 (*supra* para. 12) and the Secretariat’s communication of January 22, 2007.

24. The common intervener objected to the testimony rendered by Oscar Antonio Castro Ramírez (*supra* para. 16(k)) in his affidavit before a notary public, and requested that the Court evaluate his testimony in accordance with the rules of competent analysis and experience. They further requested that the Court apply Article 52 of the Rules of the Court, which relates to false evidence. In this regard, the Court admits this testimony to the extent that it conforms to the object of testimony established in the Order of the President of December 14, 2006 (*supra* para. 12), and will evaluate the testimony in light of the common intervener’s observations, the body of evidence in this case, and the rules of competent analysis.

25. With respect to the expert testimony rendered by Mauricio José Ramón Gaborit Pino (*supra* para. 16(i)) in his affidavit before a notary public, the State objected because he “works as Head of the Department of Psychology of [the Central American University José Simeón Cañas]. [IDHUCA] also belongs to this institution, and represents the alleged victims in the present case. As a result, the State does not consider him credible as an expert witness due to his direct and evident relationship with the representatives of the alleged victims.” The State requested that the Court seek the objective and professional psychological opinion of a different expert witness. On this issue, the Court notes that this objection was already addressed in the Order of the President of December 14, 2006 in the “whereas” clauses eleven and twelve. Likewise, the State objected to the expert testimony rendered by Ricardo Alberto Iglesias Herrera (*supra* para. 16(h)), stating that his testimony “does not constitute a ‘technical expert report’, but rather, a criminal complaint, affirming facts and situations without any base in evidence, and expressing a ‘subjective’ evaluation of the historical situation of El Salvador [...]” Moreover, the State indicated that “in his expert report he narrates frightening and injurious accusations against the law enforcement officials [...] even though it is not his place as an expert to make technically unfounded assertions.” This Tribunal admits the abovementioned pronouncements, taking into account the object of testimony established in the Order of the President of December 14, 2006 and the

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<sup>14</sup> Cf. *Case of the “White Van” (Paniagua Morales et. al.) v. Guatemala*, *supra* note 13, para. 70; *Goiburú et al. v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 59*; *Case of Ximenes Lopes v. Brazil. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, para. 56*; and *Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, para. 121.*

observations presented by the State, and will evaluate them according to the body evidence in the present case and the rules of competent analysis.

26. With respect to the press documents submitted by the parties, this Tribunal has found that these may be noted when they describe public and notorious events, or when they record statements by State agents, or when they corroborate other aspects related to the case.<sup>15</sup>

27. Regarding the journalistic articles published on the Internet provided by the common intervener to be admitted as supervening evidence (*supra* para. 12) which refer to the alleged participation of members of the National Police in the “death squads”, the Court points out that the Commission did not make observations. The State requested that the Court not admit said evidence because it was not supervening. To this respect, this Tribunal finds that said documents and the information that they contain are not directly related to the facts of the present case, and that, as a result, they can not be considered supervening evidence. Therefore, the Tribunal concludes that the mentioned documents do not satisfy the criteria established in Article 44(3) of the Rules of Procedure and does not admit them.

#### *Evaluation of the Oral Testimony*

28. The Tribunal admits the testimony rendered by Gloria Giralt de García Prieto (*supra* para. 17(a)) before the Court to the extent that it conforms with the object of testimony defined in the Order of the President of December 14, 2006 (*supra* para. 12), and will evaluate it with the remainder of the body of evidence. Likewise, the Court reiterates what it previously indicated with respect to the value of testimony rendered by an alleged victim in the present case (*supra* para. 22).

29. With respect to the testimony rendered by Pedro Cruz Rodríguez (*supra* para. 17b), Fredy Antonio Ramos (*supra* para. 17(c)) and Virginia Lorena Paredes de Dueñas (*supra* para. 17(d)), this Tribunal evaluates their statements in accordance with the rules of competent analysis and to the extent that they conform to the object of testimony defined in the Order of the President of December 14, 2006 (*supra* para. 12).

## V PRELIMINARY OBJECTIONS

30. In the State’s reply brief, the State raised three preliminary objections: “Lack of Jurisdiction *Ratione Temporis*”; “Failure to Exhaust Domestic Remedies” and an objection related to the “Informality of the Application.” The Court will now proceed to analyze these objections in the order stated.

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### FIRST PRELIMINARY OBJECTION “Lack of Jurisdiction *Ratione Temporis*”

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<sup>15</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 12, para. 146; *Cantoral Huamaní and García Santa Cruz*, *supra* note 10, para. 41; and *Case of Zambrano Vélez et al.*, *supra* note 10, para. 28.

31. The State raised its first preliminary objection based on its Instrument of Recognition of the contentious jurisdiction of the Court of June 6, 1995. This instrument contains the following declaration:

I. The Government of El Salvador recognizes as binding ipso facto, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights, in accordance with Article 62 of the American Convention on Human Rights, "Pact of San José."

II. The Government of El Salvador, in recognizing that jurisdiction, states that its recognition is for an indefinite period and on condition of reciprocity, and that it retains the right to include exclusively deeds or juridical acts or deeds or juridical acts that begin after the date of deposit of this declaration of acceptance.

32. As a result, the State alleged that this declaration precludes the Court from hearing or ruling upon: a) events or juridical acts prior to the date of deposit of the Declaration of Acceptance; and b) "events or juridical acts which begin prior to the date on which the Declaration of Acceptance was deposited."

33. On this point, the State also indicated that it submits to the Court's consideration the second part of the declaration of recognition of the Court's jurisdiction. According to the State, this declaration directs that the Court shall only have jurisdiction over those events or juridical acts which have begun subsequent to the date of deposit of the declaration of recognition, thus excluding events or juridical acts which begin prior to that date, and which continue to have effects subsequent to that date.

34. El Salvador indicated that upon applying this temporal limitation to the present case, "given that the events occurred on June 10, 1994, a hearing of these events, as well as some of the judicial investigation and prosecutorial actions, lie outside the Court's jurisdiction, taking into account that this event generated effects in time such as the judicial proceedings and prosecutorial actions which include a variety of investigations to address that event; as a result, these events or juridical acts also would remain excluded from the jurisdiction of the Court, since they necessarily depend upon the generating event, which is the homicide of [Ramón Mauricio García Prieto]." The State supported its reasoning "on the basis that the accessory's fate is the same as that of the principal, which is a general principle of Law and which indicates that if the events which gave rise to subsequent actions have as a point of departure the homicide of [Ramón Mauricio García Prieto] which occurred on June 10, 1994, that is, prior to June 6, 1995, and if this [...] is the generating event, and everything else derives from it, it would be contrary to the principle of legal certainty to exercise jurisdiction over the other events[...]."

35. The Inter-American Commission maintained that the Court has jurisdiction over the events and alleged violations that occurred subsequent to the date of the State's recognition of the Court's jurisdiction. In this regard, in its application, the Commission distinguished between those events which, in its opinion, were outside the jurisdiction of the Tribunal, and those acts and omissions which were consummated independently subsequent to June 6, 1995, the date on which the State recognized the Court's jurisdiction. According to the Commission, these acts and omissions constitute the State's failure to fulfill its obligation to effectively and adequately investigate the death of Ramón Mauricio García Prieto within a reasonable time, as well as to investigate the threats of which his next of kin and their attorneys were victim. In this sense, the Commission observed that "although

[...] in general, the denial of justice is a continuing violation, [...] the Commission has identified [...] independent events which are related to the violation of Articles 8 and 25 of the Convention.” Likewise, it alleged that various “threats received by the García Prieto Giralt family and their attorneys, which occurred subsequent to June 6, 1995, are related to the violation of Articles 5, 8, and 25 of the [American] Convention.”

36. The common intervener concurred with the Commission’s allegations with respect to the State’s preliminary objection. In this regard, the common intervener indicated that it had only submitted acts and events which began subsequent to June 6, 1995 for the Court’s consideration, such as the various threats, intimidating acts, and surveillance against the García Prieto Giralt family, as well as the lack of an adequate and effective investigation.

37. The Court reiterates what it has established in other cases, in the sense that the clause in which the Court’s jurisdiction is recognized is essential for the effectiveness of the international mechanisms of protection. Nonetheless, this clause must be interpreted and applied in light of the special nature of human rights treaties and their collective implementation.<sup>16</sup>

38. The Court, like every organ with jurisdictional attributes, has the inherent power to determine the reach of its own jurisdiction. The instruments deposited by the States which recognize the compulsory jurisdiction of the Court (Article 62(1) of the Convention) presuppose the Court’s power to resolve jurisdictional controversies involving States which appear before the Court.<sup>17</sup> This Tribunal takes into account the principle of non-retroactivity established in Article 28 of the Vienna Convention on the Law of Treaties of 1969<sup>18</sup> when determining the reach of its own jurisdiction.

39. The Tribunal has already established that the declaration contained in El Salvador’s instrument of recognition of the jurisdiction of the Court contemplates a temporal limitation on the Court’s jurisdiction. The objective of this temporal limitation is to exclude events or acts which occurred prior to the date on which the State recognized the Tribunal’s jurisdiction, as well as those acts and effects of a continuous or permanent violation which began prior to the date of recognition.<sup>19</sup> The State raised this same temporal limitation as a preliminary objection.

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<sup>16</sup> Cf. *Case of Ivcher Bronstein v. Perú. Jurisdiction*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of the Serrano Cruz Sisters. Preliminary Objections*. Judgment of November 23, 2004. Series C No. 118, para. 69; and *Case of Nogueira Carvalho et al. v. Brazil. Preliminary Objections and Merits*. Judgment of November 28, 2006. Series C No. 161, para. 42.

<sup>17</sup> Cf. *Case of Ivcher Bronstein. Jurisdiction*, *supra* note 16, para. 34; *Case of the Serrano Cruz Sisters. Preliminary Objections*, *supra* note 16, para. 74; *Case of Almonacid Arellano et al. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 45; and *Case of the Yean and Bosico Girls v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 8, 2005. Series C No. 130, para. 78.

<sup>18</sup> This Article establishes that “[u]nless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.” See Also, Cf. *Case of the Serrano-Cruz Sisters. Preliminary Objections*, *supra* note 16, para. 64; *Case of the Yean and Bosico Girls*, *supra* note 17, para. 78; and *Case of Nogueira de Carvalho et al*, *supra* note 16, para. 43.

<sup>19</sup> Cf. *Case of the Serrano Cruz Sisters. Preliminary Objections*, *supra* note 16, para. 72.

40. As was already established by this Tribunal, the abovementioned temporal limitation is based upon the authority granted to the States Parties in Article 62 of the Convention. This authority allows those states that recognize the contentious jurisdiction of the Tribunal to temporally limit that jurisdiction. Therefore, this limitation is valid, since it is compatible with this article.<sup>20</sup>

41. It is now incumbent upon the Tribunal to determine if the facts submitted to it have been excluded by the abovementioned limitation, given that the Court cannot leave it to the States to determine which events have been excluded from the Court's jurisdiction. This determination is a duty which corresponds to the Tribunal in the exercise of its jurisdictional attributes.<sup>21</sup>

42. In the case *sub judice* there is no dispute among the parties that the death of Ramón Mauricio García Prieto occurred on June 10, 1994, prior to the State's recognition of the Court's jurisdiction, and that as a result, this event is outside the jurisdiction of the Tribunal. Likewise, the alleged context of violence in which the events occurred lies outside the Court's jurisdiction.<sup>22</sup>

43. This Court has already considered that in the course of proceedings, which are considered unitary throughout their several phases,<sup>23</sup> autonomous events may arise which may constitute specific and independent instances of a denial of justice which violate the Convention.<sup>24</sup>

44. As a result, the temporal limitation interposed by the State upon recognizing the jurisdiction of the Court lacks effect with respect to the independent events which may constitute specific violations within the temporal jurisdiction of the Tribunal.

45. The Court has jurisdiction to analyze those acts and omissions which occurred during the judicial and police investigations which may be characterized as "autonomous events", and which have occurred within the jurisdiction of the Tribunal, that is to say, subsequent to June 6, 1995. Likewise, the Court will analyze the merits of the alleged threats, intimidating acts, and pursuit of the García Prieto Giralto family which occurred after the indicated date.

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<sup>20</sup> Cf. *Case of the Serrano Cruz Sisters. Preliminary Objections*, *supra* note 16, para. 73.

<sup>21</sup> Cf. *Case of the Serrano Cruz Sisters. Preliminary Objections*, *supra* note 16, para. 74.

<sup>22</sup> Both the Commission and the representatives indicated in the application and the brief containing pleadings and motions, respectively, that a context of violence existed due to the operation of "illegal armed structures in El Salvador", and that this context should be considered as part of the factual foundation of the case.

<sup>23</sup> Cf. *Case of Castillo Petruzzi et al. Merits, Reparations and Costs*. Judgment of May 30, 1999. Series C No. 52, para. 161; *Case of Lori Berenson Mejía v. Perú. Merits, Reparations and Costs*. Judgment of November 25, 2004. Series C No. 119, para. 192; and *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107, para. 159.

<sup>24</sup> Cf. *Case of the Serrano Cruz Sisters. Preliminary Objections*, *supra* note 16, para. 84; and *Case of Almonacid Arellano et al.*, *supra* note 17, para. 48.

46. For all the above reasons, the Court partially dismisses the State's preliminary objection raised by the State with respect to the Court's *ratione temporis* jurisdiction, in the terms expressed in the preceding paragraphs.

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### SECOND PRELIMINARY OBJECTION

#### "Objection due to the Failure to Exhaust Domestic Remedies"

47. The State raised an objection with respect to the failure to exhaust domestic remedies in relation to the alleged threats which occurred prior to and subsequent to the homicide of Ramón Mauricio García Prieto. In this regard, the State indicated that "it was not until 1998 that criminal complaints were filed with the Office of the Attorney General [of the Republic of El Salvador] with respect to the threats and other intimidating acts. These complaints have been investigated one by one, without being able to consider any of them as a criminal offense." According to the State, due to the fact that the alleged victims failed to exhaust the domestic remedies that were available to them to guarantee their personal integrity, the situation cannot be considered in an international forum.

48. For its part, the Commission requested that the Court dismiss this preliminary objection and indicated that this situation had already been resolved in its Report on Admissibility No. 27/99 (*infra* para. 51). The common intervener concurred with the Commission's allegations and requested that the Court declare that this preliminary objection was extemporaneously raised, and, as a result, should be dismissed.

49. On this point, the Court would like to emphasize the criteria for an objection based on the failure to exhaust domestic remedies, which shall apply to the present case. First, the Court has indicated that the failure to exhaust domestic remedies is an issue of pure admissibility and that the State that raises this objection should indicate which remedies remain to be exhausted, and should verify that these remedies are effective.<sup>25</sup> Second, in order to be timely, the objection for the failure to exhaust domestic remedies should be raised in the first action taken by the State before the Commission, once the complaint and facts therein have been served upon it. Otherwise, it will be assumed that the State has tacitly renounced its ability to raise the objection. Third, the defendant State may expressly or implicitly renounce its ability to raise the objection for the failure to exhaust domestic remedies.<sup>26</sup>

50. In the present case, the State responded to the petition on March 5, 1997 during the admissibility proceedings before the Commission. In its response, it indicated that "[the petitioners] never reported the alleged threats to the competent authorities. On the contrary, [...] they always expressed their complete confidence in the acts of the Office of the Attorney General of the Republic [of El Salvador],

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<sup>25</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 12, para. 88; *Case of Nogueira Carvalho et al.*, *supra* note 16, para. 51; and *Case of Almonacid Arellano et al.*, *supra* note 17, para. 64.

<sup>26</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 12, para. 88; *Case of Nogueira Carvalho et al.*, *supra* note 16, para. 51; and *Case of Almonacid Arellano et al.*, *supra* note 17, para. 64.



which they now contradict in their petition, given that they state that they are not confident in the investigation undertaken by the Office of the Attorney General." According to the State, its "legal system allows for a private prosecutor, which the alleged victims could have appointed, but never did."

51. On the other hand, in its Report on Admissibility No. 27/99, the Commission indicated that the State "[...] had not raised objection with respect to the failure to exhaust domestic remedies, nor had it indicated exactly which remedies were still available to the petitioner." Consequently, the Commission concluded that "the State [had] tacitly desisted in its interposition [of this objection] and deems [Article 46(1)(a)] of the Convention satisfied."

52. The Court observes that, given the criteria identified above, the State implicitly renounced a means of defense which the American Convention<sup>27</sup> establishes in its favor, given that it did not expressly indicate during the admissibility proceedings before the Commission which appropriate and effective remedies remained to be exhausted. Therefore, the State was impeded from alleging the failure to exhaust domestic remedies before this Court.

53. For the abovementioned reasons, the Court dismisses the second preliminary objection raised by the State and will analyze in the merits the alleged violations of Article 5 of the Convention.

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### **THIRD PRELIMINARY OBJECTION**

#### **"Objection based on the Informality of the Application"**

54. Upon raising this preliminary objection, the State alleged that the Inter-American Commission submitted the application to the Court "ignoring the criteria established in [Article 33] of the Rules of Procedure of the Inter-American Court", which require the identification of the lay and expert witnesses and object of their testimony.<sup>28</sup> This argument was based on the fact that the Commission offered witness number six and requested that he or she remain anonymous until the definitive production of evidence. Consequently, the State observed that the offering of an anonymous witness placed it in a disadvantaged position with respect to its right to exercise a legitimate defense, and requested that the Court declare the

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<sup>27</sup> Article 46(1)(a) of the American Convention establishes that a petition or communication submitted to the Inter-American Convention in conformity with Articles 44 or 45 of the Convention will only be deemed admissible when the remedies available in the domestic jurisdiction have been utilized and exhausted, in accordance with the principles of international law generally recognized. At the same time, according to Article 47(a) of the Convention, the Commission will declare inadmissible any petition or communication submitted under Articles 44 or 45 when one of the requirements of Article 46 is absent.

<sup>28</sup> Article 33, in relevant part, establishes that: "The brief containing the application shall indicate: 1. the claims (including those relating to reparations and costs); the parties to the case; a statement of the facts; the orders on the opening of the proceeding and the admissibility of the petition by the Commission; the supporting evidence, indicating the facts on which it will bear; the particulars of the witnesses and expert witnesses and the subject of their statements; the legal arguments, and the pertinent conclusions. In addition, the Commission shall include the name and address of the original petitioner, and also the name and address of the alleged victims, their next of kin or their duly accredited representatives, when this is possible. [...]"

application inadmissible due to the absence of procedural requirements.

55. For its part, the Commission indicated in its observations that “the State’s argument is not the subject of a preliminary objection” and that “the inadmissibility of the totality of the application as a consequence for the presentation of an anonymous witness is unrelated to the sanctions established with respect to this subject in [Articles 44 and 33] of the Rules of Procedure.” Likewise, the Commission alleged that its request “is not a request for permanent anonymity, but rather anonymity only until the Court officially cites the lay and expert witnesses in this case [...].”

56. The common intervener stated that it shares the Commission’s view in the sense that the objection raised by El Salvador “is not a preliminary objection, given that it does not impede the consideration of the merits of the case, but rather refers to an issue that should be decided by the Court once the proceedings are underway.”

57. The Court considers the purpose of a preliminary objection to be to challenge or limit the jurisdiction of the Tribunal, that is to say, that it is directed toward a decision on whether the merits of the case can be heard, and if so, which parts of the merits. If the objection does not have this legal characteristic, it cannot be considered an objection.

58. In the present case, the State’s allegations refer to the admissibility of one of the pieces of evidence offered by the Commission, and do not have the nature of a preliminary objection. Moreover, it is important to note that the Commission subsequently withdrew the anonymous witness from its definitive list of witnesses. As a result, the Tribunal observes that at this time that the point is moot.

59. For the above reasons, the Court dismisses the State’s “preliminary objection” because it lacks the characteristics necessary to be considered as such.

## VI JURISDICTION

60. The Court has jurisdiction to hear the present case, pursuant to Articles 62(3) and 63(1) of the American Convention, given that El Salvador has been a State Party to the Convention since June 23, 1978 and recognized the contentious jurisdiction of the Court on June 6, 1995. Therefore, the Court will go on to rule upon the merits and possible reparations, in consideration of its rulings upon the preliminary objections. (*supra* paras. 46, 53, and 59).

## VII ARTICLE 4 (RIGHT TO LIFE)<sup>29</sup> IN RELATION WITH ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) OF THE AMERICAN CONVENTION

61. In their brief containing pleadings and motions, CEJIL and IDHUCA alleged that the State violated the right to life to the detriment of Ramón Mauricio García

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<sup>29</sup> Article 4(1) establishes that:  
[e]very 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.

Prieto based on two findings: a) the State favored the conditions for the creation and consolidation of the death squads, which were responsible for the execution, and b) the State did not fully investigate the events surrounding the death of Mr. García Prieto. The Commission and the State did not specifically refer to this allegation.

62. This Tribunal already established that its jurisdiction only extends to those events which occurred subsequent to June 6, 1995, which is the date on which the State recognized the jurisdiction of the Court. (*supra* paras. 44 and 45). Moreover, each party has recognized that the death of Ramón Mauricio García Prieto occurred on June 10, 1994, and as a result, this event lies outside the temporal jurisdiction of the Court (*supra* para. 42). In the present case, the Tribunal is impeded from considering the alleged violation of the obligation to respect Article 4 of the Convention as alleged by the common intervener.

## VIII

### ARTICLES 5 (RIGHT TO HUMANE TREATMENT),<sup>30</sup> 8(1) (RIGHT TO A FAIR TRIAL)<sup>31</sup> AND 25(1) (RIGHT TO JUDICIAL PROTECTION)<sup>32</sup> IN RELATION WITH ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) OF THE AMERICAN CONVENTION

#### 1. *Identification of the victims*

63. Prior to the examination of the alleged violations in this section, this Tribunal deems it is appropriate to identify the individuals who will be considered the alleged victims in the present case.

64. This Court observes that in the Commission's Report on Merits No. 94/05, it concluded that the victims were Ramón Mauricio García Prieto, José Mauricio García Prieto Hirlemann, Gloria Giralte de García Prieto, and Carmen Alicia Estrada. In the application submitted to the Court by the Commission, it indicated that the victims would be the same individuals named in its Report on Merits, with the exception of Ramón Mauricio García Prieto (*supra* para. 5). In the proceedings before the Court two briefs containing pleadings and motions were submitted. In one of them, CEJIL and IDHUCA indicated that in addition to the victims claimed by the Commission in its application, Ramón Mauricio García Prieto, his son Ramón Mauricio García Prieto Estrada, and his sisters María de los Ángeles García Prieto de Charur, Ite María del Carmen García Prieto Taghioff and Lourdes García Prieto de Patuzzo, should be

<sup>30</sup> Article 5(1) (Right to Humane Treatment) establishes that:  
1. Every person has the right to have his physical, mental, and moral integrity respected.

<sup>31</sup> Article 8(1) (Right to a Fair Trial) of the Convention establishes:  
[e]very 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>32</sup> Article 25(1) (Right to Judicial Protection) of the Convention establishes that:  
[e]veryone 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.

considered victims as well (*supra* para. 8). The other brief containing pleadings and motions indicated that Carmen Alicia Estrada, Ramón Mauricio García Prieto Estrada, as well as the other next of kin of Mr. García Prieto, without specifying their names, (*supra* para. 7) should be considered as victims. Finally, in its written closing arguments of February 26, 2007, the Commission included Ramón Mauricio García Prieto Estrada, María de los Ángeles García Prieto de Charur, Ile María del Carmen García Prieto Taghioff and Lourdes García Prieto de Patuzzo as alleged victims.

65. The jurisprudence of this Tribunal with respect to the identification of victims has been broad and adjusted to the circumstances of the case. The victims should be indicated in the application and in the Commission's Report on Merits issued in accordance with Article 50 of the Convention. Therefore, pursuant to Article 33(1) of the Rules of the Court, it is the Commission, and not this Tribunal, who should, at the appropriate time, precisely identify the alleged victims in a case before the Court.<sup>33</sup>

66. In accordance with the criteria expressed in the preceding paragraph, the Tribunal will analyze if the individuals identified in paragraph 64 can be included as alleged victims in the present case. The Court observes that it was not until the presentation of the written closing arguments that the Commission requested the incorporation of Ramón Mauricio García Prieto's son and sisters as victims.

67. Given the above, the Tribunal observes that María de los Ángeles García Prieto de Charur, Ile María del Carmen García Prieto Taghioff, and Lourdes García Prieto de Patuzzo, sisters of Mr. García Prieto, and Ramón Mauricio García Prieto Estrada, his son, were not mentioned as victims in the Article 50 Report or in the application.

68. On this point, the Court has indicated that it is not admissible to allege new facts that differ from those in the Commission's application, except for those that explain, clarify, or dispute the facts mentioned in the application, or answer the claims by the petitioner.<sup>34</sup> Given the foregoing, the Court finds that the claims concerning Ramón Mauricio García Prieto's sisters and son, María de los Ángeles García Prieto de Charur, Ile María del Carmen García Prieto Taghioff, Lourdes García Prieto de Patuzzo, and Ramón Mauricio García Prieto Estrada, allege new facts and, therefore, may not be considered as victims by this Tribunal.

69. In the present case, a friendly settlement was reached between Ms. Carmen Alicia Estrada, in her name and in the name of her son, Ramón Mauricio García Prieto Estrada, and El Salvador on January 23, 2007.<sup>35</sup> In this agreement a pecuniary

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<sup>33</sup> Cf. *Case of the Plan de Sánchez Massacre. Merits*. Judgment of April 29, 2004. Series C No. 105, para. 48; See also the Court's decision in: *Case of La Cantuta v. Perú. Merits, Reparations, and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 72 and 79; and *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. 33.

<sup>34</sup> Cf. *Case of the "Five Pensioners" v. Perú. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 153 and 155; *Case of the Miguel Castro Castro Prison v. Perú Merits, Reparations and Costs*. Judgment of November 25, 2006. Series C No. 160, para. 162; and *Case of Bueno Alves v. Argentina. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 164, para. 121.

<sup>35</sup> During the public hearing held at the headquarters of the Tribunal on January 26, 2007, the State indicated that it had "arrived at a friendly settlement [with Ms. Estrada, pursuant to] Article 54 [of the

compensation was established. This Court observes that, in accordance with its responsibility to protect human rights, it may order that a case continue to be heard, even when the parties have undertaken acts which ostensibly put an end to the proceedings or resolve the conflict (Article 55 of the Rules of the Court).

70. Thus, although Ms. Estrada alleged in her brief containing pleadings and motions that she was a victim of the events of the present case, the Court will continue with the analysis of this case with respect to the alleged violations to the detriment of José Mauricio García Prieto Hirlemann and Gloria Giralte de García Prieto and will not analyze the violations alleged by Ms. Carmen Alicia Estrada, who renounced her claims in these proceedings in the abovementioned “friendly settlement”.

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## **2. Investigation into the death of Ramón Mauricio García Prieto within the limits of the Court’s jurisdiction**

71. In its application, the Commission alleged that, subsequent to June 6, 1995, the State failed to fulfill its obligation to effectively and adequately investigate the death of Ramón Mauricio García Prieto and the threats and harassment suffered by his next of kin. In this regard, the Commission indicated that the investigations were paralyzed on several occasions<sup>36</sup> and that some of the material and intellectual authors of the events at issue have not been investigated.

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Rules of Procedure...]. On February 14, 2007, the State submitted the agreement consummated before a notary public on January 23, 2007 between Carmen Alicia Estrada, as legal representative of her own interests and those of her son, Ramón Mauricio García Prieto Estrada, and the State of El Salvador. This agreement expressed, *inter alia*, that:

- a) “the State, despite having already investigated, identified, prosecuted and punished two of the material authors of the murder of Mr. García Prieto Giralte, pursuant to applicable legislation, and having observed due process, [...] as well as having undertaken efforts to identify those responsible and determine if others had participated in the crime, and conscious of the fact that the daily life of [Carmen Alicia Estrada and her minor son] and their hopes for the future have been affected, has sought to approach them in order to demonstrate the State’s authentic solidarity with their present and future circumstances”. The State consummated the agreement, among other reasons, “because of its policy of solidarity with, protection of, and respect for childhood and for the family [...]”;
- b) the State and Ms. Carmen Alicia Estrada, as legal representative of her own interests and those of her son, “have arrived at a Friendly Settlement, in order to put an early end to the proceedings”, pursuant to Article 54 of the Rules of Procedure;
- c) the State delivers to the minor Ramón Mauricio García Prieto Estrada, through his legal representative Carmen Alicia Estrada, and to Carmen Alicia Estrada, a single compensatory indemnity, whose amounts include corresponding costs and expenses, which she receives; and
- d) the parties to the present agreement “freely and voluntarily express their approval and acceptance of its contents”. Likewise, they express that “in this way they seek to end the controversy about the State’s international responsibility [...] with respect to the affected rights of Carmen Alicia Estrada and Ramón Mauricio García Prieto Estrada, and that consequently, they deemed the claims made by her during the proceedings to be satisfied”; that Carmen Alicia Estrada frees the State of “any present or future claim or responsibility that could arise from the proceedings before the Inter-American Court”; and that “she expressly authorizes the State [...] to inform the [Inter-American Court] [...] of the present Friendly Settlement, so that [...] the Tribunal should certify it [...]”.

<sup>36</sup> The Commission indicated that these delays occurred: i) for 11 months after José Raúl Argueta Rivas was found guilty in case number 262/94 before the Fifth Criminal Court of San Salvador (“Juzgado Quinto Penal de San Salvador”) on October 7, 1996 until the initiation of a new investigation under case

72. With respect to the criminal proceedings carried out before the Third Criminal Court (“Juzgado Tercero de lo Penal”) under case number 110/98, which were designed to investigate the death of Ramón Mauricio García Prieto and the alleged threats against his family, the Commission alleged that military authorities obstructed the investigation into the movements of the San Benito Battalion (“Batallón San Benito) of the now defunct National Police (“Policía Nacional”) on the date of Mr. García Prieto’s homicide. According to the Commission, this obstruction prevented a determination of whether members of that battalion were present at the scene of the crime and if so, what actions they took. The Commission also indicated that during the proceedings under case number 110/98, the Division of Criminal Investigation (“División de Investigación Criminal”) was ordered to provide information regarding the activities of Carlos Romero Alfaro, who had been indicted as a possible third material author of the crime. In response, the Division submitted the daily incident log in which the activities undertaken by Romero Alfaro on the day of the events were documented. According to the Commission, several inconsistencies were revealed which were never investigated.

73. In addition, the Commission expressed that although “Ramón Mauricio García Prieto’s parents [...] filed a new criminal complaint and requested specific investigative steps in 2003”, the State has not undertaken a diligent investigation in response, despite the abundant evidence indicating the participation of a third individual in the crime. With respect to the principle of expeditious justice, the Commission considered that “the delay in the present case was manifested in the time which had transpired in obtaining the punishment of some of the perpetrators in their respective criminal proceedings. These proceedings lasted until 2001” and were characterized by lapses in which procedural activity was insignificant.

74. The common intervener concurred with the arguments expressed in the Commission’s application and also maintained that in the criminal proceedings under case number 110/98 “several acts and omissions exist which demonstrate that the judicial authorities [...] failed in their obligation to advance an adequate investigation and judicial process capable [of leading] to the punishment of those responsible, [...] which affected the right of the victims’ next of kin to know the truth.” The common intervener also indicated that “it is clear that the authorities in charge of the judicial proceedings dismissed or rejected, without any justification, evidence that rested on the proceedings.”

75. The State, for its part, alleged that in the present case, Ramón Mauricio García Prieto’s homicide “was fully investigated by the competent institutions, [and] that the investigations undertaken determined that the homicide was committed by private individuals with no connection to the State, thus were José Raúl Argueta Rivas and Julio Ismael Ortiz Díaz found guilty.” With respect to due process, the State indicated that “the Judicial Branch, the Office of the Attorney General of the Republic, [and] the National Civil Police took a great number of investigative and procedural steps, which provided not one, but several opportunities to make use of

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number 110/98 before the Third Penal Court of San Salvador (“Juzgado Tercero Penal de San Salvador”) on September 5, 1997; ii) from June 7, 2001, the date on which Ismael Ortiz Díaz was found guilty, until June 13, 2003, date on which the prosecutor opened file number 34-00-03; and iii) from June 2004 until the present, during which time no investigative action has been taken according to the prosecutor’s file. In other words, the authorities have not undertaken any investigative action with respect to the identification of the intellectual authors of the homicide subsequent to the end of the judicial proceedings in case number 110/98.

the remedies which the State puts at the disposition of every citizen." Regarding the length of the investigations and judicial proceedings, the State expressed that "the investigations involve a series of previously established procedural phases, each of which has an appropriate time for fulfillment, which governed the State's actions and had optimal results." (State's reply brief, p. 77)

76. In preparation for the analysis of the facts presented in the Commission's application with respect to the alleged violation of the rights enshrined in Articles 5, 8(1) and 25(1) of the American Convention, this Tribunal will proceed to detail the facts related to the homicide of Ramón Mauricio García Prieto and some of the investigative actions taken by police and judicial authorities which occurred prior to the State's recognition of the Court's contentious jurisdiction. These facts will only be considered as antecedents, and therefore, no legal consequence will be based upon them.

***The homicide of Ramón Mauricio García Prieto and the initial investigations***

77. The homicide of Ramón Mauricio García Prieto Giralt occurred on June 10, 1994 as he was going to the house of some relatives, accompanied by his wife Carmen Alicia Estrada and his son of five months, Ramón Mauricio García Prieto Estrada. Before arriving at his destination, he visited a bank where he withdrew a sum of money. Upon arriving at his relatives' house, he was intercepted by two individuals carrying firearms who threatened him with death. Ramón Mauricio García Prieto was carrying his son of five months in his arms, and managed to pass him to his wife, while he asked the perpetrators to remain calm. One of the individuals grabbed a leather bag that Mr. García Prieto was carrying containing thirty thousand Colones that he had recently withdrawn from the bank, as well as a firearm. Afterwards, one of the perpetrators shot Ramón Mauricio García Prieto, who fell to the ground and lost consciousness. The two individuals fled in a vehicle driven by a third individual who was waiting for them a few meters from the scene of the crime. Mr. García Prieto was taken to the Women's Hospital ("Hospital de la Mujer"), where he died.<sup>37</sup>

78. Following Ramón Mauricio García Prieto Giralt's death, the State initiated two criminal proceedings and a prosecutorial investigation into the matter.

a) Criminal Proceeding No. 262/94 undertaken before the Fifteenth Criminal Court of Peace of San Salvador<sup>38</sup>

79. In response to the death of Ramón Mauricio García Prieto on June 10, 1994, the Fifteenth Court of Peace initiated an investigation into the events. On August 16,

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<sup>37</sup> Cf. testimony of Carmen Estrada de García Prieto, judicial file number 262/94 (exhibits to the application, exhibit 1, volume 1, pages 11 to 13) and forensic recognition of the cadaver of Ramón Mauricio García Prieto Giralt of June 11, 1994, judicial file number 262/94 (exhibits to the application, exhibit 1, volume 1, pages 6 and 7).

<sup>38</sup> This court had a series of different names during the development of the proceedings. Initially, its name was the "Fifteenth Criminal Court of Peace of San Salvador" ("Juzgado Décimo Quinto de Paz de San Salvador"), later the "Fifth Criminal Court" ("Juzgado Quinto de lo Penal"), and now the "Fifth Trial Court" ("Juzgado Quinto de Instrucción"). For the purposes of the present Judgment, the Court will refer to said court in conformity with its name at a particular stage of the proceedings.

1994, José Raúl Argueta Rivas was detained as the alleged material author of the homicide. At the time of his detention, two identification cards of the Armed Forces were confiscated from him. These identification cards were the subject of a forensic document analysis by the National Civil Police Laboratory for Forensic Science Investigations (“Laboratorio de Investigación Científica del Delito”), which determined that they were forged. On September 12, 1994, some of the investigators of the Division of Criminal Investigation assigned to the case signed a document in which they indicated that a “confidential source” had indicated to them that José Raúl Argueta Rivas should be considered a suspect in the homicide. On November 8, 1994, Pedro Antonio Sánchez Guerrero<sup>39</sup> was linked to the case as an alleged material coauthor. The proceedings were brought to a full trial against both men on March 15 1995.<sup>40</sup>

***Events subsequent to the State’s recognition of the Court’s jurisdiction on June 6, 1995***

80. On October 7, 1996, the Fifth Criminal Court of San Salvador sentenced José Raúl Argueta Rivas to “twenty-six years in prison for the homicide of Mr. Ramón Mauricio García Prieto [...]”. The court also ordered José Raúl Argueta Rivas “to pay fifty thousand Colones as an indemnity for the damages and injuries sustained by the family” of Mr. García Prieto and sentenced him to “four years in prison for the crime of forgery [...] for a total of thirty years in prison.” In the same judgment, and in conformity with the jury verdict of July 23, 1996, Pedro José Sánchez Guerrero was acquitted of the crime.<sup>41</sup>

b) Criminal Proceedings 110/98 undertaken before the Third Criminal Court of San Salvador<sup>42</sup>

81. On August 28, 1997, the National Civil Police reopened the investigation into the homicide of Ramón Mauricio García Prieto, in accordance with orders issued on August 26, 1997 by the Ministry for Public Safety (“Ministerio de Seguridad Pública”). Likewise, the PNC initiated an investigation into the alleged threats and harassment suffered by José Mauricio García Prieto Hirlemann, Gloria Giralte de García Prieto and

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<sup>39</sup> Cf. Judgment of the Fifth Criminal Court of October 7, 1996, judicial file number 262/94 (exhibits to the application, annex 1, volume III, pages 654 to 664). The judgment declared that the name of this person is Pedro Antonio Sánchez Guerrero, who is also known as “Pedro Antonio Guerrero Sánchez”.

<sup>40</sup> Cf. writ of the Fifth Criminal Court of Peace of June 10, 1994, judicial file No. 292/94 (exhibits to the application, annex 1, volume II, page 3); police record of August 16, 1994, judicial file No. 262/94 (exhibits to the application, annex 1, volume 1, pages 156 and 157); forensic analysis report of the National Civil Police Laboratory for Forensic Science Investigations of January 23, 1995, judicial file No. 262/94 (exhibits to the application, annex 1, volume II, pages 410 and 412), police record of September 12, 1994, judicial file No. 262/94 (exhibits to the application, annex 1, Volume II, page 287); writ of the Attorney General of the Republic of El Salvador of November 8, 1994, judicial file No. 262/94 (exhibits to the application, annex 1, volume II, pages 349 and 350); and writ of the Fifth Criminal Court of March 15, 1995, judicial file No. 262/94 (exhibits to the application, annex 1, volume II, pages 464 to 467).

<sup>41</sup> Cf. Judgment of the Fifth Criminal Court, *supra* note 39; jury’s verdict of July 23, 1996, judicial file No. 262/94 (exhibits to the application, exhibit 1, volume 3, page 633).

<sup>42</sup> This court had a series of different names during the development of the proceedings. Initially, its name was the “Thirteenth Court of Peace of San Salvador” (“Juzgado Décimo Tercero de Paz de San Salvador”), later the “Third Criminal Court” (“Juzgado Tercero de lo Penal”) and now, the Third Trial Court” (“Juzgado Tercero de Instrucción”). For the purposes of the present Judgment, the Court will refer to said court in conformity with its name at a particular stage of the proceedings.



Carmen Alicia Estrada.<sup>43</sup>

82. On September 16, 1997, José Mauricio García Prieto Hirlemann, father of Ramón Mauricio García Prieto, gave a statement to the PNC in which he provided detailed information about the existence, possible identity, and physical characteristics of a third material author of his son's homicide.<sup>44</sup> Likewise, he reported the possible participation of intellectual authors of the events. On this issue, he mentioned an incident which began in March of 1987 as a result of a real estate deal with Roberto Hernán Puente Rivas, in which Mauricio Ernesto Vargas Valdés had participated, concerning a property belonging to the García Prieto Giralt family. He also mentioned a series of "threats and surveillance" of which he allegedly had been victim. On September 17, 1997, Gloria Giralt de García Prieto, mother of Ramón Mauricio García Prieto, testified before the PNC that she had knowledge, by way of a third individual, of the identity of those who participated in her son's homicide. Likewise, she detailed a series of "threats and surveillance", which occurred subsequent to the death of her son.<sup>45</sup>

83. On January 19, 1998, Carmen Alicia Estrada recognized Julio Ismael Ortiz Díaz as one of the perpetrators of the homicide of Ramón Mauricio García Prieto when asked to identify the guilty party out of a series of photographs.<sup>46</sup> On January 20, 1998, the PNC issued an order for the administrative detention of Mr. Díaz Ortiz, who was captured on January 23, 1998.<sup>47</sup> On January 23, 1998, investigators submitted a prosecutorial investigation report and that same day the Thirteenth Court of Peace of San Salvador initiated the criminal proceedings.<sup>48</sup>

84. On January 24, 1998, Carmen Alicia Estrada recognized Mr. Díaz Ortiz in a

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<sup>43</sup> Cf. Memorandum No. 4990 from the general director of the National Civil Police of August 28, 1997, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 1, page 761) and record of the Ministry for Public Safety of August 26, 1997, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 1, page 762 and 763).

<sup>44</sup> Cf. Statement by José Mauricio García Prieto Hirlemann in which he testified before the National Civil Police that neither he, his son, nor his family had experienced any problems or known enemies with anyone with the exception of Mr. Roberto Hernán Puente Rivas and Mr. Mauricio Vargas. The situation with these two men arose from a deal between the two men José Mauricio García Prieto Hirlemann for the sale of real estate owned by the latter. Because the deal fell through, José Mauricio García Prieto Hirlemann retook possession of his property. Following threats to and surveillance by unknown subjects of José Mauricio García Prieto Hirlemann, Roberto Hernán Puente Rivas, accompanied by Mr. Mauricio Vargas expressed to him that "for everything to return to normal, you will have to pay us three hundred thousand Colones.", judicial file number 110/98 (exhibits to the application, exhibit 2, volume 1, pages 791 to 796).

<sup>45</sup> Cf. Testimony of September 17, 1997 by Gloria Giralt de Garcia Prieto before the Department of Investigation of Organized Crime, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 1, page 797); and testimony by Mauricio Garcia Prieto Hirlemann, *supra* note 44.

<sup>46</sup> Cf. Record of photograph recognition exercise of January 19, 1998, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 3, page 1290).

<sup>47</sup> Cf. Administrative detention order of January 20, 1998 by the Department of Investigation of Organized Crime, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 3, page 1301); and document No. 026DICO/98 of the National Civil Police, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 3, page 1337).

<sup>48</sup> Cf. Prosecutorial summons of January 23, 1998, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 3, pages 1334 and 1335; and write of January 23, 1998, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 3, pages 1338, 1343 and 1344).

lineup.<sup>49</sup> Mr. Diaz Ortiz was interrogated on January 25, 1998.<sup>50</sup>

85. On September 29 and October 30, 1998, Gloria Giralt de García Prieto and José Mauricio García Prieto Hirlemann, respectively, testified before the Third Criminal Court in relation to the investigation of the material perpetrators as well as the likely participation of intellectual authors in the death of their son.<sup>51</sup>

86. On February 10, 1999, Carlos Romero Alfaro, known as "Zaldaña", was officially placed under investigation as a suspected material author.<sup>52</sup>

87. On April 27, 1999, the Third Criminal Court of San Salvador ordered a judicial inspection of the books containing the arrivals and departures records for the personnel of the San Benito Battalion of the National Police (*infra* para. 111).

88. On August 15, 2000, a full trial was ordered with respect to the accused Julio Ismael Díaz Ortiz. In the same order, the charges against Carlos Romero Alfaro were provisionally dismissed because "no evidence was established against him" and no other probative means existed. Likewise, the Judge of the Third Criminal Court indicated that "it was not proven that General [Mauricio Ernesto] Vargas Valdés and Engineer [Robert Hernán] Puente Rivas undertook negotiations for the purchase of real estate belonging to the García Prieto family."<sup>53</sup>

89. This decision was appealed by the prosecutor's office and Julio Ismael Ortiz Díaz on August 26, 2000 and August 28, 2000, respectively, before the Third Criminal Chamber of the First Central Section of San Salvador ("Cámara Tercera de lo Penal de la Primera Sección del "Centro", San Salvador"). On October 23, 2000, the Third Criminal Chamber affirmed the decision.<sup>54</sup>

90. On January 30, 2001, Matilde Guadalupe Hernandez de Espinoza interposed a private accusation against the imputed Julio Ismael Ortiz Diaz, who was being prosecuted for the murder of Ramón Mauricio García Prieto. She brought this action as the representative of the parents of Ramón Mauricio García Prieto and indicated that the aggrieved parties were Ramón Mauricio García Prieto Giralt, José Mauricio

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<sup>49</sup> Cf. Police line-up record of January 24, 1998, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 3, page 1377).

<sup>50</sup> Cf. Interrogation record of Julio Ismael Ortiz Díaz of January 25, 1998, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 3, pages 1393 to 1397).

<sup>51</sup> Cf. Testimonies of the parents of Mr. García Prieto of October 29 and 30, 1998, judicial file number 110/98 (exhibits to the application, exhibit 2, volume IV, pages 1542 to 1550 and 1562 to 1573).

<sup>52</sup> Cf. Interrogation record of Carlos Romero Alfaro of February 10, 1999, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 3, page 1817 to 1831).

<sup>53</sup> Cf. Order by the Third Trial Court of San Salvador of August 15, 2000, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 7, page 2413 to 2419).

<sup>54</sup> Cf. Appellate brief of the Office of the Attorney General of the Republic of El Salvador of August 26, 2000 before the Third Trial Court, judicial File number 110/98 (exhibits to the application, exhibit 2, volume 7, pages 2430 to 2435); appellate brief of Julio Ismael Ortiz Díaz of August 28, 2000 before the Third Trial Court, judicial File number 110/98 (exhibits to the application, exhibit 2, volume 7, pages 2426 to 2429); and judgment of the Criminal Chamber of the First Central Division of San Salvador ("Cámara de lo Penal de la Primera Sala del Centro de San Salvador") of October 23, 2000, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 7, pages 2447 to 2455).

García Prieto Hirlemann and Gloria Giralt de García Prieto.<sup>55</sup>

91. At a public hearing on May 26, 2001, a jury declared Julio Ismael Ortiz Díaz guilty as a material author of the homicide of Ramón Mauricio García Prieto. Julio Ismael Ortiz Díaz was a former member of the now defunct National Police. On June 7, 2001, the Third Criminal Court of San Salvador issued a judgment sentencing Ortiz Díaz to thirty years in prison and ordering him to pay “50,000 Colones in civil liability for the non-pecuniary damages suffered by the aggrieved family.” It was determined that the motive for the homicide was robbery.<sup>56</sup> On June 18, 2001, Julio Ismael Ortiz Díaz appealed the judgment against him,<sup>57</sup> which was affirmed on July 19, 2001 by the “Third Criminal Chamber of the First Central Section”<sup>58</sup> of San Salvador. Mr. Ortiz Díaz submitted an appeal for annulment to the Criminal Chamber of the Supreme Court of Justice, which declared it was inadmissible and affirmed the judgment of August 22, 2001.<sup>59</sup>

c) Investigation by the Prosecutor of the Special Crimes Unit (File No. 34-00-03)

92. On June 6, 2003, José Mauricio García Prieto and Gloria Giralt de García Prieto filed a complaint at the Office of the Attorney General of the Republic, in which they maintained that they “did not know the identities of the intellectual authors of the homicide of [their] son, [but] affirme[d] that they suspect[ed] Mauricio Ernesto Vargas Valdés [and] Roberto Hernán Puentes Rivas.” They also indicated that no one had been punished for transporting José Raúl Argueta Rivas and Julio Ismael Ortiz Díaz to the place of the homicide, and requested that several investigative steps be taken with respect to this matter.<sup>60</sup> On June 16, 2003, the Attorney General of the Republic reopened the prosecutorial investigation under file number 34-00-03, and characterized the reopened investigation as a “re-verification”.<sup>61</sup> On January 27, 2004, Ramón Mauricio García Prieto’s parents requested that the Office of the Attorney General inform them of the investigative actions undertaken and the results

<sup>55</sup> Cf. Private accusation of January 30, 2001 filed by Matilde Guadalupe Hernández de Espinoza, legal representative of Mr. José Mauricio García Prieto Hirlemann and Ms. Gloria Giralt de García Prieto, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 8, pages 2636 to 2639).

<sup>56</sup> Cf. Jury’s verdict of May 26, 2001, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 8, page 2816); judgment of the Third Trial Court of June 7, 2001, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 8, page 2819 to 2824); and interrogation record of Julio Ismael Ortiz Díaz, *supra* note 50.

<sup>57</sup> Cf. Appellate brief of Julio Ismael Ortiz Díaz of June 18, 2001 before the Third Trial Court, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 9, page 2835 to 2839).

<sup>58</sup> Cf. Judgment of the Criminal Chamber of the First Central Division of San Salvador of June 19, 2000, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 9, pages 2852 to 2859).

<sup>59</sup> Cf. Cassation judgment of August 28, 2001 by the Criminal Chamber of the Supreme Court of Justice, judicial file number 110/98 (exhibits to the application, exhibit 2, volume 9, pages 2860 to 2862).

<sup>60</sup> Cf. Complaint filed on June 6, 2003 by José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto before the Attorney General of the Republic of El Salvador, judicial file number 110/98 (exhibits to the application, exhibit 4, pages 2946 to 2950).

<sup>61</sup> Cf. Prosecutorial investigation No. 34-00-03 opened by the Attorney General of the Republic of El Salvador of June 16, 2003 (record on the preliminary objections, merits, reparations and costs, volume III, pages 790 and 800).

obtained with respect to the complaint they had filed. On April 15, 2004, acting through IDHUCA, they again requested information from the Office of the Attorney General about the investigative actions undertaken and the results obtained, and further requested that they be allowed to access the case file. On May 4, 2004, Mr. García Prieto's parents again repeated their request.<sup>62</sup>

93. On June 9, 2004, the Attorney General of the Republic issued public statements allegedly announcing that "the statute of limitations on the criminal proceedings in the case of García Prieto expired on June 10, 2004, which officially closed the investigations."<sup>63</sup>

94. The last document contained in the prosecutor's file No. 34-00-03 is dated June of 2004, and contains the Agricultural Bank's ("Banco Agrícola") response to a request for information from the Attorney General relating to an "application made to that banking institution by General [Mauricio Ernesto] Vargas [Valdés] and Roberto [Hernán] Puente [Rivas], an engineer," in the year nineteen eighty eight (1988), relating to a mortgage loan for the purchase of a house belonging to the García Prieto family.<sup>64</sup> In the file rendered as evidence in the present case there is no evidence of procedural actions taken since June of 2004.

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95. In response to a complaint presented by Ramón Mauricio García Prieto's parents, on July 12, 1995, the Office of the Ombudsman for the Defense of Human Rights began investigations into the facts surrounding Ramón Mauricio García Prieto's death. On October 14, 1996, the Office of the Ombudsman issued a resolution, which included several recommendations, on the human rights violations that occurred in relation to the investigation of the homicide.<sup>65</sup> On November 1, 1996,

<sup>62</sup> Cf. Brief filed by José Mauricio García Prieto Hirlemann and Gloria Giralte de García Prieto before the Attorney General of the Republic of El Salvador of January 27, 2004 (record on the preliminary objections, merits, reparations and costs, volume III, page 808); Brief filed by José Mauricio García Prieto Hirlemann and Gloria Giralte de García Prieto before the Attorney General of the Republic of El Salvador of April 15, 2004 (record on the preliminary objections, merits, reparations and costs, volume III, page 811); Brief filed by José Mauricio García Prieto Hirlemann and Gloria Giralte de García Prieto before the Attorney General of the Republic of El Salvador of May 4, 2004 (record on the preliminary objections, merits, reparations and costs, volume III, page 810).

<sup>63</sup> Cf. State's Brief N.V. number 006/2006 of January 9, 2006 with respect to the Commission's Report on the Merits number 94/05 (exhibits to the application, appendix 3, volume 3, page 4258), and Report of the Ombudsman for the Defense of Human Rights of June 22, 2005 (exhibits to the application, exhibit 6, page 3054).

<sup>64</sup> Cf. Response by the Agricultural Bank of June 15, 2004, file number 34-00-03 (record on the preliminary objections, merits and reparations, volume III, page 837).

<sup>65</sup> Cf. Resolution of the Ombudsman for the Defense of Human Rights of October 14, 1996 (exhibits to the application, exhibit 1, volume III, pages 667 to 696). In this resolution, the Ombudsman:

- a) found that Carlos Romero Alfaro had participated in the process of the investigation. This individual was captured for his alleged participation in the homicide of Darol Francisco Velis Castellanos, leader of the Farabundo Martí Front for National Liberation ("Frente Farabundo Martí para la Liberación Nacional" or "FMLN");
- b) questioned the use of "confidential sources" and the lack of transparency with which the police investigation of the events was carried out; and
- c) referred to several procedural irregularities which prevented advances in the investigation of the theory that suggested links between State agents and the events,

moreover, the Ombudsman for the Defense of Human Rights concluded that:

the Office of the Ombudsman remitted this resolution to the Fifteenth Court of Peace of San Salvador. On November 7, 1996, the judge of the Fifteenth Court of Peace of San Salvador replied to the resolution, referring to various points within it, including the testimonies of lay and expert witnesses and investigative evidence gathered during investigations that formed the legal and procedural basis necessary to elevate the proceedings to full trial.<sup>66</sup>

96. On June 22, 2005, the Office of the Ombudsman for the Defense of Human Rights issued a "Special Report on the Case of Ramón Mauricio García Prieto Giralt", pursuant to domestic legislation establishing its functions, under file number SS-0725-95. In this report, the Office of the Ombudsman, *inter alia*: a) concluded that the death of Ramón Mauricio García Prieto was an extrajudicial execution allegedly perpetrated by an illegal armed group which had acted with the tolerance of the police authorities; b) ratified its resolution of October 14, 1996, in which it concluded that the motive of the crime was to arbitrarily deprive the victim of his life and that the motive was not robbery as decided by the Trial Judge; c) concluded that the Judge of the Fifteenth Court of Peace failed to investigate the material authors' membership in a structure dedicated to the elimination of individuals; d) indicated that several delays had occurred in the investigative proceedings and that general impunity existed in the García Prieto case due to the lack of will by the State to establish the truth of the events; and e) indicated that the García Prieto Giralt family continued to be the victims of telephone harassment, surveillance by unknown individuals, and other similar acts.<sup>67</sup>

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97. This Tribunal has recognized in previous cases that it is a basic principle of the law of international State responsibility, established in International Human Rights Law, that every State is internationally responsible for acts and omissions of any of its authorities or organs which violate internationally recognized rights, pursuant to Article 1(1) of the American Convention.<sup>68</sup> Likewise, Articles 8 and 25 of the Convention determine, with respect to the acts and omissions of internal judicial authorities, the reach of the abovementioned principle of generating responsibility for State organs.<sup>69</sup>

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- a) the motive for the crime was homicide and not robbery, given that Ramón Mauricio did not resist at all when he handed over his money, and did not raise any defense, and
  - b) the crime was committed by "an operational group whose acts were very 'professional' in the perpetration of that type of crime"; and
  - c) recommended that the investigation be conducted seriously and in strict compliance with the Constitution, international treaties, and the law.

<sup>66</sup> Cf. Judge's Report of November 7, 1996 of the Fifteenth Court of Peace of San Salvador (exhibits to the application, exhibit 1, volume III, pages 700 to 717).

<sup>67</sup> Cf. "Special Report on the Case of Ramón Mauricio García Prieto Giralt" by the Ombudsman for the Defense of Human Rights of June 22, 2005 (exhibits to the application, exhibit 6, pages 2995 to 3146).

<sup>68</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 12, paras. 164, 169, and 170; *Case of Cantoral Huamani and García Santa Cruz*, *supra* note 10, para. 79; and *Case of Zambrano Vélez et al.*, *supra* note 10, para. 103.

<sup>69</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C. No. 63, para. 220; *Case of Ximenes Lopes*, *supra* note 14, para. 173; and

98. The Court has ruled on the close relationship between the general duty to guarantee rights under Article 1(1) of the Convention and the specific rights that the State must protect under said instrument.<sup>70</sup> As a result of this duty to guarantee rights, obligations emerge for the State to ensure the free and full exercise of the rights recognized in the Convention for every person within its jurisdiction.<sup>71</sup> This duty to guarantee rights, when combined with the specific rights of the Convention, can be fulfilled in several ways, depending on the right that the State must guarantee and the particular circumstances of the case.

99. The duty to investigate human rights violations is found among the positive measures that States must undertake in order to guarantee the rights recognized in the Convention.<sup>72</sup> The Court has ruled that in order to fulfill the aforementioned duty, States must not only prevent but also investigate the violations of human rights embodied in the Convention, like those violations alleged in the present case. Furthermore, the State must reestablish, if possible, the right violated, and, when appropriate, redress the damages which resulted from the violations of human rights.

100. It is important to note that the duty to investigate is an obligation of means, not results. However, this duty should be assumed by the State as its own legal duty, and not as a simple formality condemned beforehand to be unsuccessful,<sup>73</sup> or as a mere exercise of private interests, which depends upon the procedural initiative of the victims or their next of kin, or the presentation of evidence by private individuals.<sup>74</sup>

101. In light of this obligation, once the authorities have knowledge of the event, they should initiate a serious, impartial and effective investigation, *ex officio* and without delay.<sup>75</sup> This investigation should be undertaken utilizing all the legal means available and should be oriented toward the determination of the truth.

102. In addition, this Tribunal Court has also referred to the right of the next of kin

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*Case of Baldeón García v. Peru. Merits, Reparations and Costs.* Judgment of April 6, 2006. Series C No. 147, para. 141.

<sup>70</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 12, para. 164; *Case of Vargas Areco V. Paraguay. Merits, Reparations and Costs.* Judgment of September 26, 2006. Series C No. 155, para. 73; and *Case of the Massacre of la Rochela, v. Colombia. Merits Reparations and Costs.* Judgment of May 11, 2007. Series C No. 163, para. 145.

<sup>71</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 1, para. 91; *Case of the Massacre of la Rochela*, *supra* note 70, para. 67; and *Case of Zambrano Vélez et al.*, *supra* note 10, para. 114.

<sup>72</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 12, paras. 166 and 176; *Case of La Cantuta*, *supra* note 33, para. 110; and *Case of Zambrano Vélez et al.*, *supra* note 10, para. 88.

<sup>73</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 12, para. 177; *Case of Cantoral Huamani and García Santa Cruz*, *supra* note 10, para. 131; and *Case of Zambrano Vélez et al.*, *supra* note 10, para. 120.

<sup>74</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 12, para. 177; *Case of Zambrano Vélez et al.*, *supra* note 10, para. 120; and *Case of Baldeón García*, *supra* note 69, para. 93.

<sup>75</sup> Cf. *Case of the Gómez Paquiyauri Brothers v. Perú. Merits, Reparations and Costs.* Judgment of July 8, 2004. Series C No. 110, para. 146; *Case of Cantoral Huamani and García Santa Cruz*, *supra* note 10, para. 130; and *Case of Zambrano Vélez et al.*, *supra* note 10, para. 119.

of the alleged victims to know what happened and to know who was responsible for the respective events. On the matter, this Court has also stated that:

From Article 8 of the Convention it is evident that the victims of human rights violations, or their next of kin should have substantial possibilities to be heard and to act in the respective proceedings, both to clarify the facts and punish those responsible, and to seek due reparation.<sup>76</sup>

103. The next of kin of the alleged victims have the right to expect, and the States the obligation to ensure, that what befell the alleged victims will be investigated effectively by the State authorities; that proceedings will be filed against those allegedly responsible for the unlawful acts; and, if applicable, the pertinent penalties will be imposed, and the losses suffered by the next of kin repaired.<sup>77</sup>

104. It is important to note that the obligation to investigate does not derive solely from the Treaty norms of International Law binding upon the States Parties, but also from the domestic legislation that makes reference to the duty to investigate certain unlawful conducts, and from the norms that allow the victims or their family members to present a complaint such that they may participate in the criminal proceedings in order to establish the truth of the events.

105. The Salvadoran Code of Criminal Procedure in force at the time of the events stipulated in Article 50 that “[t]hose entitled to levy an accusation for crimes and misdemeanors that give rise to a proceeding by its own motion, shall be those who are the holders of the right infringed or endangered, their legal representatives, spouse and relatives within the fourth degree of consanguinity or second of affinity, older than twenty years old [...]”. Also, Article 86 of the Code of Criminal Procedure established that “[t]he public criminal action will be initiated and monitored by the Public Ministry or by the judge’s own motion, notwithstanding the right to file an accusation according to the law”.

106. In addition, Article 125 of this Code of Criminal Procedure provided that:

“Any person older than twenty years old that considers himself aggrieved by a crime that can be prosecuted ex officio, or who without considering himself aggrieved has knowledge of a crime, may file a complaint before the competent judge [...]”.

107. In the present case, the parents of Ramón Mauricio García Prieto had the right to participate in obtaining the truth and in the investigation, identification, prosecution and the possible sanction of those responsible for the homicide of their son, in compliance with the domestic legislation in force at the time which established said right.<sup>78</sup> Thus, the State had the duty to provide an appropriate judicial remedy in order to guarantee this obligation to investigate. The Court notes

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<sup>76</sup> Cf. *Case of “Street Children” (Villagrán Morales et al.)*, supra note 69, para. 227; *Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C No. 120, para. 63; and *Case of the 19 Tradesmen v. Colombia. Merits, Reparations and Costs*. Judgment of July 5, 2004. Series C No. 109, para. 186.

<sup>77</sup> Cf. *Case of Bulacio v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100, para. 114; *Case of the Miguel Castro Castro Prison*, supra note 34, para. 382; and *Case of Zambrano Vélez et al.*, supra note 10, para. 115.

<sup>78</sup> Cf. Articles 50 and 125 of the Criminal Procedure Code of El Salvador of October 11, 1973.

that Ramón Mauricio García Prieto's parents, as the injured party,<sup>79</sup> lodged a private accusation in the proceedings under No. 110/98 by way of their representative prior to the judgment issued by the Third Trial Court on June 7, 2001 (*supra* para. 90).<sup>80</sup>

108. Moreover, this Tribunal observes that, in the development of the investigation under number 110/98, Gloria Giralt de García Prieto and José Mauricio García Prieto testified before the Third Trial Court in their capacity as victims. In this testimony, they referred to several events and situations related to the investigation of the death of their son (*supra* para. 85).

109. In conformity with the above, this Court must determine if the State incurred violations of the rights enshrined in Articles 8(1) and 25(1) of the Convention, in combination with Article 1(1) of the Convention. For this purpose, the Court has established that "the determination of whether the State has violated its international obligations due to the acts of its judicial organs may lead the Tribunal to examine the respective domestic proceedings."<sup>81</sup> For this reason, this Tribunal will examine the criminal proceedings No. 110/98 and the prosecutor's file No. 34-00-03, taking into account some of the allegations of the Commission and the common intervener (*supra* paras. 71 to 74).

*Investigation into the homicide of Ramón Mauricio García Prieto subsequent to June 6, 1995 (criminal proceedings under case number 110/98 and prosecutor's file number 34-00-03)*

110. The Commission and the common intervener indicated that in the criminal proceedings under file number 110/98 before the Third Criminal Court, several omissions and incidents of obstruction occurred which impeded the gathering of relevant information in the investigation of the homicide of Ramón Mauricio García Prieto. Among these, the Commission and common intervener indicated an incident related to a judicial inspection of the records detailing the "arrivals and departures" of the personnel of the San Benito Battalion of the National Police in June of 1994 (*supra* para. 72 and 74).

111. The Court observes that, in the evidence presented by the parties, the following facts are documented in file number 110/98 with respect to the above mentioned judicial inspection:

- a) On April 12, 1999, the prosecutor for the case submitted a written request that the Judge of the Third Criminal Court "inspect the books containing the arrival and departure records for the personnel of the San Benito Battalion;"<sup>82</sup>

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<sup>79</sup> With respect to parties who may bring cases, Salvadoran legislation states that the complainant or the individual levying the accusations is the injured party in public suits which are brought with a formal request that the individual be considered a party, and in order to act within the criminal proceedings in conjunction with the prosecutor. Thus, it has been found necessary to establish a series of mechanisms that facilitate access to the proceedings for those who ultimately are the ones directly affected by the events.

<sup>80</sup> Cf. private accusation of January 30, 2001, *supra* note 55.

<sup>81</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.)*, *supra* note 69, para. 222; *Case of Baldeón García*, *supra* note 69, para. 142; and *Case of Ximenes Lopes*, *supra* note 14, para. 174.

<sup>82</sup> Cf. Document issued by the Public Ministry on April 12, 1999 (criminal proceedings number 110/98, exhibits to the application, exhibit 2, volume 6, page 2099).



b) On April 27, 1999, the Judge of the Third Criminal Court requested that the Minister of National Defense allow a "Judicial Official ("Colaborador Judicial") of the Tribunal to enter the respective Archives offices or where they may [...] access the books containing the records of arrivals and departures of the personnel of the now extinct San Benito Battalion during the month of June, 1994."<sup>83</sup> That same day, the Judge, together with the prosecutor of the case, presented themselves at the Ministry of National Defense "in order to inspect the archives of [that] institution." They met with the Chief of the Legal Department, who explained to them that "the mentioned Book of Arrivals and Departures was not found when searched." When the Judge and prosecutor insisted upon reviewing the Archives Control ("Controles de Archivos"), the Chief of the Legal Department introduced them to the Chief of the Archives Department, who explained to them that the archives were in "tremendous disorder" and stated that they "spent more than a month searching for that information" without having found the documents. He also stated that there were other documents in the offices of the Historical Archives, located at the Naval Base;<sup>84</sup>

c) On May 18, 1999, the Judge of the Third Criminal Court and one of the prosecutors of the case presented themselves at the offices of the Naval Base. However, the officials of the Historical Archive indicated to them that the individuals who could authorize their entry were not present. Finally, the Judge indicated in the corresponding records that "every means [had been] attempted in order to complete the task, but it was impossible [...] because the Ministry of National Defense did not provide the necessary cooperation;"<sup>85</sup> and

d) On June 21, the Office of the Attorney General requested that the Judge again order the inspection of the Historical Archive.<sup>86</sup> On June 28, 1999, the Judge ordered that the inspection be undertaken on July 5, 1999.<sup>87</sup> However, the case file does not reveal whether this inspection was ever carried out by state authorities.

112. The State's obligation to carry out investigations with due diligence includes the obligation of all state authorities to collaborate in the gathering of evidence so that the objectives of an investigation may be achieved. The authority in charge of the investigation must ensure that all necessary investigative steps are undertaken

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<sup>83</sup> Cf. Document issued by the Third Trial Court of April 27, 1999, criminal proceedings number 110/98 (exhibits to the application, exhibit 2, Volume VI, page 2129).

<sup>84</sup> Cf. Record of Judicial Inspection of April 27, 1999 undertaken by the Third Criminal Court of San Salvador, criminal proceedings number 110/98, (exhibits to the application, exhibit 2, volume 6, pages 2130 to 2132).

<sup>85</sup> Cf. Inspection by the Third Trial Court of May 18, 1999 (criminal proceedings number 110/98, exhibits to the application, exhibit 2, volume 6, pages 2216 and 2217).

<sup>86</sup> Cf. Document issued by the Public Ministry on June 21, 1999 (criminal proceedings number 110/98, exhibits to the application, exhibit 2, volume 6, pages 2263 and 2264).

<sup>87</sup> Cf. Document issued on June 28, 1999 by the Third Trial Court of San Salvador criminal proceedings number 110/98 (exhibits to the application, exhibit 2, volume 6, page 2265).

and must take appropriate action, in accordance with domestic legislation, when this does not occur. At the same time, all other state authorities must collaborate with the examining judge and abstain from acts that obstruct the investigative process. Acts of this nature exist in the present case as a result of the investigation regarding the inspection of the books containing the "arrivals and departures" records of the personnel of the San Benito Battalion of the extinct National Police.

113. This Tribunal finds that, when the Third Trial Court ordered the inspection of records of the San Benito Battalion of the extinct National Police in order to further the investigation necessary to clarify the events (*supra* para. 87 and 111), state authorities of the Ministry of National Defense and those of the Historical Archive, located at the Navy Base, had the obligation to collaborate in a diligent and effective fashion with the investigation set forth by the trial judge. As a result, the State did not comply with the mentioned obligation by not permitting access to the books containing the "arrivals and departures" personnel records of the San Benito Battalion of the extinct National Police in June of 1994.

114. Regarding the prosecutorial investigation No. 34-00-03 (*supra* para. 92 to 94), the Court observes that José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto lodged a complaint on June 6, 2003 before the Public Prosecutors Office, in which they stated that they "did not know the identities of the intellectual authors of the homicide of [their] son, [but] affirme[d] that they suspect[ed] Mauricio Ernesto Vargas Valdés [and] Roberto Hernán Puente Rivas" and indicated that no one had been found guilty with respect to the individual who drove José Raúl Argueta Rivas and Julio Ismael Ortiz Díaz to and from the scene of the homicide. On June 16, 2003, the Office of the Attorney General opened prosecutorial investigation No. 34-00-03 (*supra* para. 92) in relation to the homicide of Ramón Mauricio García Prieto. There is no evidence of procedural action in the prosecutor's file subsequent to June 2004; in other words, to date, the investigation remains pending since that date.

115. For the Court, the lack of state response is a determinative element when evaluating whether a breach of Articles 8(1) and 25(1) of the American Convention has occurred, because it is directly related to the principle of effectiveness that should permeate the development of such an investigation. In this way, upon receiving a criminal complaint, the State should undertake a serious and impartial investigation, but also should resolve the case in a reasonable time in a manner that reaches the merits of the circumstances alleged.

116. Therefore, regarding the investigation carried out by the authorities in relation with the homicide of Ramón Mauricio García Prieto, the Court concludes that the State has not carried out a complete investigation, given that some state authorities failed to fulfill their duty to collaborate with the examining judge in regards to the judicial inspection of the books containing the "arrivals and departures" records of the members of the San Benito Battalion of the extinct National Police. In the same way, prosecutorial investigation no. 34-00-03, which is open in order to investigate the possible participation of intellectual perpetrators in the homicide of Mr. García Prieto and the identification of the possible third party that may have been involved in the facts, the Court observes a lack of due diligence by the police and judicial authorities of El Salvador to act on their own motion. The Court also observes the delay of a determination by the judiciary which would conclude the investigation of the events. Consequently, the Court finds that a violation of the rights established in Articles 8(1) and 25(1) of the American

Convention has occurred to the detriment of José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto, in relation to Article 1(1) of the Convention.

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117. The Commission and the common intervener alleged that the personal integrity of the members of the García Prieto Giralt family has been affected by the insufficient investigation into the homicide of Mr. García Prieto carried out by the State. In response, the State maintained that the death of Ramón Mauricio García Prieto Giralt was broadly investigated by the competent institutions.

118. This Court observes that in their testimony before a notary public (*supra* para. 16(d) and 16(e)), Ile del Carmen García Prieto Taghioff and Lourdes Elizabeth García Prieto Giralt described how their family has been affected by the lack of a complete investigation into the events of their brother's homicide. Likewise, in her testimony before the Court (*supra* para. 17(a)), Gloria Giralt de García Prieto before the Court stated that:

[...W]e have felt frustrated, sad, angry, it is a contrast of feelings, we feel that our future is limited in a country that has the capacity necessary to pull us to pieces and that there is no one to stop it, we feel definitively disintegrated as a family, I would not [...] think of bringing my children to live as a complete family in El Salvador, I would definitively die from worry.

119. Moreover, with respect to José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto, expert witness and psychologist Mauricio José Ramón Gaborit Pino indicated in his expert report (*supra* para. 16(i)) that:

[...t]he psychological impact on the life of Doña Gloria and Don Mauricio has been mainly due to the denial of justice in the several actions brought to clarify the circumstances of the death of their son [...]

120. Given the foregoing, this Tribunal observes that although José Raúl Argueta Rivas and Julio Ortiz Díaz were found guilty as perpetrators of the homicide of Ramón Mauricio García Prieto, his parents have lived with feelings of impotence and anxiety due to the lack of a complete investigation and because the prosecutorial investigation No. 34-00-03 has yet to be resolved (*supra* para. 116).

121. Therefore, this Court finds that the State is responsible for the violation of the right to humane treatment enshrined in Article 5 of the American Convention, in conjunction with Article 1(1) of the Convention (Obligation to Respect Rights), to the detriment of José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto.

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**3) Threats and harassment suffered by some members of the García Prieto Giralt family and the corresponding lack of an investigation into the events**

122. The Inter-American Commission alleged that Ramón Mauricio García Prieto's next of kin were the object of recurring acts of intimidation, which endangered their

lives and affected their safety and personal integrity. These acts included, among other things, anonymous threats and harassing phone calls, pursuit by vehicles, and surveillance by unknown individuals. The Commission alleged that these events have been a consequence of attempts by the García Prieto Giralt family to obtain justice. In addition, the Commission alleged that by failing to duly conduct an investigation, the State has permitted this situation to endure. As a result, the Commission alleged, the mental health of Ramón Mauricio García Prieto's next of kin has been affected.

123. At the same time, the Commission argued that "the errors in the investigation into the threats has produced a constant fear in the [alleged] victims and has justified the grant of precautionary measures." Moreover, according to the Commission, the investigation was characterized, among other things, by delay and the failure to call relevant witnesses. The Commission also stated that "none of the alleged investigations have produced the identification of any of those responsible" and stated that the investigations "were characterized by long periods of complete inactivity."

124. Likewise, the common intervener indicated that the acts of intimidation directed at the García Prieto Giralt family have occurred with frequency and have endured to the present. According to the common intervener, the majority of these acts have been directed at the parents of Ramón Mauricio García Prieto, but María de los Ángeles García Prieto de Charur, Lourdes García Prieto de Patuzzo and other members of their extended family have also been affected.

125. With respect to the investigation into the "threats and acts of intimidation," the common intervener indicated that although the criminal proceedings under file number 110/98 were opened in response to the request for precautionary measures by the Commission (*supra* note 9), the State never identified those responsible. According to the common intervener, the majority of the investigative steps taken were superficial. "For example, when vehicles involved in the acts of intimidation were investigated, the owners of these vehicles were sometimes identified, but these individuals were never called to provide a statement; in other cases, the vehicles were registered in the name of State entities [...], however, an investigation into this situation was never developed." Furthermore, the common intervener alleged that the steps taken to investigate the threats and acts of intimidation were negligent and focused on requesting information about the telephone numbers from which the harassing phone calls originated. These investigations were halted in 2002.

126. For its part, the State indicated that "it has shown consideration and respect for the García Prieto family and their legal advisors" and "has protected the physical and mental integrity" of them since the precautionary measures were granted, in other words, "from 1997 until 2006." The State also alleged that the supposed "threats and acts of intimidation have been unfounded and without an evidentiary basis." Moreover, the State alleged that all the acts of intimidation have been duly investigated without ever being able to prove their existence.

127. Regarding the investigation of these events, the State indicated that "with the objective of implementing the protective measures required as a result of the alleged threats to [the] personal integrity [of the García Prieto Giralt family] the State has set into motion the mechanisms established by the corresponding national legislation, such that investigations have been undertaken with respect to the threats that the [García Prieto family] has allegedly suffered, but it has been impossible to

verify the facts alleged.” The State added that “the García Prieto family had every procedural opportunity necessary to bring a claim before the Salvadoran justice system with respect to the acts of harassment, persecution, and threats, but they did not do so at the time.”

128. Based on the evidence presented and in consideration of the parties’ arguments, the Court will detail the facts it deems proven and within its jurisdiction *ratione temporis* with respect to the threats and harassment of which José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto were victim. The Court will begin by referring to the events which occurred in the criminal proceedings under file number 110/98 before the Third Criminal Court of San Salvador, and then it will refer to events related to the prosecutor’s investigation developed under file number 4799-UDV-2001.

a) Proceedings advanced before the Thirteenth Trial Court of Peace of San Salvador under file number 110/98

129. Several complaints and statements regarding recurrent harassment directed at José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto are found in the record of the criminal proceedings. These complaints and statements refer to visits by unknown individuals at the García Prieto Giralt house or their rural properties; incidents in which the family was followed, in which vehicles usually fitted with polarized windows and lacking license plates pursued them; and telephone calls originating from unknown telephone numbers, at times communicating intimidating messages.<sup>88</sup>

130. In the development of the investigation into the threats and harassment of which Ramón Mauricio García Prieto’s family were object, a series of investigative steps<sup>89</sup> were taken to identify those responsible. In a communication dated January

<sup>88</sup> With respect to the harassment: testimony of October 2, 1997 by Ángela María Quintanilla before the Public Ministry, Office of the Attorney General of the Republic, Eastern Zone, San Miguel. On September 15, 1995, Ángela María Quintanilla, employee of Mr. and Ms. García Prieto Giralt, testified that an unknown woman asked if the house belonged to the García Prieto family, and later boarded a vehicle without plates and with polarized windows, which was occupied by armed individuals. With respect to the anonymous phone calls: She testified that on September 14, 1995 she received a phone call in which an unknown individual asked for José Mauricio García Prieto Hirlemann, criminal proceedings number 110/98, (exhibits to the application, exhibit 2, volume 2, page 1089); testimony of José Reinaldo Rivera Machado before a notary public on August 14, 1996. He stated that on August 9 and 10, 1996, well-armed individuals arrived at the García Prieto family farm in a pick-up truck and asked for José Mauricio García Prieto Hirlemann, criminal proceedings number 110/98, exhibits to the application, exhibit 2, volume 1, page 811); testimony of September 16, 1997 by José Mauricio García Prieto Hirlemann before the Department of Investigation of Organized Crime of the National Civil Police. In his testimony, José Mauricio García Prieto Hirlemann indicated that on February 24, 1997, following a television interview in which Mr. and Ms. García Prieto discussed their struggle for justice, unidentified individuals let a car coast down a hill, where it collided with a vehicle belonging to their daughter, Lourdes Elizabeth García Prieto de Patuzzo, whose car was parked in front of her parents’ house. With respect to the times that he was followed, he also indicated that on August 28, 1996 he was followed by a vehicle without plates, and that he had been followed on several occasions by unknown individuals in different vehicles using different foreign and domestic plates, criminal proceedings number 110/98 (exhibits to the application, exhibit 2, volume 1, page 792 to 795).

<sup>89</sup> Cf. Note of September 5, 2000, in which Mr. Rodrigo Ávila, Director of the National Civil Police, ordered that the investigations into the threats and intimidating acts continue to be investigated (criminal proceedings number 110/98, exhibits to the application, exhibit 2, volume 1, pages 772 to 777); Request of October 8, 1997 regarding investigative steps taken with respect to the acts of intimidation and the presence of armed individuals on the farm called “El Carmen” (criminal proceedings number 110/98, exhibits to the application, exhibit 2, volume 1, page 844); Investigative steps related to license plate numbers, antecedents, and owners (criminal proceedings number 110/98, exhibits to the application,

23, 1998, the prosecutor's office submitted a list of the investigative steps taken to the Criminal Tribunal in charge. The prosecutor's office indicated that although it had taken various steps, it had been unable to determine the identity of those responsible, and that, as a result, the investigations should continue with respect to the threats and harassment.<sup>90</sup>

131. It has been proven that one of the most relevant events occurred on August 4, 1998 at the beach called "El Cuco", in the Department of San Miguel, when the family was there on vacation. According to the facts, José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto went out to walk along the beach that night when unknown individuals fired shots at them. Their security agents responded with shots, and the couple immediately returned to their home. According to Gloria Giralt de García Prieto, a criminal complaint was filed regarding this event.<sup>91</sup>

132. On August 15, 2000, the Third Criminal Court of San Salvador issued a decision in which it indicated that "reason favors Mr. and Mrs. García Prieto, with respect to the undeniable fact of the acts of intimidation they have suffered [...], the existence of these intimidating acts and persecution is sustained, since the unease they have suffered as a result of strange individuals monitoring their actions is not normal". Likewise, in this decision, the Judge indicated that because it was necessary to continue with the trial of José Ismael Ortiz Díaz, and in order to avoid procedural delay, the investigation into the acts of intimidation and persecution would be closed.<sup>92</sup>

- b) Prosecutor's investigation corresponding to file number No. 4799-UDV-2001.

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exhibit 2, volume 2, pages 934 to 987); Note of November 13, 1997 from the Department for the Investigation of Organized Crime, in which documents relating several investigative steps were annexed to the file demonstrating the verification of vehicles and some telephone numbers, criminal proceedings number 110/98 (exhibits to the application, exhibit 2, volume 1, pages 992 to 1000); Request for information from the Department for the Investigation of Organized Crime dated November 21, 24, and 25, 1997 regarding vehicular information, criminal proceedings number 110/98, (exhibits to the application, exhibit 2, volume 2, pages 1081 and 1110); and Response by the Joint Center for Counter-Narcotics Intelligence ("Centro de Inteligencia Conjunto Antinarcóticos") of November 25, 1997 in which it reported that no information existed in its database with respect to one of the vehicles (criminal proceedings number 110/98, (exhibits to the application, exhibit 2, volume 2, page 1111).

<sup>90</sup> Cf. Briefing by the Office of the Attorney General of the Republic of El Salvador (exhibits to the application, exhibit 2, volume 3, page 1334).

<sup>91</sup> Cf. Criminal complaint filed before the Third Criminal Court of San Salvador by Gloria Giralt de García Prieto on September 29, 1998 criminal proceedings number 110/98 (exhibits to the application, exhibit 2 volume 4, page 1546); Daily incident report of August 11, 1998 by agent Julio Alberto Barrientos Arévalo prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 5, page 6116); Testimony of January 24, 2002 by Julio Alberto Barrientos Arévalo before the Regional Metropolitan Unit of Investigation of the National Civil Police (prosecutor's file number 4799-UDV-2001, exhibits to the brief containing pleadings and motions, exhibit 16, volume 5, page 6112); Testimony of February 19, 2002 by Juan Antonio Cisneros Girón before the Regional Metropolitan Unit of Investigation of the National Civil Police, prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 6, page 6281).

<sup>92</sup> Cf. Order by the Third Criminal Court of San Salvador of August 15, 2000, criminal proceedings number 110/98 (exhibits to the application, exhibit 2, volume 7, pages 2418 to 2419).

133. On December 12, 2001, the Attorney General, Belisario Amadeo Artiga, sent a memorandum to Coralia Coto, chief receptionist of criminal complaints within the Public Ministry, in which he communicated that “Mr. José Mauricio García Prieto Hirlemann and Ms. Gloria Giralt [de García Prieto] have been the subject of threats and have been followed by unknown individuals. Thus, by this notice, I instruct you to open a criminal investigation.”<sup>93</sup>

134. On December 3, 2001, the prosecutor’s office opened file number 4799-UDV-2001 in order to investigate the threats and harassment of which José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto had been victim. In this file, several events of this type are described, many of which occurred prior to the initiation of the investigation (*supra* para. 129).<sup>94</sup>

135. In file number 4799-UDV-2001 a series of investigative steps are documented relating to the reception of statements given by the victims and their next of kin and employees, as well as several state agents who provided protection to some members of the García Prieto Giralt family. It also contains investigative steps relative to the verification of the anonymous phone calls received in the residences of Mr. and Mrs. García Prieto Giralt; the ownership of several vehicles that followed José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto; and other steps

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<sup>93</sup> Cf. Memorandum number 238 of November 15, 2001 from the Attorney General, prosecutor’s file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 1, page 5152).

<sup>94</sup> With respect to the harassment: chronology of incidents corresponding to José Mauricio García Prieto/1998, daily incident report of Amador Guzmán and chronology of incidents corresponding to José Mauricio García Prieto in 1998, daily incident report of June 11, 1998 by agent Juan Cisneros Girón, in which they indicated that on May 28, 1998, an agent observed a suspicious individual, allegedly armed, on the family’s farm, and that on June 11, 1998 a vehicle was parked with its lights off near the family residence, prosecutor’s file number 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, volume 6, pages 6222 and 6223); Report by agent José Gamaliel Rauda of June 8, 1998, in which he indicated that on June 4, and 5, 1996, shots were heard, and a security guard of the residence stated that a taxi had passed and its occupants had fired into the air, prosecutor’s file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 5, page 5950); Report by agent José Guillén Montano in which he indicated that on November 6, 1998, José Mauricio García Prieto Hirlemann went out to walk and several individuals remained in their vehicle for several minutes, with the motor running, prosecutor’s file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 6, page 6224); Report by agent José Gamaliel Rauda about an incident of April 17, 2001, in which a projectile impacted with the balcony of the García Prieto Giralt family home, prosecutor’s file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 6, page 6252); Interview with witness José Claribel Medina of January 29, 2002, and interview with witness Daniel Antonio García Orellana of April 16, 2002 in which they indicated that on December 11, 1999 the García Prieto Giralt family was informed that armed men were present on their farms, and that one of them was looking for José Mauricio García Prieto Hirlemann. They filed a complaint about the event before agent Medina of the National Civil Police under Institutional Numerical Order number 100094, prosecutor’s file number 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, volume 5, page 6129 and volume 9, page 6711, respectively). With respect to the incidents in which the family was followed: report by Benedicto Antonio Lemus of April 10, 1998, prosecutor’s file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 5, page 6010); Report by agent José Gamaliel Rauda García of May 11, 1998, prosecutor’s file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 5, page 5995); Report by agent Juan Antonio Cisneros Girón of May 18, 1998 prosecutor’s file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 5, page 5994); Testimony by agent Alina Isabel Arce of February 20, 2002 in which she testified before the National Civil Police that on an unspecified date, while she was with the García Prieto Giralt family in their vehicle, a pick up truck forced the vehicle from the road, witness interview with Alina Isabel Arce of February 20, 2002, prosecutor’s file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 6, pages 6283 to 6284).

taken with respect to the facts contained in the complaints (*supra* para. 130).<sup>95</sup> Moreover, the file indicates that the investigation is open and that no accusations have been made.

136. On January 30, 2002, Bladmir Alberto Cáceres Rivas, Deputy Commander and Chief of the Regional Metropolitan Division of Investigation, submitted a report to the Office of the Attorney General of the Republic with respect to the threats, and stated that "the investigation is still underway."<sup>96</sup>

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<sup>95</sup> Cf. Communications directed to the Section Chief of the Division of Important Persons of the National Civil Police by agents in charge of the security and protection of Benjamín Cuéllar, Gloria Giralte García Prieto, and José Mauricio García Prieto Hirlemann, prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 3, 4, 5, 6, and 7, pages 5830, 5935, 5939, 5948, 5995, 5950, 5994, 6116, 6129); Communication from the Chief of the Internal Affairs Unit of the National Civil Police of May 28, 2001 prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 2, page 5385); Communication from the Chief of the Legal Unit of December 21, 2001, prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 2, pages 5335 and 5338); Communication from the Deputy General Director of the National Civil Police of May 28, 2001, prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 2, pages 5381); Communication from the Chief of the Regional Para-Central Division of the National Civil Police of May 30, 2001, prosecutor's file number 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, volume 9, page 6786); Communication from the Commercial Agency Chief of TELECOM of May 30, 2001, prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 9, pages 6788); Communication from the Coordinator of the Regional Para-Central Division of May 31, 2001, prosecutor's file number 4799-UDV-2001, exhibits to the brief containing pleadings and motions, exhibit 16, volume 2, page 5388); Communication from the Attorney General of the Republic of January 8, 2002 to the General Manager of Telecom S.T.O. of C.V. and Salinet S.T.O. of C.V., prosecutor's file number 4799-UDV-2001, exhibits to the brief containing pleadings and motions, exhibit 16, volume 1, page 5175); Communication from Telecom S.T.O. of January 14, 2002 (prosecutor's file number 4799-UDV-2001, exhibits to the brief containing pleadings and motions, exhibit 16, volume 1, pages 5186); Communications to the companies of Telefónica of El Salvador, Telecom, and Salinet on behalf of the Adjunct Attorney General, prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 1, pages 5213, 5301, 5288, 5290); Documents issued by the Metropolitan Regional Division of Investigations of the National Civil Police of January 31, 2002, prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 6, pages 6144 to 6145, 6216 to 6260); Communication from the Chief of the Regional Metropolitan Division of February 19, 2002 directed to the Chief of SICA/JICC/DAN prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 6, page 6297); Document number DAN-CICA-331 from the Director of CICA/JICC/DAN of February 22, 2002 directed to the Chief of the Metropolitan Regional Division, prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 6, pages 6298 to 6364); Police document of March 4, 2002 elaborated by the Metropolitan Regional Division of Investigation (prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 8, pages 6610 to 6612); Memorandum Number 023UJ/DRMI/02 of March 18, 2002 from the Chief of the Metropolitan Regional Division of Investigation, prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 8, page 6667); Document number 0016UJ/DRMI/2002 of March 18, 2002 from the Chief of the Metropolitan Regional Division of Investigation (prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 8, page 6668); Document number 170 of March 18, 2002 from the Deputy Chief of the State Family Registry of the Mayor's Office of the Municipality of San Miguel (prosecutor's file number 4799-UDV-2001, exhibits to the brief containing pleadings and motions, exhibit 16, volume 8, page 6669); Communication from the case prosecutor dated March 20, 2002, prosecutor's file number 4799-UDV-2001, exhibits to the brief containing pleadings and motions, exhibit 16, volume 1, page 5237); and Memorandum No. 035/UJ/DRMI/2002 from the Chief of Investigations for the Metropolitan Regional Division of Investigation of April 29, 2002 prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 9, page 6815).

<sup>96</sup> Cf. Document number 006UJ-DRMI/02 from the Chief of the Metropolitan Regional Division of Investigation of the National Civil Police, prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 1, page 5201).



137. The last procedural action in the prosecutor's file number 4799-UDV-2001 according to the evidence in the present case, and in relation to the investigation of the threats and harassment, occurred on June 19, 2002. On that date, an extrajudicial statement was requested in the offices of the "911 emergency system".<sup>97</sup> In the file presented as evidence in the proceedings before the Inter-American Court no decision exists which would conclude the investigation.

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138. In the following two sections, this Tribunal will examine: a) the alleged threats and harassment suffered by members of the García Prieto Giralt family and b) the investigation of the threats and harassment.

a) *The alleged threats and harassment suffered by the members of the García Prieto Giralt family*

139. It has been proven that José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto have been subjected to threats and harassment, which have occurred with varying intensity. This Tribunal observes that in their testimonies before police and prosecutorial authorities, domestic courts, and the Inter-American Court, José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto have stated that they and other members of their family have been the object of these acts and described how this has affected their physical and psychological health (*supra* para. 16(a), 16(d), 16(e) and 16(j)). Among these events, the following are notable: the event which occurred at the beach called "El Cuco"; the shots fired at their house in San Salvador by unknown individuals; the anonymous phone calls to their houses in San Miguel and San Salvador; the presence of unknown individuals that ask about the location of family members, in particular, José Mauricio García Prieto Hirlemann; and the incidents in which they are followed by unknown individuals, sometimes armed, riding in vehicles with tinted windows and sometimes without license plates (*supra* para. 129). In this sense, Gloria Giralt de García Prieto stated before the Court that:

now, I would like it to be understood that we live in a routine of threats and that we cannot be filing complaints everyday that they are following us, that they called us on the phone at two in the morning, that they flashed their headlights at us, because to do so would be totally exhausting. We [mention] the most important, those which are the most important, which demonstrate the truth that these threats exist, grave threats exist and they have not been investigated [...].

140. Likewise, it has been proven that agents of the National Civil Police have reported and testified about the occurrence of such threats and harassment, including pursuits by unknown vehicles and other acts of intimidation. These reports are contained in the daily incident reports of the agents of the Protection of Important Individuals Unit ("Unidad de Protección a Personalidades Importantes") of the National Civil Police, who were assigned to protect the García Prieto Giralt family.<sup>98</sup> On this point, Alina Isabel Arce, in her statement before a notary public

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<sup>97</sup> *Cf.* Communication from the National Civil Police, prosecutor's file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volume 10, page 7097).

<sup>98</sup> *Cf.* Communications directed to the Section Chief of the Division for Important People of the National Civil Police by agents charged with the security and protection of Gloria Giralt de García Prieto,

(*supra* para. 16(f)) stated that “in the period in which I provided protection to Mr. and Ms. García Prieto Giralte, events occurred which threatened and jeopardized their safety and physical integrity.” She also stated that she was obligated to provide reports of daily incidents to her superiors.<sup>99</sup>

141. Additionally, judicial officials have confirmed the events related to the threats and harassment. In this regard, witness Fredy Ramos, (*supra* para. 17(c)) then prosecutor in the criminal proceedings designed to investigate the death of Ramón Mauricio García Prieto, testified before the Court that, based on the testimony of the parents of Mr. García Prieto, the existence of the threats was established. Likewise, witness Pedro José Cruz, (*supra* para. 17(b)) who worked on the case as assistant prosecutor in the Special Crimes Unit (“Unidad de Delitos Especiales”) of the Office of the Attorney General of the Republic in 1997, testified before the Court that:

[...] what we were able to establish [was] the existence of the threats and incidents in which the family was followed, by means of appropriate evidence, and statements not only of the victims, but also of other individuals, of employees or of individuals that knew of the threats that had also received calls or had seen unknown individuals lurking or pursuing the family of the victim.

142. In this respect, it is important to note that on December 10, 1998, the Chief of the Division for the Protection of Important People informed the judge of the Third Criminal Court that “an evaluation undertaken by the Division in June [1998] with respect to the safety concerns of the [García Prieto Giralte] family, concluded that the level of risk was imminent, based on information provided by the protection team, given that it had been deduced that they had been followed and were subjected to surveillance, provocation, harassment, and threatening telephone calls.”<sup>100</sup> However, it was not until August 15, 2000, in an order by the Third Criminal Court, that “the existence of these intimidating acts and persecution of the García Prieto family [was] sustained” (*supra* para. 132).<sup>101</sup>

143. In addition to the above, the Office of the Ombudsman for the Defense of Human Rights issued a report with respect to the case on June 22, 2005. The report refers to the existence of the harassment of and threats against some members of the García Prieto Giralte family and describes the events in detail (*supra* para. 86).

144. Moreover, the Court notes that on June 20, 1997, in response to the threats and harassment directed toward the García Prieto Giralte family, the Inter-American Commission adopted precautionary measures (*supra* note 9), and, subsequently, requested that the Court adopt provisional measures, which were ordered by the Tribunal (*supra* para. 13 and 14). Currently, some members of the García Prieto Giralte family are protected by these measures (*supra* para. 13 and 14). On this

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and José Mauricio García Prieto Hirlemann, prosecutor’s file number 4799-UDV-2001, (exhibits to the brief containing pleadings and motions, exhibit 16, volumes 4, 5, and 7, pages 5948, 5950, 6116, and 6129).

<sup>99</sup> Cf. In her testimony, Ms. Arce stated that she had been an operative agent of the Division for the Protection of Important People of the National Civil Police, Judges and Witnesses section. From April 1 to June 8, 1998, she was assigned to protect Gloria Giralte de García Prieto, prosecutor’s file number 4799-UDV-2001 (Merits file, volume 3, pages 643 to 647).

<sup>100</sup> Cf. Communication of December 10, 1998 from the Division for the Protection of Important People of the National Civil Police, judicial file number 110/98, exhibits to the application, exhibit 2, volume 4, page 1654).

<sup>101</sup> Cf. Order of August 15, 2000, *supra* note 53.

point, the Tribunal observes that the State, following the adoption of the precautionary measures, ordered that several agents of the PNC provide protection to the beneficiaries of the measures, as a way of complying with the measures.

145. For all of the above reasons, it has been effectively demonstrated the José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto have been the object of threats and harassment (*supra* para. 139). As a result, the Court finds that the State's argument that the alleged "threats and intimidating acts have been unfounded without an evidentiary basis" is inadmissible.

146. Although this Tribunal deems that the existence of the threats and harassment has been proven, the Tribunal does not find sufficient elements that would allow it to attribute responsibility to the State for a failure to respect the personal integrity of the mentioned individuals.

147. Nonetheless, with respect to the obligation to guarantee the right recognized in Article 5(1) of the Convention, the Court has indicated that the State must undertake a complete and effective investigation in accordance with its domestic legislation.

148. The Court must analyze whether the State has fulfilled its duty to effectively guarantee the personal integrity of José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto as required by Article 1(1) of the Convention. This analysis will be undertaken in the following section, taking into account the temporal jurisdiction of this Tribunal.

*b) Investigations into the threats and harassment*

149. In conformity with the criteria established in Articles 8(1) and 25(1) of the Convention, the Court will analyze whether the investigation into the threats and harassment which occurred within the temporal jurisdiction of the Court in the case *sub judice* has been undertaken in conformity with the demands of the obligation to guarantee rights contained in Article 1(1) of the Convention. Under these parameters, the Court exercises its jurisdiction in order to examine whether the investigation was an adequate and effective means of protecting the rights recognized in the Convention.

150. Based on the evidence presented, this Tribunal has determined that the State carried out two investigations into the threats and harassment of which members of the García Prieto Giralt family were victim. The first occurred as part of the criminal proceedings under file number 110/98. This investigation was closed on August 15, 2000 by the Third Criminal Court (*supra* para. 132). The second investigation was part of the prosecutor's file number 4799-UDV-2001.

151. In the prosecutor's investigation under file number 4799-UDV-2001, the Court observes that, although the authorities ordered the verification of the vehicular records corresponding to the license plates of the vehicles reported to have followed José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto, in some cases the owners of the vehicles were not interviewed. Moreover, in the daily incident reports of the agents of the Protection of Important Individuals Unit, several events of intimidation and harassment against some members of the García Prieto

family were recorded (*infra* note 102). The case file reveals that the state authorities have not exhausted the investigation into the events reported.

152. Given the evidence submitted in the present case, the Court observes that the origin or authorship of the threats and harassment perpetrated against some members of the García Prieto Giralt family has not been determined in the domestic forum, despite the fact that this situation has existed for more than nine years (*supra* para. 135).

153. This Tribunal finds that when a pattern of these types of acts exists, the State's investigation of such acts must make use of all the technical means appropriate through its institutions, in order to obtain the effective protection of personal integrity through an exhaustive, diligent, and effective investigation. The foregoing entails the use of technical means such as studies and analyses of risk factors for the individuals that suffer from these acts, the use of caller identification devices, interviews, and the use of interrogation along logical lines of investigation.

154. In light of the foregoing, the Court must examine both the gravity of the events investigated by the State authorities and the investigative activity undertaken by these authorities in order to determine the truth of the events. This analysis must take into account the fact that the duty to investigate is an obligation of means, not results.

155. The Tribunal notes that the majority of the events occurred starting from 1997. Nonetheless, as is verified in the prosecutorial investigation, some of the steps taken to clarify them were undertaken long after the events took place, such as the statements taken from the agents who provided security to some of the García Prieto family members.<sup>102</sup> On the other hand, with respect to the investigation into the telephone numbers from which phone calls to the García Prieto house originated, inadequate investigative steps were taken to clarify their character.<sup>103</sup>

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<sup>102</sup> For example, security agents were called to testify before the National Civil Police some time after the threats and harassment detailed in their daily incident reports occurred. See, among others, the statements of Mario Molina Morales of January 22, 2002, prosecutor's file No. 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, Volume 5, page 6078 to 6081); Luis Ernesto García of 22 of January of 2002, prosecutor's file No. 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, Volume 5, page 6090 to 6092); José Ulises Alemán of 22 of January of 2002 prosecutor's file No. 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, Volume 5, page 6093 to 6096); Julio Alberto Barrientos of 24 of January of 2002 (prosecutor's file No. 4799-UDV-2001, exhibits to the brief containing pleadings and motions, exhibit 16, volume 5, page 6112 to 6115); Porfirio of Jesús Mejía of 24 of January of 2002, prosecutor's file No. 4799-UDV-2001, prosecutor's file No. 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, Volume 5, page 6118 to 6121); Magdalena Guadalupe Linares of 28 of January of 2002, prosecutor's file No. 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, Volume 5, page 6122 and 6123); and José Claribel Medina of 29 of January of 2002 prosecutor's file No. 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, Volume 5, page 6124).

<sup>103</sup> Cf. Memorandum of May 28, 2001 to René Eduardo Domínguez Calderón, Subdirector General of the National Civil Police, directed to Commissioner Nelson Edgardo Campos Escalante, Chief of the Subcentral Regional Division, prosecutor's file No. 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, Volume 2, page 5381); Memorandum No. DRP/663/2001 from the Coordinator of the Subcentral Regional Division of May 31, 2001, prosecutor's file No. 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, Volume 2, page 5388); Communication from the Chief of Commercial Accounts of Telecom dated May 30, 2001, prosecutor's file No. 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, Volume 9, page 6788); Client call record for Tank Service S.T.O. of C.V., prosecutor's file No. 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, Volume 9, page 6850); and Letter from Jorge Orlando Cortez Díaz, esq., dated December 17, 2001, to the case prosecutor for the Division Chief of Metropolitan

156. Likewise, this Court observes that the State never investigated the events which occurred at “El Cuco” beach on August 4, 1998 even though State agents were eyewitnesses. Although witness Fredy Ramos testified in the public hearing that an investigation had been developed with respect to these events, the State never presented evidence which demonstrated the investigative actions taken (*supra* para. 17(c) and 20).

157. Finally, it should be mentioned that the record does not include a report or final conclusion by the prosecutor about the state of the investigation which could justify its closure or suspension. The last action documented in the file was undertaken in the month of June of 2002, which indicates that more than 64 months have passed since that date without any action being taken.

158. This Court finds that a lack of diligence by the police and prosecutorial authorities existed in the conduct of the investigations. This lack of diligence has impeded the determination of the facts and the identification, trial, and possible punishment of the perpetrators responsible for the threats and harassment directed at some members of the García Prieto Giralt family. Moreover, the lack of an adequate and serious investigation has permitted that such events continue to the present.

159. In the present case, it has been proven that José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto have lived for years, and continue living, with feelings of insecurity, anguish, and powerless due to the lack of an investigation of the events perpetrated against them. The failure to investigate the threats and harassment has affected the personal integrity of Ramón Mauricio García Prieto’s parents. That is to say, in the case *sub judice*, the Court finds that the investigation into the abovementioned events was not effectively and completely carried out in such a way as to make it possible to guarantee the right recognized in Article 5(1) of the Convention, in relation with Article 1(1) of the Convention, to the detriment of José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto.

160. As a result of all of the foregoing, this Court finds that the State is responsible for the violation of the right to a fair trial, and judicial protection, enshrined in Articles 8(1), and 25(1) of the American Convention on Human Rights, in conjunction with Article 1(1)1 of the Convention, and for the violation of the right to personal integrity enshrined in Article 5(1) of the American Convention, for failure to investigate the threats and harassment suffered by Mr. José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto.

## IX ARTICLE 11(2) (RIGHT TO PRIVACY)<sup>104</sup>

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Regional Investigations for the National Civil Police, prosecutor’s file No. 4799-UDV-2001 (exhibits to the brief containing pleadings and motions, exhibit 16, Volume 1, page 5169 and 5171).

<sup>104</sup> Article 11(2) of the Convention establishes that:

[...]

2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

[...]

**IN RELATION WITH ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS)  
OF THE AMERICAN CONVENTION**

161. The common intervener requested that the Court declare that the State is responsible for the violation of Article 11(2) of the Convention, to the detriment of the next of kin of Ramón Mauricio García Prieto. The common intervener alleged that “for more than ten years the [members of the] García Prieto family have been the object of systematic surveillance and have been followed by unknown individuals, who on occasions have been identified as state agents.” This situation has “affected the development of their familial and social relationships, which form part of their private life”, and “has restricted their movements, which has forced them to modify their habits and daily activities.” Neither the Commission nor the State referred to the alleged violation of Article 11(2) of the Convention.

162. In reference to the alleged violation of this Article of the American Convention, the Court notes that in its Report on Merits, the Commission found that it had not identified separate issues to analyze with respect to the alleged violation of Article 11 of the Convention. In addition, in consideration of the allegations brought forth by the common intervener with respect to the violation of Article 11(2) (Right to Privacy) of the Convention, this Court finds that the facts claimed to sustain this alleged violation and their legal effects have been examined in the previously declared violation of Article 5 (Right to Humane Treatment) of the American Convention.

**X  
REPARATIONS  
(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)<sup>105</sup>**

163. It is a principle of International Law that when an international obligation is violated and produces an injury, the duty arises to adequately compensate for it. The Court has based its decisions on this matter on 63(1) of the American Convention.<sup>106</sup>

164. In accordance with its findings on the merits and the violations of the Convention found in Section VIII, as well as the criteria established by its own jurisprudence in relation to the nature and reach of the obligation to compensate,<sup>107</sup> the Court will analyze the claims by the Commission and by CEJIL and IDHUCA with

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<sup>105</sup> Article 63(1) of the Convention establishes that: “If 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.”

<sup>106</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25; *Case of Cantoral Huamani and García Santa Cruz*, *supra* note 10, para. 156; *Case of Zambrano Vélez et al.*, *supra* note 10, para. 131; and *Case of Escué Zapata*, *supra* note 10, para. 126.

<sup>107</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 106, paras. 25 to 27; *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 43; *Case of the “White Van” (Paniagua Morales et al.)*, *supra* note 13, paras. 76 to 79; *Case of Cantoral Huamani and García Santa Cruz*, *supra* note 10, para. 157; *Case of Zambrano Vélez et al.*, *supra* note 10, para. 132; and *Case of Escué Zapata*, *supra* note 10, para. 127.

respect to reparations in order to establish measures to redress the injuries of the present case.

### **A) Injured parties**

165. The Court will now proceed to determine which individuals should be considered "injured parties" in the terms of Article 63(1) of the American Convention and, as such, be entitled to the reparations ordered by the Tribunal.

166. In the present case, the Commission and the common intervener alleged that the next of kin of Ramón Mauricio García Prieto hold the right to reparations in the terms of Article 63(1) of the Convention. The common intervener also alleged that Ramón Mauricio García Prieto holds a right to reparations.

167. The Court finds that the "injured parties" in the present case are José Mauricio García Prieto Hirlemann and Gloria Giralte de García Prieto, due to their character as victims of the violations of human rights found by this Tribunal (*supra* paras. 116, 121, and 160). As a result, these individuals are entitled to the reparations established by the Tribunal in terms of pecuniary and non-pecuniary damages.

### **B) Compensation**

168. In accordance with the dispositions of Article 63(1) of the Convention, it is incumbent upon this Tribunal to determine the measures necessary to redress the violations which were declared to have occurred to the detriment of José Mauricio García Prieto Hirlemann and Gloria Giralte de García Prieto.

#### *B.1) Pecuniary Damages*

169. In its jurisprudence, the Court has developed the concept of pecuniary damage and defined the situations in which it is proper to award this.<sup>108</sup>

170. According to the Commission, in determining pecuniary damages, the efforts undertaken by the next of kin of Ramón Mauricio García Prieto to obtain justice and the damage to the family assets and property as a consequence of the constant threats and harassment should be taken into account. The common intervener requested that the Court order the State to indemnify the victims under the following concepts: a) "consequential damages"; b) "lost wages", and c) "moral damages."

171. In the Court's judgment, the concepts cited by the common intervener in points a) and b) should be analyzed under the concept of pecuniary damages. Point c) will be analyzed under the concept of non-pecuniary damages. Thus, the Court will now examine the requests made by the common intervener with respect to pecuniary damages in accordance with the aforementioned.

172. The common intervener argued that an award based upon consequential damages should be based upon the following: a) the loss of burned properties

<sup>108</sup> Cf. *Case of Aloeboetoe et al. v. Suriname. Reparations and Costs*. Judgment of September 10, 1993. Series C No. 15, paras. 50, 71 and 87; *Cantoral Huamani and García Santa Cruz*, *supra* note 10, para. 166. *Case of Zambrano Vélez et al.*, *supra* note 10, para. 138; and *Case of Escué Zapata*, *supra* note 10, para. 132.

belonging to the García Prieto Giralt family, for which the State should pay for the damages to those properties beginning at the moment of the serious intimidating events; b) the expenses incurred as a result of the heart problems suffered by José Mauricio García Prieto Hirlemann which were a consequence of the anguish and suffering generated from the moment of Ramón Mauricio García Prieto's homicide, for which the common intervener requested that an award be established in equity, given that the family did not retain receipts for the expenses incurred as a result; c) expenses incurred by the family in order to guarantee their safety given the risks to their lives and personal integrity. The common intervener indicated that because the family has been subjected to "threats, harassment, and incidents in which they were followed" for more than twelve years, they have had to increase their security measures. These measures included measures to secure their home and the employment of personnel. As a result, the common intervener requested that the Court order a sum in equity given that they did not retain receipts for these expenses.

173. This Court has held in other cases<sup>109</sup> that it is appropriate to grant an amount for expenses incurred by victims or their next of kin as a consequence of the violations of human rights declared by the Court whenever these expenses have a direct causal nexus with the acts declared as violations, and are not expenses related to obtaining access to justice, since the latter are considered as repayment for "expenses and costs" and not as "compensation."

174. In light of the violations declared in section VIII of the present Judgment, the Tribunal finds that the reparations ordered in this forum should refer only to those violations upon which the Court has ruled. When the Court establishes an amount in order to compensate for pecuniary damages suffered, the body of evidence submitted and the arguments of the parties will be taken into account. Given the legal arguments and documentary evidence submitted to this Tribunal by the common intervener, it has not been possible to determine the existence of the required causal relationship or nexus between the pecuniary damages alleged by the common intervener with respect to the loss of burned properties or the expenses related to José Mauricio García Prieto Hirlemann's health and the facts declared as violations in the present Judgment.

175. With respect to the request by the common intervener concerning the "expenses incurred by the family in order to guarantee their safety given the risk of an injury to their lives and personal integrity," the common intervener indicated that the family has been threatened, harassed, and pursued for more than twelve years. As a result, they have been forced to contract personnel and take other security measures in their home. On this issue, the Tribunal observes that the State assigned personnel for the protection of some members of the García Prieto Giralt family as a result of the precautionary measures ordered by the Commission (*supra* note 9). On this issue, the Court finds that the common intervener did not submit sufficient evidence to permit the Tribunal to establish a compensation for these expenses.

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<sup>109</sup> Cf. *Case of the Serrano Cruz Sisters*, *supra* note 76, para. 152; *Case of Escué Zapata*, *supra* note 10, para. 136; *Case of Bueno Alves*, *supra* note 34, paras. 193 and 194; and *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment June 17, 2005. Series C No. 125, para. 194.



176. Likewise, with respect to lost wages, the common intervener maintained that members of the García Prieto Giralto family have dedicated themselves as coffee producers on lands located in San Miguel, San Salvador. Due to the threats, harassment, incidents in which they were pursued, and fires on the properties where they undertook their activities, the family was forced to suspend their visits to San Miguel. As a result, their business has been paralyzed in order to avoid jeopardizing their lives. Consequently, the common intervener requested that the Court consider the loss of income within the concept of pecuniary damages, and that the Court determine an amount in equity, given the lack of documents which establish fixed amounts.

177. With respect to the common intervener's allegation regarding the loss of income for the García Prieto Giralto family, this Court likewise finds that in the present case the common intervener did not present evidence that demonstrates that these alleged losses are a consequence of the violations found by the Court in the present Judgment.

178. As a result, the Court has not found evidence which demonstrates that José Mauricio García Prieto Hirlemann and Gloria Giralto de García Prieto have suffered pecuniary damages in the present case. For that reason, the Court abstains from granting them compensations for this concept.

#### *B.2) Non-pecuniary Damages*

179. It is now incumbent upon the Court to determine if other reparations should be ordered with respect to the non-pecuniary damages alleged in the present case, in accordance with the parameters established by the Court in its jurisprudence.<sup>110</sup>

180. The Commission alleged that in the present case it is evident that the next of kin of Ramón Mauricio García Prieto have suffered psychological pain, anguish, uncertainty, and changes in their lives as a result of the lack of justice within a reasonable term, and due to the partial impunity existent with respect to those responsible for his death and the threats and harassment of which they have also been victim. These events have "magnified their suffering." Consequently, the Commission requested that compensation for the next of kin of Mr. García Prieto be determined by the Court in equity, under the concept of non-pecuniary damages.

181. The common intervener maintained that the State was responsible for a series of violations of the human rights of Ramón Mauricio García Prieto and his next of kin, which caused them profound suffering and pain. Moreover, the common intervener argued that the lack of justice for the death of Mr. García Prieto initially generated a sense of frustration in his parents and sisters. According to the common intervener, this frustration has been transformed into a feeling of absolute powerlessness and the loss of confidence in the Salvadoran justice system, which has caused incommensurable suffering. In addition, the common intervener maintained that members of the García Prieto Giralto family have been victims of aggression, threats, and interference in their private lives, which have become worse as they relentlessly struggled for justice. As a result, they have lived in constant

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<sup>110</sup> Cf. *Case of Aloeboetoe et al.*, *supra* note 108, paras. 52, 54, 75, 77, 86 and 87; *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, paras. 53 and 57; *Cantoral Huamani and García Santa Cruz*, *supra* note 10, para. 175; *Case of Zambrano Vélez et al.*, *supra* note 10, para. 141; and *Case of Escué Zapata*, *supra* note 10, para. 147.

insecurity and in fear of their own State's authorities which should have been protecting them. Given these factors, they requested that the Court order an amount in equity under the concept of non-pecuniary damages.

182. In its written closing arguments, the State requested that the Court deem the controversy concluded and that it be absolved of any wrongdoing.

183. International jurisprudence has repeatedly established that a judgment *per se* constitutes a form of reparation.<sup>111</sup>

184. Nonetheless, given the circumstances of the case *sub judice*, José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto have suffered an injury to their psychological and moral integrity due to the lack of a **complete** investigation into the death of their son Ramón Mauricio García Prieto, as well as the failures in the investigation into the threats and harassment. As a result, the Court deems it appropriate to order the payment of compensation, fixed in equity, for the concept of non-pecuniary damages.

185. Therefore, the Court, in equity, establishes the sum of \$20,000 (Twenty Thousand United States Dollars) for each victim, José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto for the non-pecuniary damages suffered by them. This amount shall be delivered to each of them.

186. The State shall effectuate the payment of the compensation for the concept of non-pecuniary damages directly to the beneficiaries within a period of one year, counted from the date of notification of the present Judgment upon the parties.

### **C) Measures of satisfaction and guarantees of non-repetition**

187. In this section, the Tribunal will determine the measures of satisfaction necessary to redress the non-pecuniary damages suffered. In addition, the Tribunal will order measures which reach the general public. On this subject, the Tribunal will only order those measures which it considers appropriate and which are designed to redress the violations declared in the context of the present case. Consequently, the Court will not rule upon the common intervener's requests with respect to a) the undertaking of a public act of reconciliation and recognition of responsibility; b) the creation of a constitutionally established agency dedicated to forensic science of crimes; c) the establishment of training courses for prosecutors, judicial agents, and police officers; d) the establishment of an independent organization, created with public participation, designed to investigate and adequately sanction failures by members of the PNC; e) the investigation and dismantling of the death squads; f) the creation of a video and radio report about the operation of the death squads after the end of the armed conflict; g) the designation of a "day for death squad victims"; and g) the creation of an independent commission to investigate the homicide of Ramón Mauricio García Prieto.

188. The State did not address measures of non-repetition and satisfaction.

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<sup>111</sup> Cf. *Case of Suárez Rosero v. Ecuador. Reparations and Costs*. Judgment of January 20, 1999. Series C No. 44, para. 72; *Case of Cantoral Huamani and García Santa Cruz*, *supra* note 10, para. 180; *Case of Zambrano Vélez et al.*, *supra* note 10, para. 142; and *Case of Escué Zapata*, *supra* note 10, para. 149.

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a) *The State's obligation to investigate the events of the present case*

189. The Commission requested that the Court order the State to undertake a complete, impartial, effective, and expeditious judicial investigation, in order to determine the circumstances of the homicide of Ramón Mauricio García Prieto. In the same sense, the Commission requested a judicial investigation to determine the origin of the threats and harassment, and determine the identity of those who have followed José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto. Finally, it requested that all the perpetrators of the events, throughout the different levels of decision-making and execution, be identified, and that the State advance criminal proceedings and apply the punishment due.

190. The common intervener requested that a serious, complete, and effective investigation be ordered in order to identify, try and punish all those who participated in the homicide of Ramón Mauricio García Prieto. According to the common intervener, all of the material and intellectual authors of the events should be investigated, as well as those responsible for the threats, harassment, and other interference in the private life of the García Prieto Giralt family. Likewise, they requested that the Court order the State to investigate the police and judicial agents allegedly responsible for irregularities in the proceedings undertaken.

191. With respect to the investigations, the State indicated that Ramón Mauricio García Prieto's death was broadly investigated by the competent institutions, as were the "threats and intimidating acts." The State further indicated that, through its judicial and administrative institutions, it has investigated each of the requests of the representatives, according to procedures previously established by law.

192. The Court takes into account the fact that the State has investigated, tried, and punished two of the perpetrators of Ramón Mauricio García Prieto's homicide (*supra* para. 80 and 91).

193. However, as was established in the present Judgment, during the investigation into the homicide of Ramón Mauricio García Prieto, the State failed in its duty to collaborate with the judicial authorities, specifically with respect to the inspection of the books containing the records of entry and departure of the personnel of the San Benito Battalion of the National Police, which constituted an obstruction of the investigation (*supra* para. 116). For that reason, the State should bring this investigation to its proper conclusion.

194. In addition, an investigation into the threats and harassment suffered by José Mauricio García Prieto and Gloria Giralt de García Prieto still remains open at this time. (*supra* para. 94, 116, 137, and 157). This investigation should be continued as soon as possible, in accordance to domestic legislation.

195. Pursuant to its duty to investigate, the State must utilize all available means to expedite the investigation and the corresponding judicial proceedings, such that it avoids the repetition of events like those of the present case.

196. It is incumbent upon the States to create norms and adjust their practices as necessary in order to comply with the orders and decisions of the Inter-American Court, if such norms and practices do not yet exist.

197. On the other hand, the Commission and the common intervener requested that the Court order the State to nullify the statute of limitations corresponding to the criminal proceedings with respect to the death of Ramón Mauricio García Prieto. The Court notes that it has not found evidence in the prosecutor's file number 34-00-03 such that it could determine if the statute of limitations has been applied in this case. Given this situation, the Court will not rule upon the issue, due to the lack of sufficient elements to do so.

*b) Publication of the Judgment*

198. Given the express request of the Commission and the common intervener, the Court finds it appropriate to order, as it has in other cases,<sup>112</sup> that the State publish in its official gazette and in another newspaper of broad national circulation, the following: the operative paragraphs of this Judgment, as well as the following paragraphs: 1 to 3, 5 to 11 of Section I, titled "Introduction to the Case and Subject-Matter of Dispute"; 76 to 160 of Section VIII, titled "Article 5 (Right to Humane Treatment), 8(1) (Right to a Fair Trial) and 25(1) (Right to Judicial Protection) in relation with Article 1(1) (Obligation to Respect Rights) of the Convention, including the names of each section and subsection respectively and without the footnotes. This publication should be effectuated once within six months, counted from service of the present Judgment upon the parties.

*c) Medical, psychiatric, and psychological assistance*

199. The common intervener indicated that "the State is obligated to provide free medical and psychological assistance to the next of kin of Ramón Mauricio García Prieto, such that they may access a State medical institution which provides adequate and personalized attention, and which may help them to heal the physical and psychological injuries suffered by them [and that] this measure include the costs of the medication that may be prescribed." On this issue, neither the Commission nor the State specifically referred to this request.

200. The Court would like to emphasize that expert witness Mauricio José Ramón Gaborit Pino concluded that, with respect to Ramón Mauricio García Prieto's parents, "their life now revolves around the traumatic event. The feelings of powerlessness and that justice has been denied them invade their daily lives and has conditioned all of their future plans."<sup>113</sup>

201. The Court finds that it is necessary to order measures of reparation in order to reduce the mental suffering of José Mauricio García Prieto Hirlemann and Gloria Giralte de García Prieto. To this end, the Court orders the State to provide adequate

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<sup>112</sup> Cf. *Case of Cantoral Benavides*, *supra* note 110, para. 79; *Case of Cantoral Huamaní and García Santa Cruz*, *supra* note 10, para. 192; and *Case of Zambrano Vélez et al.*, *supra* note 10, para. 151; and *Case of Escué Zapata*, *supra* note 10, para. 174..

<sup>113</sup> Cf. Expert report rendered by Mauricio José Ramón Gaborit Pino before a notary public on January 10, 2007 (Merits file, volume 3, page 659).

treatment and medication needed by these individuals, through its public health services, free of charge, for as long as necessary, and given their prior consent and a medical evaluation. When providing the medical, psychological, or psychiatric treatment required, the particular needs and circumstances of each person should be considered, in order to provide the proper treatment.

#### **D) Expenses and Costs**

202. As the Court has indicated on other occasions, the expenses and costs are included within the concept of reparations enshrined in Article 63(1) of the American Convention.<sup>114</sup>

203. In the present case, the Commission requested that that the Court order the State to pay the legal costs and expenses that the next of kin of Ramón Mauricio García Prieto have incurred during the proceedings related to this case both in the domestic and international fora.

204. The common intervener requested that the Tribunal order the State to pay US\$40,987.32 (forty thousand nine hundred eighty-seven United States Dollars and thirty-two cents) for the expenses incurred by IDHUCA. This organization has assisted the García Prieto Giralto family in their judicial efforts at the domestic level. Likewise, the common intervener requested a sum of US\$14,055.24 (fourteen thousand fifty-five United States Dollars and twenty-four cents) for the expenses incurred by CEJIL. This organization acted together with IDHUCA as representatives of the victims from the time of the initial complaint submitted to the Commission on October 22, 1996. Lastly, in addition to these amounts, the common intervener requested costs and expenses incurred from the time of the submission of the application to the time of the submission of their written closing arguments. These amounts were: for the expenses of IDHUCA, US\$865.00 (eight hundred and sixty-five United States Dollars, and US\$3,365.96 (three thousand three hundred sixty-five United States Dollars and ninety-six cents) for the expenses of CEJIL.

205. For its part, the State requested that the Court find that there was no reason to award costs.

206. With respect to reimbursement for expenses and costs, the Tribunal has indicated that it is incumbent upon it to prudently assess an appropriate amount, which should include the expenses generated during domestic proceedings, as well as before the Inter-American system, taking into account the circumstances of each case and the nature of an international system for the protection of human rights. This assessment may be undertaken based on the principle of equity and taking into account the expenses indicated by the parties, so long as the *quantum* is reasonable.<sup>115</sup>

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<sup>114</sup> Cf. *Case of Garrido and Baigorria*, *supra* note 107, para. 79; *Case of Cantoral Huamani and García Santa Cruz*, *supra* note 10, para. 203; *Case of Zambrano Vélez et al.*, *supra* note 10, para. 159; and *Case of Escué Zapata*, *supra* note 10, para. 186.

<sup>115</sup> Cf. *Case of Bueno Alves*, *supra* note 34, para. 219; *Case of La Cantuta*, *supra* note 33, para. 243; and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2006. Series C No. 158, para. 152.

207. Based on the foregoing, and in consideration of the evidence presented by the common intervener in the present case, the Tribunal, in equity, finds that the State should remit the amount of US\$13,000.00 (thirteen thousand United States Dollars) to Gloria Giralt de García Prieto who shall deliver the amount that she deems adequate to her representatives, in order to compensate for the costs and expenses incurred in the domestic proceedings and those before the Inter-American system. The State shall effectuate this payment for costs and expenses within a period of one year counted from notification of the present Judgment.

***E) Method for the fulfillment of payments ordered***

208. The payment of the amounts established in favor of the victims will be made directly to them. In the event that any of these individuals should die before their respective compensation is delivered to him or her, it shall be delivered to his or her successors in interest, in conformity with applicable domestic law.<sup>116</sup>

209. The payments designed to reimburse the costs and expenses generated in the actions undertaken by the representatives in domestic and international proceedings will be made to the individual who originally made those payments.

210. If, due to causes attributable to the beneficiaries, it is impossible for them to receive the payment within the indicated period of one year, the State shall consign these amount in their name to an account or certificate of deposit in a solvent Salvadoran banking institution with the conditions most favorable permitted by legislation and banking practices. If the amount has not been claimed after ten years, the corresponding sum will be returned to the State together with the interest generated.

211. The State shall fulfill the economic obligations indicated in this Judgment in payments of United States Dollars or their equivalent in the national currency of El Salvador.

212. The quantities assigned in the present Judgment as compensation or as reimbursement of costs and expenses shall not be affected or conditioned on current or future fiscal conditions. As a result, they should be completely delivered to the beneficiaries in the manner established in the Judgment.

213. In the event that the State defaults on the payment, it shall pay interest corresponding to the moratorium interest rate in banks of El Salvador in addition to the amount owed.

214. Just as the Court has held and practiced in all cases subject to its jurisdiction, the Court will supervise compliance with the present Judgment in all respects. This supervision is an inherent jurisdictional attribute of the Tribunal and is a necessary condition of its fulfillment of the obligation assigned by Article 65 of the Convention. The case will be deemed closed once the State has fully complied with the dictates of this Judgment. Within one year, counted from the notification of the present

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<sup>116</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 294; *Case of Cantoral Huamani and García Santa Cruz*, *supra* note 10, para. 162; *Case of Zambrano Vélez et al.*, *supra* note 10, para. 137; and *Case of Escué Zapata*, *supra* note 10, para. 189.

Judgment upon the parties, the State shall present its first report to the Court regarding the measures taken to fulfill this Judgment.

**XI**  
**OPERATIVE PARAGRAPHS**

215. Therefore,

**THE COURT**

**DECIDES,**

By unanimity, to:

1. Partially dismiss the first preliminary objection raised by the State titled "Lack of Jurisdiction *Ratione Temporis*" in the terms of paragraphs 31 to 46 of the present Judgment; dismiss the second preliminary objection raised by the State, titled "Failure to Exhaust Domestic Remedies" in the terms of paragraphs 47 to 53 of the present Judgment; and dismiss the allegations with respect to the informality of the petition in the terms of paragraphs 54 to 59 of the present Judgment.

**DECLARES,**

By unanimity, that

1. The Court takes note of the "friendly settlement" undertaken by Ms. Carmen Alicia Estrada and the State on January 23, 2007, as well as Ms. Estrada's renunciation of claims alleged during these proceedings, in the terms of paragraphs 69 and 70 of the present Judgment.

2. The State violated the rights to a fair trial, judicial protection, and personal integrity enshrined in Articles 8(1), 25(1), and 5(1) of the American Convention on Human Rights, all in conjunction with Article 1(1) of the Convention, to the detriment of Mr. José Mauricio García Prieto Hirlemann and Ms. Gloria Giralte de García Prieto, in accordance with paragraphs 97 to 121 of the present Judgment.

3. The State violated the rights to a fair trial and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention on Human Rights, in conjunction with Article 1(1) of the Convention, and the right to personal integrity enshrined in Article 5(1) of the American Convention, due to the failure to investigate the threats and harassment suffered by Mr. José Mauricio García Prieto Hirlemann and Ms. Gloria Giralte de García Prieto, in the terms of paragraphs 128 to 160 of the present Judgment.

**AND ORDERS,**

By unanimity, that

4. This Judgment constitutes *per se* a form of reparation.
5. The State shall, bring to a proper conclusion, within a reasonable time, the pending investigation into the homicide of Ramón Mauricio García Prieto and the investigation into the threats and harassment in the terms of paragraphs 192 to 197 of the present Judgment.
6. In the terms of paragraph 198 of the present Judgment, the State shall publish, in its official gazette and in another newspaper of broad national circulation, the following: the operative paragraphs of this Judgment, as well as the following paragraphs: 1 to 3, 5 to 11 of Section I, titled "Introduction to the Case and Subject-Matter of Dispute"; 76 to 160 of Section VIII, titled "Article 5 (Right to Humane Treatment), 8(1) (Right to a Fair Trial) and 25(1) (Right to Judicial Protection) in relation with Article 1(1) (Obligation to Respect Rights) of the Convention, including the names of each section and subsection respectively and without the footnotes. This publication should be effectuated once within six months, counted from the date of notification of the present Judgment upon the parties.
7. The State shall provide, free of charge, the medical, psychiatric, and psychological assistance that may be needed by José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto, in the terms of paragraphs 200 and 201 of the present Judgment.
8. The State shall pay José Mauricio García Prieto Hirlemann and Gloria Giralt de García Prieto the amounts established in paragraph 185 of the present Judgment, as compensation for non-pecuniary damages, within a period of one year counted from the date of service of the present Judgment upon the parties, as established in paragraphs 183 to 186 of the present Judgment.
9. The State shall, within a period of one year from the date of notice of the present Judgment upon the parties, pay Gloria Giralt de García Prieto the amount indicated in paragraph 207 of the present Judgment for the costs and expenses incurred both in the domestic sphere and before the Inter-American system of protection of human rights, in the terms of paragraphs 206 and 207 of the present Judgment.
10. The Court will monitor the State's compliance with the present Judgment in all its aspects, and it will close the present case once the State has fully implemented all of its provisions. Within a period of one year, counted from the date of notice of the present Judgment upon the parties, the State must present to the Court a report of the measures adopted in compliance with its provisions.

Judge García Ramírez informed the Court of his Separate Opinion, which accompanies the present Judgment

Done in Spanish and English, the Spanish text being official, in San José, Costa Rica, on November 20, 2007.



Sergio García Ramírez  
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri  
Secretary

So ordered,

Sergio García Ramírez  
President

Pablo Saavedra Alessandri  
Secretary

**CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ  
IN THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS  
IN THE CASE OF GARCÍA PRIETO (EL SALVADOR) OF NOVEMBER 20, 2007**

**A) The Duty to Investigate**

1. In the judgment issued by the Inter-American Court of Human Rights in the *Case of García Prieto* (El Salvador) of November 20, 2007, which this opinion accompanies, the necessity of carrying forward certain investigative steps has been examined, and which have been found to be incomplete but required in order to establish the truth about certain events that could have effects under the criminal law.

2. The duty to undertake these investigative steps has a double and cyclical source, which is recognized by a State which is a party to the treaty on human rights and recognizes the jurisdiction of the international tribunal in contentious matters: primarily, the treaty itself –the American Convention- and as a consequence of this, and the recognition of jurisdiction, the rulings pronounced by the Court, which is called to interpret and apply the Convention, in its terms and in the terms of the Statute that derives from it.

**B) Adoption of measures for the fulfillment of orders: the process of national reception**

3. It is possible that the fulfillment of this duty to investigate (I will leave for another opportunity the issue of the reach of the investigation and its transcendence as a component of judicial access and punishment, an issue upon which the Court invites reflection in one paragraph) raises issues which originate in the domestic fora: obstacles raised or normative gaps. The Inter-American Tribunal has often ruled, following the orientation of the Law of treaties and the rules on the subject of international responsibility, upon the fulfillment –by the States Parties- of the general dispositions (normative) or particular dispositions (jurisdictional, with a double impact: in the actual case and in the system as a whole) of the international order. I will not say more on this subject.

4. There is no doubt about the State's obligation to adopt the measures of a legislative or other character (Article 2 of the American Convention) necessary for the observance and protection of the rights and liberties included in that instrument. That is why, in this Judgment, conscious of the circumstances that existed and the arguments that could arise from them, it was necessary to state in an emphatic paragraph: "is incumbent upon the States to create norms and adjust their practices as necessary in order to comply with the orders and decisions of the Inter-American Court, if such norms and practices do not yet exist." The command is found, then, in the international order that the States accept; the solution, with its particularities, is found in the hands (and in the duties) of these States.

5. This expression accentuates, once more, the necessity that the States arrange what is necessary, in their own internal order, with urgent attention, the commitments contracted with the help of the international order, adopted with mandatory force by the same States through their own sovereign decisions. It has

seemed interesting to me to refer now to the adoption of these measures, which constitutes a duty broadly examined and accepted- and which was not contracted, evidently, in this case, inasmuch as it is related to the most relevant and active issue, today, in the link between the national and international order and in the consolidation of the Inter-American System for the Protection of Human Rights: national reception of international decisions.

6. This theme is of course, multifaceted and has multiple implications that I do not suggest be examined now, nor could they. It is important to emphasize, however, that this reception—which is the most relevant and decisive issue in the present time, and one of the most frequently examined now in the literature<sup>1</sup>--should motivate the most energetic and sustained effort, and project itself toward the variety of fronts in which it may be installed and take hold.

### **C) Reception in the culture**

7. On other occasions, I have been occupied with the different manners in which reception should operate and with the actions that must be developed such that reception is projected forward. I have mentioned the necessity of strengthening reception in the American culture with respect to human rights, always disrespected, especially when there are signs of public insecurity that feed the unfavorable discourse

around human rights (which is, in essence, an unfavorable discourse around law itself). That culture is the “natural environment” for the observance of rights. Upon this generalized conviction depends the effective operation, the imperative demand (which impedes choosing the wrong path and favors the advance into new areas) and the real effectiveness of the instruments designed for the protection of rights, as much in the national order as in the international order.

### **D) Constitutional reception**

8. Constitutional reception is also required, which has prospered under a variety of formulas –which as a whole brings a panorama of progress, despite the heterogeneity of its normative expressions- and which slowly might consolidate the idea that beyond the always difficult issue of hierarchy among national and international orders, lies the supreme hierarchy of the human being -common to the fundamental decisions in both orders, and in their most developed and modern versions-, which links all decisions and actions.

### **E) Political reception**

9. The admission of international relations and their declaratory, normative, and jurisdictional consequences in the basic laws of the States, causes the adoption of

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<sup>1</sup> With respect to recent examples of this particular accent in the literature, two works which emerged in 2007 should be mentioned. The first of these, with a similar prior publication, which serves as a point of reference, edited a decade ago in Argentina, and the second which reached several countries in the area: Various Authors, *La aplicación de los tratados sobre derechos humanos en el ámbito local. La experiencia de una década*, Abramovich, Víctor, Bovino, Alberto, y Courtis, Christian (comps.), Editores del Puerto/Centro de Estudios Legales y Sociales (CELS)/Canadian International Development Agency, Buenos Aires, 2007, 1005 pp.; and Various Authors, *Implementación de las decisiones del Sistema Interamericano de Derechos Humanos, Jurisprudencia, normativa y experiencias nacionales*, Krsticevic, Viviana, and Rojo, Liliana (coords.), CEJIL, Buenos Aires, 2007, 432 pp.

public policies favorable to the expansion and protection of human rights. This ambit of reception may be attended, however, even in the absence of explicit constitutional dispositions –as has occurred in several cases-, with sustenance of internal norms in favor of fundamental rights and liberties and in the “anthropocentric spirit” which animates the radical decisions of modern political societies.

#### **F) Jurisdictional reception**

10. Internal jurisdictional reception of international jurisprudential criteria is indispensable, which at the same time should undertake the reflection and contribution which come from internal justice systems. The harmonization of the continental order of human rights should be the product of persistent and profound dialogue: jurisprudential dialogue, which advances. This realm of reception constitutes –as I have had occasion to affirm in other fora, in particular before the political organs of the Organization of American States- one of the most encouraging at the present time in the Inter-American System.

#### **G) Legal Reception (instrumental)**

11. Likewise, reception is absolutely necessary through the internal norms of fulfillment (which may be denominated instrumental legal means), which constitute the bridge such that international orders are naturally and quickly transmitted without errors and applied domestically, which requires immediate and adequately facilitated executive steps. I do not say that this normative structure is a condition for the validity of international provisions; I only recall that it is a natural medium for their effectiveness.

12. This angle of reception has been left behind. In general, national formulas are not ordered -although there may be good will in practice, which powerfully contributes to the fulfillment, through appropriate interpretations- which foresee with detail the internal admission of the international recommendations and resolutions. Indemnifying reparations exist in some legal systems, but these do not occur in the same way as other types of reparations, whose complexity requires clear rules that deliver quick decisions. These other types constitute, for sure, some of the most important reparations, which are characteristic and evolutionary of the Inter-American jurisdiction over human rights and the guarantee of adequate reparations which the system contains.

#### **H) Regulatory initiatives**

13. There are commendable initiatives which have arisen in some States and which may be supported, complemented, or enriched by professional and academic contribution, in the sense of elaborating first drafts of secondary legal systems, preferably rooted in the constitution, designed to guide the fulfillment of international recommendations and orders on the subject of human rights. Of course, each State should have norms that recognize and develop its own circumstances, but it would be practical to have an instrument which collects the general patterns in the introduction of international decisions in national legislation, broad rules of reparations, and special orientations in relation to the variety of categories of reparation that Inter-American jurisprudence has produced

**I) Ratification of the role of the Court, throughout the proceedings, in the subjective and objective protection of human rights**

14. In another place in the Judgment issued in the *Case of García Prieto*, the Inter-American Court freshly examines, in a brief and appropriate forms, the consequences of a friendly settlement among the State and one of the individuals that was a party in a prior stage of litigation, on her own behalf and on behalf of her minor son. When seen from the perspective of the individual, this issue concerns the composition of a renunciation of certain claims that the interested party deems satisfied by the State.

15. What is more interesting, without prejudice to the substantive findings of this particular case, is to note the function of the Inter-American Court and the way in which the Court is projected into a dispute that, under other conditions, would cease once the agreement between the (material) parties of the case was reached. The Tribunal has made it clear that: a) it is incumbent upon the Court to officiously protect –once the proceedings have been brought in an international suit- the human rights of the interested parties (subjective protection that is detached from the objective protection of the legal order); b) this protection concerns the case *sub judice* and its protagonists, but it does not concern any less (due to the nature and characteristics in which it is being exercised, in the framework of an “international System” for protection of human rights) the whole of the States committed to the System and the individuals of those States subject to its jurisdiction, and, consequently, bearers of an expectation of respect and guarantee of their treaty rights and liberties as interpreted by the Court; and c) the protection of these concepts may require that the trial continue, despite the agreement reached (and independently, up to a certain point, the acts of confession, settlement, and transaction related to it), which leads to a more or less complete trial process, and to a complete judgment on the controversy raised in the petition and, shall we say, a “pedagogical”, “preventative” exercise of the jurisdiction which operates despite the settlement. It is in these terms that the Court has operated in the proceedings brought in recent years, in cases in which a settlement among the parties was reached. This orientation remains firm in the present case, without prejudice to the specific characteristics that concur here and that are not necessary to examine at this time.

Judge Sergio García Ramírez  
President

Pablo Saavedra Alessandri  
Secretary