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REPORT No. 22/15
CASE 12.792
REPORT ON THE MERITS

MARÍA LUISA ACOSTA ET AL
NICARAGUA

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I. SUMMARY

1. On June 22, 2007, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "the Commission," or "the IACHR") received a complaint lodged by María Luisa Acosta Castellón, the Centro de Asistencia Legal a Pueblos Indígenas [Center for Legal Assistance to Indigenous Peoples - CALPI], the Centro por la Justicia y Derechos Humanos de la Costa Atlántica de Nicaragua [Center for Justice and Human Rights of the Atlantic Coast of Nicaragua -CEJUDHCAN], and the Centro Nicaragüense de Derechos Humanos [Nicaraguan Human Rights Center -CENIDH] (hereinafter "the petitioners"), acting on behalf of María Luisa Acosta Castellón, Francisco García Valle, Ana María and Álvaro Aristides Vergara Acosta, Leonor del Carmen Valle de García, and Rodolfo García Solari, against the Republic of Nicaragua (hereinafter "the State," "the Nicaraguan State," or "Nicaragua.")

2. The petitioners alleged that on April 8, 2002, María Luisa Acosta's husband, Francisco José García Valle, was murdered but that the murderers' real target had been to kill or intimidate Mrs. Acosta because of her work as a defender of indigenous peoples. They alleged that there had been a series of irregularities during the criminal proceedings instituted for the murder of Mr. García Valle, such as the dismissal of the alleged instigators and one perpetrator of the murder, and judicial harassment of Mrs. Acosta. Thus, the petitioners state that instead of seeing justice done for the crime against her husband, María Luisa Acosta had suffered a series of abuses permitted by the State, such as being accused, sued, and displaced from her place of residence.

3. For its part, the State maintained that the criminal proceedings for the murder of Mr. García Valle had been conducted with full respect for domestic laws and international treaties and that all parties to the proceedings had been treated equally and respectfully. It also reported that two people had been convicted of the murder. It pointed out that the fact that the petitioners may not agree with the decisions made by the Nicaraguan justice system, particularly the dismissal of proceedings against three of the accused for the murder of Mr. García Valle, did not mean that their rights had been infringed. According to the State, it was not up to the IACHR to act as a body reviewing judgments on the merits rendered by the domestic courts.

4. After analyzing the positions of the Parties, the Commission concluded that the Nicaraguan State is responsible for violating the rights to humane treatment, a fair trial, and judicial protection established in articles 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention, in conjunction with the obligations established in article 1.1 of the same instrument, to the detriment of the persons named in the course of this report.

II. PROCESSING BY THE COMMISSION SUBSEQUENT TO APPROVAL OF ADMISSIBILITY REPORT 148/10

5. The initial petition was received on June 22, 2007. On November 1, 2010, following admissibility proceedings, the Commission declared the case admissible by approving admissibility report 148/10 regarding alleged violations of the rights protected under article 5, 8, and 25, in conjunction with article 1.1 of the American Convention.¹ The proceedings between presentation of the petition and the admissibility report are detailed in that report. On January 10, 2011, the Committee transmitted the admissibility report to the Parties and gave the petitioners three months to submit any additional

¹ IACHR, Report No. 148/10 Petition 830-07, Admissibility, María Luisa Acosta et al, Nicaragua, November 1, 2010.

observations on the merits. In the same communication, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter, for which purpose it requested them to state their interest in that regard at their earliest convenience. In a document dated November 30, 2010, the petitioners expressed their desire to avail themselves of the friendly settlement procedure. That information was relayed to the State in a communication dated January 10, 2011. The State was given one month to reply. However, the Nicaraguan State did not respond to the petitioners' proposal and submitted its observations on the merits on March 17, 2011.

6. The petitioners' observations on the merits were received on August 18, 2011 and on March 14, October 17, and December 6, 2013, all of which were duly remitted to the State. For its part, the State presented additional briefs on October 18, 2011 and on September 6 and October 29, 2013. That information was duly forwarded to the petitioners. The IACHR also conducted a public hearing on this case on October 29, 2013 during its 149th regular session.

III. POSITIONS OF THE PARTIES

A. The Petitioners

7. During the merits phase, the petitioners continued to argue that the Nicaraguan State was liable for violating the rights established in articles 4, 5, 8, 11, and 25 of the American Convention because of the incidents related to the murder of Mr. Francisco García Valle.

8. They stated that Mrs. María Luisa Acosta's husband, Mr. Francisco García Valle, had been shot dead on April 8, 2002 at his home in Bluefields, Nicaragua. They asserted that the murderers' had really wanted to kill or intimidate his wife, Mrs. María Luisa Acosta, because her work in defense of the ownership rights of the indigenous peoples of the Pearl Lagoon basin (*Cuenca de Laguna de Perlas*) was against the interests of businessman Peter Tsokos and his business partner Peter Martínez. They pointed out that it was a well-known fact in Bluefields that CALPI, the legal assistance center headed by Mrs. Acosta "was in the midst of a battle" against actions undertaken by Peter Tsokos and Peter Martínez. They said that this case "illustrates the danger the human rights defenders face when doing their job, above all the impunity enjoyed by those who attack them."

9. They said that two people had been convicted for carrying out the murder of Francisco García Valle: Iván Argüello Rivera and Wilberth José Ochoa Madariaga. They alleged that irregularities during the proceedings meant that the third person responsible has not yet been identified, that proceedings against the alleged instigators and one alleged perpetrator of the murder had been dismissed, and that the appeal against that decision had been improperly rejected on formal grounds. They pointed out that the state of affairs had resulted in partial impunity.

10. They also declared that, based on a mere accusation by one of the alleged instigators, Peter Martínez, Mrs. Acosta had been accused of the offense of complicity in the murder of her own husband. The petitioners alleged that, as an accused in the proceedings, without a court-appointed counsel (her own legal representative had not been allowed to intervene), María Luisa Acosta had been prevented from submitting evidence against the alleged instigators of her husband's murder. They further pointed out that, even though the Public Prosecutor's Office and Mrs. Acosta had informed the Criminal Court Judge in Bluefields (hereinafter "Criminal Court Judge") that, for security reasons, she had moved to Chinandega, the judge wanted to force her to appear before the Bluefields Court and indeed issued a warrant for her arrest on May 2, 2002. They stated that the judge in the case, before issuing his judgment dismissing proceedings against María Luisa Acosta, had described her to the national press media, as an accessory after the fact in the murder of her husband (*la encubridora del asesinato de su esposo*). They asserted that the accusation against her had been intended to intimidate her and to get her to desist from requesting an impartial investigation into the murder of her husband.

11. They also indicated that, because of Mrs. Acosta's accusations against the alleged instigators, in May 2002 those individuals had sued her for alleged damages and had had her home in Bluefields embargoed for two years. According to the petitioners, that had negatively impacted Mrs. Acosta's assets. They added that in June 2002, Messrs. Tsokos and Martínez denounced María Luisa Acosta for the offenses of false testimony and false accusation. They pointed out that those proceedings were resolved in Mrs. Acosta's favor toward the end of 2004. Consequently, according to the petitioners, instead of seeing justice done in respect of the murder of her husband, María Luisa Acosta had been accused, sued, and displaced. They further indicate that the State had offered her no protection or judicial guarantees. On the contrary, it had allowed the system to wreak a series of abuses against her.

12. The details regarding the facts and the investigation process in connection with Mr. García Valle's death will be described in the Commission's analysis of the facts based on the information supplied by both Parties. Following is a summary of the main legal arguments put forward by the petitioners.

13. With respect to the rights to a fair trial and judicial protection, the petitioners pointed out that the authorities failed to meet their obligation to conduct an investigation and appropriate judicial proceedings conducive to punishment of all those responsible. Specifically, they underscored the following irregularities: a) although it was known that a third perpetrator existed, there is no evidence of any procedure to identify him and bring him to trial; b) following the capture of Iván Argüello, the judge in the case did not take a statement from him, as the injured party, María Luisa Acosta, had requested; c) no pronouncements had been made regarding the requests by the Public Prosecutor's office to reopen the investigations into Messrs. Tsokos and Martínez in connection with the facts denounced; and d) despite the hard evidence linking those two individuals to the facts, that evidence was ignored by the corresponding judicial authorities, who therefore failed to their duty, which was to assess all the evidence. Among the evidence, the petitioners pointed in particular to a National Police crime laboratory expert opinion that allegedly showed that the weapon used to murder Mr. García Valle belonged to Mr. Martínez, and to documents showing links, prior to the murder, between Peter Tsokos and Iván Argüello.

14. Furthermore, they stated that the remedies had become ineffective because there had been an evident intention on the part of the judges to obstruct access to them. Proof of that, according to the petitioners, was that all the appeals they and the Public Prosecution Service (Ministerio Público) had filed to have the proceedings declared null and void because of the alleged irregularities had been rejected or sidelined by the authorities through baseless and erroneous resolutions. They added that the State had also failed to investigate the complaints lodged by María Luisa Acosta with the Committee for Disciplinary Matters of the Supreme Court of Justice (hereinafter "the Disciplinary Committee") in connection with the irregularities committed by the judges.

15. They cited as a violation of these rights the voiding of the appeal against the judgment dismissing the case against Peter Martínez and Peter Tsokos, which rendered that judgment final. They stressed that that decision had been based on an alleged failure of Mrs. Acosta's attorney to provide paper for photocopying the judgment when in fact the clerks of the court had prevented him from meeting that requirement, which, in any case, had been abolished. They pointed out that the State was attempting to make them responsible for the fact that the judgment had become final.

16. As regards the right to personal integrity to the detriment of María Luisa Acosta and the other family members of Mr. García Valle, the petitioners pointed to the failure to establish the truth of what had happened, as well as their severe anguish and anxiety due to the State's actions and omissions. They mentioned the constant fear felt by María Luisa Acosta and her children that they would be victims of another attack. Specifically in relation to María Luisa Acosta, they indicated that the exhausting criminal proceedings following the murder of her husband, the proceedings initiated against her, and the threat posed by the impunity of the crime against Mr. García Valle, had led to a deterioration in her health, self-esteem, and finances." For their part, her children's school performance had deteriorated, among other consequences.

17. Finally, the Commission notes that the petitioners continued to allege violations of the rights established in article 4 (right to life) and article 11 (right to privacy/honor respected and dignity recognized) of the Convention, even though they had been declared inadmissible in the admissibility report. As regards the right to life, they pointed out that the State had not adopted the measures needed to carry out a serious and effective investigation into the death of Francisco García Valle. As regards article 11 of the Constitution, they states that the judges had engaged in harassment and defamation and in "malicious" judicial proceedings against María Luisa Acosta.

B. Position of the State

18. The State basically agreed with the petitioners' indications regarding the date, place, and manner in which the murder of Mr. García Valle had been consummated. However, the State disagreed as to the causes that appear to have prompted the crime. It said that the murder of Mr. García Valle was an isolated event committed by "antisocial individuals with criminal instincts" and had had nothing to do with indigenous peoples' issues, State policies, or persecution of human rights defenders. As for domestic proceedings, the State concurred with the petitioners' account. However, it denied that they meant that the State had incurred international liability.

19. In general, the Nicaraguan State maintained that the authorities involved in the investigation of the facts had acted in accordance with their functions. It asserted that as soon as the police authorities had become aware of the murder, they had initiated inquiries. It added that the judges who had taken the dismissal of proceedings and conviction decisions in relation to the murder of Mr. García Valle, had demonstrated objectivity in the performance of their functions, had not acted opportunistically, had not been biased, and had not "secured" a situation of impunity.

20. The State argued that the aforementioned criminal proceedings had been conducted with full respect for and equal treatment of the parties involved. It stated that the Criminal Court Judge had taken note of the accusations formulated by Mrs. Acosta against the persons allegedly responsible for the murder of her husband and had instituted criminal proceedings against all of them. It added that it had not impeded Mrs. Acosta's access to justice because she had at all times had at her disposal the remedies and mechanisms permitted by law.

21. The State maintained that, with a view to identifying, trying, and convicting those responsible for the crime, the authorities had taken decisions based on both fact and law. It asserted that the conviction had been handed down with due legal process. It stressed that the validity of domestic legal proceedings does not stem from their being acceptable to the parties concerned, but rather from their observance of the rules of due process during the proceedings. It argued that the fact that the decision to dismiss the case against those denounced by Mrs. Acosta as the alleged instigators and perpetrators of the murder of Mr. García Valle had not been appealed within the time allowed implied tacit consent to said decision, which does not amount to a denial of access to justice.

22. The State also pointed out that it could not be accused of denying access to an effective remedy, because the right of appeal was established by the Constitution. It indicated that to file an appeal, the appellant was legally obliged to provide paper for photocopying the judgment to be appealed within 24 hours. It added that Mrs. Acosta's representative did not comply with the rules governing the appeal and the State could not be blamed for that.

23. As for the right to humane treatment of Mr. García Valle's family members, the State argued that it had guaranteed due process, with both parties being treated equally, which had resulted in a conviction at the will of Nicaraguan society represented by the court's panel of judges (*tribunal de jurados*). It argued that it was not up to the IACHR to act as a review body for decisions hand down by domestic courts.

IV. ANALYSIS OF MERITS

A. Established facts

1. Regarding María Luisa Acosta's work

24. María Luisa Acosta is both nationally and internationally recognized as a lawyer who defends the rights of indigenous peoples.² In this regard, Nicaragua's State Attorney for the Defense of Human Rights (*Procurador para la Defensa de los Derechos Humanos*) called Mrs. Acosta "the leading defender of indigenous rights [which she] defends courageously and from a human rights perspective."³ At the time of the facts addressed in this case and till now (the date this report was issued), María Luisa Acosta has worked as the Coordinator of CALPI, a Nicaraguan organization dedicated to providing legal and technical advice to the indigenous peoples, principally on matters relating to the exercise of their right to ownership of their lands and natural resources.⁴

25. Since 2000, María Luisa Acosta has represented the indigenous peoples of the Pearl Lagoon basin in a number of administrative and judicial suits in order to assert their rights to the possession and use of ancestral lands.⁵ Both within Nicaragua and internationally, María Luisa Acosta publicly denounced what was happening to those peoples.⁶

26. According to information in the public domain, the various administrative and judicial suits had been filed against real estate broker Peter Tsokos, a national of both Greece and the United States, who had purchased seven of the 22 Pearl Cays, which allegedly constituted ancestral lands of the indigenous people inhabiting them.⁷ According to both Nicaraguan and international media, the purchase of those cays had been illegal, given that the Nicaraguan Constitution and the Statute on the Autonomy of the Atlantic Coast Regions guaranteed the property of the indigenous peoples against private purchase.⁸ It was also reported

² Appendix 1. Letter from the Rector of the University of Tromsø to the Office of the United Nations High Commissioner for Human Rights (OHCHR), dated May 2, 2002. Trial court file No. 110-02, folio 353. Appendix 2. Letter from the Research Center at the University of York to the President of Nicaragua, dated April 18, 2002. Trial court file No. 110-02, folio 355. Appendix 3. Statement by *Nicaragua Emergency Response Network* on April 11, 2002. Trial court file No. 110-02, folio 350. Appendix 4 "Pastores por la Paz imploran investigar crímenes, constatan violaciones a derechos indígenas en el Caribe", *La Prensa*, April 10, 2002. Trial court file No. 110-02, folio 283. Appendix to the petitioners' communication of July 13, 2007.

³ Appendix 5. Statement by the State Attorney for the Defense of Human Rights (PDDH), Benjamín Pérez Fonseca, Managua, April 22, 2011. Trial court file No. 110-02, folio 352. Appendix to the petitioners' communication of July 13, 2007.

⁴ Web site of the Centro de Asistencia Legal Para Pueblos Indígenas (CALPI), <http://calpi.nativeweb.org/quien-somos.htm>

⁵ Workers World, Nicaragua leader targeted, May 2, 2002, <http://www.workers.org/ww/2002/nicaletter0502.php>

⁶ Appendix 6. "Abogada de etnias asegura que Policía niega acceso al agua a las etnias que habitan en la zona", *La Prensa*, October 14, 2000. Appendix 7. "Corte Suprema ventilará conflicto por Cayos de Perlas", *La Prensa*, October 14, 2000. María Luisa also wrote academic papers on the buying and selling of these cays. Appendix 8. Revista del Caribe Nicaragüense, WANI (Legal analysis of the Buying and Selling of the Pearl Cays). Revista del Caribe Nicaragüense, WANI. No. 29 CIDCA-UCA, April-June 2002. Appendices to the petitioners' communication of July 13, 2007.

⁷ Appendix 9. Letter of Solidarity with María Luisa Acosta from the Alexander Von Humboldt Institute, International Legal Group, and Centro de Asistencia Legal a los pueblos indígenas (CALPI), Trial court file No. 110-02, folio 351. Appendix to the petitioners' communication of July 13, 2007. Appendix 10 "Jamás he cometido un delito, afirma, Griego protesta su inocencia", *El Nuevo Diario*, April 13, 2002. Appendix 4 "Pastores por la Paz imploran investigar crímenes, constatan violaciones a derechos indígenas en el Caribe", *La Prensa*, April 10, 2002. Trial court file No. 110-02, folio 283. Appendix to the petitioners' communication of July 13, 2007. "Nicaragua leader targeted", *Workers World*, May 2, 2002. Posted at <http://www.workers.org/ww/2002/nicaletter0502.php>. Appendix 11. "Indígenas reclaman complejo de islotes", *La Prensa*, October 8, 2000.

⁸ "Nicaragua leader targeted", *Workers World*, May 2, 2002. Posted at <http://www.workers.org/ww/2002/nicaletter0502.php>. Appendix 12. Catherine Elton, "Legal storm rocking island 'kingdom'", *The Miami Herald*, 99th Year, No. 219, 2002. Trial court file No. 110-02, folios 368-370. Appendix to the petitioners' communication of July 13, 2007. *Nicaragua Network Hotline*, Peter Tsokos sells another island!, December 3, 2001. Posted at: <http://www.hartford-hwp.com/archives/47/402.html>. Appendix 13. "Marena multa al griego Peter Tsokos", *La Prensa*, May 18, 2001. "Amparan a misquitos en el caso de los cayos", *El Nuevo Diario*, March 12, 2001. Posted at: <http://archivo.elnuevodiario.com.ni/2001/marzo/12->

[continues ...]

that Peter Tsokos and his partner Peter Martínez, had sold the cays to foreign buyers⁹ and had hired armed guards and National Police officers to keep the indigenous peoples off their own land, thereby preventing them from engaging in traditional subsistence activities.¹⁰

27. One of the actions undertaken by María Luisa Acosta to defend indigenous peoples' rights that ran counter to the interests of Peter Tsokos and his partner Peter Martínez, was the filing of an *amparo* (constitutional protection) suit with the Civil Law Division of the Court of Appeals of the Atlántico Sur District (*Sala Civil del Tribunal de Apelaciones de Circunscripción del Atlántico Sur*) (hereinafter "Civil Division of the Court of Appeals") on October 2, 2000, on behalf of several indigenous peoples in the Autonomous Atlántico Sur Region of Nicaragua (hereinafter "the RAAS")¹¹ and against two senior police authorities that, according to the *amparo* suit, were acting "like a private vigilante unit in the service of [...] Peter Tsokos"¹². As a result of that proceeding, on May 2, 2001, the Civil Law Division of the Court of Appeals ordered said authorities to withdraw and to refrain from sending members of the National Police to the aforementioned places¹³. The filing and outcome of this *amparo* suit drew the attention of Nicaraguan media to the conflict.¹⁴

28. In addition, as a result of complaints by María Luisa Acosta to the Ministry of the Environment and Natural Resources (hereinafter the "MARENA"), on October 18, 2000, the State Prosecutor for the Defense of the Environment and Natural Resources warned Mr. Tsokos that he would be punished via administrative and criminal if he continued preventing or restricting the entry of investigators authorized by the MARENA into the Pearl cays¹⁵. According to Nicaraguan media, in April 2001, the MARENA fined Peter Tsokos for conducting slash and burn operations in the Cerro Silva Nature Reserve.¹⁶

[... continuation]

marzo-2001/nacional/nacional7.html. "El Caso de los Cayos Perlas", *La Prensa*, October 12, 2002. "Venta de cayos podría anularse", *La Prensa*, October 8, 2000. The petitioners also voiced their opinions. Initial petition of June 20, 2007.

⁹ Appendix 17. "Asesino de García ya está en Bluefields", *El Nuevo Diario*, September 6, 2004, File 2019-2004 of the appeal for annulment to the Supreme Court of Justice, folio 95. Appendix to the petitioners' communication of July 13, 2007. Appendix 12. Catherine Elton, "Legal storm rocking island 'kingdom'", *The Miami Herald*, 99th Year, No. 219, 2002. Trial court file No. 110-02, folios 368-370. Appendix to the petitioners' communication of July 13, 2007. Appendix 18. "Rifan cayo nica", *La Prensa*, January 5, 2002. "Continúan denuncias contra inversionista griego", *La Prensa*, April 21, 2001. Posted at: <http://archivo.laprensa.com.ni/archivo/2001/abril/21/nacionales/nacionales-20010421-06.html>. Appendix 13. "Marena multa al griego Peter Tsokos", *La Prensa*, May 18, 2001. Posted at: <http://archivo.laprensa.com.ni/archivo/2001/mayo/18/nacionales/nacionales-20010518-05.html>

¹⁰ Appendix 14. "Ampan a misquitos en el caso de los cayos", *El Nuevo Diario*, March 12, 2001. Posted at: <http://archivo.elnuevodiario.com.ni/2001/marzo/12-marzo-2001/nacional/nacional7.html>. "Policía está al servicio de Tsokos", *La Prensa*, October 14, 2000. Appendix 21. "La otra cara de los Cayos", *El Nuevo Diario*, October 9, 2000. Posted at: <http://archivo.elnuevodiario.com.ni/2001/marzo/12-marzo-2001/nacional/nacional7.html>.

¹¹ The appellants were the indigenous and ethnic peoples of the Pearl Lagoon Basin; the Misquita indigenous peoples of Raitipura, Awas, Kahkabila, and teh creole communities of Pearl Lagoon, Brown Bank, Marshall Point, and Set Net Point of the Pearl Lagoon Municipality. Specifically, the *amparo* suit was filed against the Head of the National Police in the RAAS and the Head of the National Police in the municipality of Laguna de Perlas (Pearl Lagoon). Appendix 22. Appeal to the Civil Law Division of the Court of Appeals in Bluefields, October 2, 2002. Appendix to the petitioners' communication of July 13, 2013.

¹² Appendix 22. Appeal to the Civil Law Division of the Court of Appeals in Bluefields, October 2, 2002. Appendix to the petitioners' communication of July 13, 2007.

¹³ Appendix 23. "Ordenan salida de policías de los Cayos Perlas", *La Prensa*, May 6, 2001. Posted at: [http://calpi.nativeweb.org/Peticion \(MLA\) + MM.htm](http://calpi.nativeweb.org/Peticion (MLA) + MM.htm)

¹⁴ Appendix 24. "Policía retira a agentes de los Cayos", *La Prensa*, October 8, 2001. "Abogada de etnias asegura que Policía niega acceso al agua a las etnias que habitan en la zona", *La Prensa*, October 14, 2000. Appendix 14. "El caso de los Cayos Perlas", *Editorial in La Prensa*, October 12, 2000. Appendix 11. "Indígenas reclaman complejo de islotes", *La Prensa*, October 12, 2000; Appendix 25. "Misquitos se ampan contra policía que apoyan al griego", *El Nuevo Diario*, October 10, 2000; "La otra cara de los Cayos", *El Nuevo Diario*, October 9, 2000.

¹⁵ Appendix 26. Letter addressed to Peter Tsokos, Office of the State Attorney for Defense of the Environment and Natural Resources, October 18, 2000. Appendix to the petitioners' communication of July 13, 2013.

¹⁶ Appendix 13. "Marena multa al griego Peter Tsokos", *La Prensa*, May 18, 2001.

29. On January 30, 2002, acting on behalf of the communities of Monkey point and Rama, María Luisa Acosta instituted other proceedings against Peter Tsokos, by filing a restitution and constitutional protection suit (*amparo*) with the Civil Law District Court in Bluefields (hereinafter the "Civil Law District Court"). In that complaint, she alleged that Mr. Tsokos had stationed several armed men on communal land of the Punta de Águila/Cane Creek Community. On February 6, 2002, the aforementioned Court notified Mr. Tsokos of the suit against him and ordered him "to refrain from continuing to perturb property rights (*seguir perturbando la propiedad*) [by offering lots for sale] while the dispute is being aired."¹⁷

30. On March 16, 2002, one month before the murder of her husband, Mrs. Acosta had begun legal representation of the communities of Pearl Lagoon, Awas, Raitipura, and Holouver for all kinds of matters¹⁸. It was public knowledge that these cases had to do with a constitutional protection suit and petition for the restitution of 80 "manzanas" of land ostensibly owned by Mr. Peter Martínez, Peter Tsokos's partner, but claimed by indigenous peoples¹⁹.

2. The murder of Mr. Francisco José García Valle

31. According to the petitioners, Mr. Francisco García Valle had been born in Bluefields and was 44 years old when he was killed. He worked as a university teacher and owned a shop that sold cloth, a carpenter's workshop and upholstery, and the La Paz Funeral Parlor. María Luisa Acosta and her husband lived in the Santa Rosa district of Bluefields, with their two children, Ana María Vergara Acosta and Álvaro Aristides Vergara Acosta.

32. On Sunday, April 7, 2002 María Luisa Acosta rented out, for one month, the ground floor of the home owned by her and her husband, Francisco José García Valle.²⁰ Their tenants were Iván Argüello, Wilberth Ochoa²¹ and a third, still not identified, person²². The first two had been spotted in the district just

¹⁷ Appendix 27. Order of the Bluefields Civil Law District Court of February 6, 2002. Appendix to the petitioners' communication of Friday, July 13, 2007.

¹⁸ Appendix 28. Legal power of attorney granted to María Luisa Acosta, folio 13 of Registration Deed (*Protocolo*) No. 2 of Attorney and Notary Public Gloria Mangas, March 16, 2002. Appendix to the petitioners' communication of Friday, July 13, 2007.

¹⁹ Appendix 28. Legal power of attorney granted to María Luisa Acosta, folio 13 of Registration Deed (*Protocolo*) No. 2 of Attorney and Notary Public Gloria Mangas, March 16, 2002. Appendix to the petitioners' communication of July 13, 2007. María Luisa's representation role was also reported in the Nicaraguan press. Appendix 29. "Fiscalía pide procesar a Tsokos por crimen de profesor Francisco Valle en Bluefields", *Sucesos*. Case file No. 2019-2004 of the appeal for annulment to the Supreme Court of Justice, folio 98. Appendix to the petitioners' communication of July 13, 2007. Appendix 30, Capturan Próximo, *Sucesos*, *El Nuevo Diario*, September 1, 2004. Case file No. 2019-2004 of the appeal for annulment to the Supreme Court of Justice, folio 92. Appendix to the petitioners' communication of July 13, 2007. Appendix 17. "Asesino de García ya está en Bluefields", *El Nuevo Diario*, September 6, 2004. Case file No. 2019-2004 of the appeal for annulment to the Supreme Court of Justice, folio 95. Appendix to the petitioners' communication of July 13, 2007. CALPI, *Cronología del caso García*. [García case timeline] Available at: <http://calpi.nativeweb.org/cronos.html>. "Continúan denuncias en contra de inversionista griego", *La Prensa*, April 21, 2001. Information on this can also be found in the initial petition of June 20, 2007.

²⁰ Mrs Acosta's and her husband's home was located in the Santa Rosa district at the first entrance to the José Martín settlement and had two floors: the ground floor was divided into two and was rented out as an office and as a dwelling. Appendix 31. Photograph of a chart. National Police of the Atlántico Sur Autonomous Region, April 8, 2002 Trial court file No. 110-02, folios 18 and 20. Appendix 32. Witness statement by Natalia Omeir Hulse, April 16, 2002 Trial court file No. 110-02, folios 53 and 54. Appendices to the petitioners' communication of July 13, 2007.

²¹ Wilberth Ochoa's participation in the murder was determined with the accusation brought by the Public Prosecution Service before the Bluefields District Criminal Court. Appendix 33. Accusation against Wilberth José Ochoa for the crime of murder, Public Prosecution Service, Atlántico Sur Autonomous Region, January 13, 2013. Trial court file No. 110-02, folios 275 to 277. Appendix to the petitioners' communication of July 13, 2007.

²² Appendix 32. Witness statement by Natalia Isabel Omier Hulse (a domestic worker in the García Valle household for eight years), to the National Police Criminal Investigations unit, April 9, 2002. Trial court file No. 110-02, folio 13. Appendix 34. Model application for movement of persons valid for codes A, J, Q, and S, National Police, Ministry of the Interior, National Archive, April 10, 2002. Trial court file No. 110-02, folios 13 and 15. Appendix 35. Ad-Inquirendum statement by María Luisa Acosta, April 16, 2002. Trial court file No. 110-02, folio 56. Appendix 36. Brief from the Assistant Prosecutor to the Bluefields District Criminal Court Judge, May 9, 2002. Trial court file No. 110-02, folio 168. Appendices to the petitioners' communication of July 13, 2007.

two days prior to Mr. García Valle's death²³. Iván Argüello told Mrs. Acosta that he was a merchant, who sold paintings²⁴.

33. According to the statement by María Luisa Acosta, on Monday, April 8, 2002, at around 8:30 p.m., she arrived home after giving a talk about her work with indigenous peoples at the University of the Autonomous Regions of the Nicaraguan Caribbean Coast (URACCAN) and noticed that the gate was open but the door into the house was locked.²⁵ After waiting outside her home for about an hour, she went to the house of her neighbor, Mrs. María Esther Castrillo, to ask her whether Mr. García Valle had left the keys with her. Mrs. Castrillo said he had not and told her that she had seen him go by at about 7 p.m.²⁶ María Luisa Acosta stated that she decided to go in through one of the windows, found her husband lying on the dining room floor, and thought at first that he had been tied up in order to rob him. However, when she saw that there was no mess in the house and her husband was not moving, she feared he was dead and went out of her house shouting for help²⁷ and the neighbors came to assist her²⁸.

34. At 10:50 p.m. that same night, the National Police received an anonymous call telling them that in the home belonging to Mrs. Acosta and her husband, there was a person who had been tied up and was probably dead²⁹. At 11:00 p.m., the National Police and the Alternate Forensic Scientist found Mr. Francisco José García Valle's corpse on the northern side of the upper floor of the house.³⁰ According to the police records, he had been murdered between 7 p.m. and 8 p.m.³¹ On the body, "the ankles were tied, the hands had been tied behind his neck, the mouth had been gagged, and there was a bullet entry wound in the third intercostal space at the level of the sternum with no exit orifice".³² Mr. García Valle was wearing a

²³ Appendix 37. Witness statement by Eddy Lira Milles (neighbor), National Police Criminal Investigations, April 12, 2002. Trial court file No. 110-02, folio 14. Appendix 35. Statement by María Luisa Acosta, National Police Criminal Investigations, April 16, 2002. Trial court file No. 110-02, folio 56. Appendix 38 Statement by Person under Investigation (Wilberth Ochoa), National Police, Chinandega, January 11, 2003. Trial court file No. 110-02, folio 306. Appendices to the petitioners' communication of July 13, 2007.

²⁴ Appendix 35. Statement by María Luisa Acosta, April 16, 2002. Trial court file No. 110-02, folio 55. Appendix 39. Police Operations Report, National Police Criminal Investigations, Bluefields. Trial court file No. 110-02, folio 55. Appendices to the petitioners' communication of July 13, 2007.

²⁵ Appendix 35. Statement by María Luisa Acosta, National Police Criminal Investigations, April 16, 2002. Trial court file No. 110-02, folios 56 and 57. Appendix to the petitioners' communication of July 13, 2007.

²⁶ Appendix 35. Statement by María Luisa Acosta, National Police Criminal Investigations, April 16, 2002. Trial court file No. 110-02, folios 56 and 57. Appendix 40. Witness statement by María Esther Castrillo Chavarría (neighbor), National Police Criminal Investigations, April 9, 2002. Trial court file No. 110-02, folio 12. Appendices to the petitioners' communication of July 13, 2007.

²⁷ Appendix 35. Statement by María Luisa Acosta, National Police Criminal Investigations, April 16, 2002. Trial court file No. 110-02, folio 56. Appendix 39. Police Operations Report, National Police Criminal Investigations, Bluefields, April 8, 2002. Trial court file No. 110-02, folio 3. Appendix to the petitioners' communication of July 13, 2007.

²⁸ Appendix 35. Statement by María Luisa Acosta, National Police Criminal Investigations, April 16, 2002. Trial court file No. 110-02, folio 56. Appendix 39. Police Operations Report, National Police Criminal Investigations, Bluefields, April 8, 2002. Trial court file No. 110-02, folio 3. Appendix 41. Witness statement by María Elena Castrillo Chavarría (neighbor), April 16, 2002. Trial court file No. 110-02, folio 50. Appendices to the petitioners' communication of July 13, 2007.

²⁹ Appendix 40. Statement by María Esther Castrillo Chavarría (neighbor), National Police Criminal Investigations, April 9, 2002. Trial court file No. 110-02, folio 12. Appendix 42. Accusation based on own knowledge (No. 00514-02), Offense: Murder, National Police Criminal Investigations, April 8, 2004. Trial court file No. 110-02, folio 2. Appendices to the petitioners' communication of July 13, 2007.

³⁰ Appendix 43 Forensic medical opinion, Alternate Forensic Scientist, Special Zone 11, Bluefields, April 9, 2002. Trial court file No. 110-02, folios 10 and 11. Appendix 44. Minutes of the on-site inspection. National Police Criminal Investigations, April 08, 2002. Trial court file No. 110-02, folios 4-6. Appendices to the petitioners' communication of July 13, 2007.

³¹ Appendix 31. Photographic evidence. National Police of the Atlántico Sur Autonomous Region, April 8, 2002. Trial court file No. 110-02, folios 20 and 21. Appendix to the petitioners' communication of July 13, 2007.

³² Appendix 42. National Police document. Based on own knowledge. Offense: Murder, April 8, 2002, folio 2. Appendix 39. Police Operations Report, National Police Criminal Investigations, Bluefields. April 8, 2002. Trial court file No. 110-02, folio 3. Appendices to the petitioners' communication of July 13, 2007.

striped shirt stained with blood³³ and various documents were on the floor beside him³⁴. The battery of the wireless phone had been taken out³⁵ while the other phone's line had been cut³⁶.

35. According to the reconstruction of the facts by the Public Prosecutor's Office, on April 8, 2002, Iván Argüello, Wilberth Ochoa and the third person climbed up the back of Mrs. Acosta's home and broke down the door; then they tied Mr. García Valle up by the ankles and wrists, placed a gag in his mouth, beat him ferociously, and then shot him in the chest.³⁷ According to the Public Prosecution Service, following the murder, the three individuals fled.³⁸

36. There was widespread media coverage of Mr. Francisco García Valle's murder.³⁹ Various civil society organizations and national and international academic institutions expressed their consternation and asked the authorities to investigate the facts of the case.⁴⁰ The Prosecutor for the Defense of Human Rights in Nicaragua also "asked them to do everything possible, to throw light on this case."⁴¹ In several of these

³³ Appendix 43 Forensic medical opinion, Alternate Forensic Scientist, Special Zone 11, Bluefields, April 9, 2002. Trial court file No. 110-02, folios 10 and 11. Appendix 31. Photographic evidence. Atlántico Sur Autonomous Region, April 8, 2002. Central photo No. 8. Sign photographs Nos. 9 and 10. Trial court file No. 110-02, folios 22 and 23. Appendices to the petitioners' communication of July 13, 2007.

³⁴ Appendix 31. Photographic evidence. Central photos 8 and 9. Detailed photographs Nos. 17 and 18). Atlántico Sur Autonomous Region, April 8, 2002. Trial court file No. 110-02, folios 22, 26, and 27. Appendix to the petitioners' communication of July 13, 2007.

³⁵ Appendix 31. Photographic evidence (detailed photo No. 15). National Police of the Atlántico Sur Autonomous Region, April 8, 2002. Trial court file No. 110-02, folio 26. Appendix to the petitioners' communication of July 13, 2007.

³⁶ Appendix 31. Photographic evidence (detailed photo No. 20). National Police of the Atlántico Sur Autonomous Region, April 8, 2002. Trial court file No. 110-02, folio 28. Appendix to the petitioners' communication of July 13, 2007.

³⁷ Appendix 33. Accusation against Wilberth José Ochoa for the crime of murder, Public Prosecution Service, Atlántico Sur Autonomous Region, January 13, 2013. Trial court file No. 110-02, folios 275 to 277. Appendix to the petitioners' communication of July 13, 2007.

³⁸ Appendix 33. Accusation against Wilberth José Ochoa for the crime of murder, Public Prosecution Service, Atlántico Sur Autonomous Region, January 13, 2013. Trial court file No. 110-02, folios 275 to 277. Appendix 36. Document of the Assistant Prosecutor addressed to the District Criminal Court Judge in Bluefields, May 9, 2002. Trial court file No. 110-02, folio 168. Appendices to the petitioners' communication of July 13, 2007.

³⁹ Appendix 45. "De ofendida a acusada", *El Nuevo Diario*, April 22, 2002, Available at: <http://archivo.elnuevodiario.com.ni/2002/abril/21-abril-2002/sucesos/sucesos3.html>. Appendix 46. "Abogada denuncia complot en su contra", *La Prensa*, May 7, 2002. Available at: <http://archivo.laprensa.com.ni/archivo/2002/mayo/07/nacionales/nacionales-20020507-07.html>. Appendix 45 "Activistas de Derechos Humanos piden seguridad para Dra. Acosta", *La Prensa*, April 15, 2002. Trial court file No. 110-02, folio 376. Appendix 47 "Policía sospecha de asesinato por encargo", *La Prensa*, April 11, 2002. Trial court file No. 110-02, folio 378. Appendix to the petitioners' communication of July 13, 2007. Appendix 48 "Atroz asesinato del presidente de Cámara de Comercio de Bluefields, Su esposa una abogada defensora de los derechos indígenas, considera que los asesinos le buscaban a ella", *La Prensa*, April 10, 2002. Trial court file No. 110-02, folio 379. Appendix to the petitioners' communication of July 13, 2007. Appendix 49 "Pero su lucha sigue", *El Nuevo Diario*, April 28, 2002. Trial court file No. 110-02, folio 380. Appendix to the petitioners' communication of July 13, 2007. Appendix 50. "Indígenas solo quieren do Tsokos ¡que se vaya!", *El Nuevo Diario*, April 9, 2002. "Asesinan a esposo de abogada indigenista", *El Nuevo Diario*, 1April 10, 2002. "Viuda ata cabos en crimen de su marido", *El Nuevo Diario*, April 12, 2002. Appendix to the petitioners' communication of July 13, 2007.

⁴⁰ Appendix 3 Pronouncement by *Nicaragua Emergency Response Network*, April 11, 2002. Trial court file No. 110-02, folio 350. Appendix 9 Letter of solidarity with María Luisa Acosta from the Alexander von Humboldt Institute, International Legal Group, and the Center for Legal Assistance to Indigenous Peoples (CALPI). Trial court file No. 110-02, folio 351. Appendix 1. Letter from the Rector of the University of Tromsø to the Office of the United Nations High Commissioner for Human Rights (OHCHR), dated May 2, 2002. Trial court file No. 110-02, folio 353. Appendix 53. Pronouncement by the University of the Autonomous Regions of the Nicaraguan Caribbean Coast (URACCAN); First Small Farmers' Association of Ecological Cultivation and Production in the Atlántico Sur and Central Autonomous Regions, Nueva Guinea; and the Small Farmers' School of Ecological Agriculture in the La Esperancita wetlands, Nueva Guinea. Trial court file No. 110-02, folio 354. Appendix 2. Letter from the Research Center at York University to the President of Nicaragua, April 18, 2002. Trial court file No. 110-02, folio 358. Appendix 54 Communique of the Nicaraguan-American Chamber of Commerce, April 15, 2002. Trial court file No. 110-02, folio 358. Appendix 55 Letter from *Center for Maritime Research* (MARE). Trial court file No. 110-02, folio 362. Appendix 4 "Pastores por la Paz imploran investigar crimen, constatan violaciones a derechos indígenas en el Caribe", *La Prensa*, April 10, 2002. Trial court file No. 110-02, folio 283. Appendix to the petitioners' communication of July 13, 2007.

⁴¹ Appendix 5 Statement by the State Attorney for the Defense of Human Rights (PDDH), Benjamín Pérez Fonseca, Managua, April 22, 2011. Trial court file No. 110-02, folio 352. Appendix to the petitioners' communication of July 13, 2007.

pronouncements reference was made to the motive for Mr. García Valle's murder being intimidation of María Luisa Acosta because of the work she was doing.⁴² María Luisa Acosta also said as much publicly on April 19, 2002.⁴³

37. As established above, as a result of María Luisa Acosta's work in support of the indigenous peoples in the Pearl Lagoon basin in various administrative and judicial suits against Peter Tsokos and his partner Peter Martínez, Mr. Tsokos was warned that he would be penalized by civil and criminal courts if he continue to "perturb" communal properties,⁴⁴ and fined for engaging in slash and burn operations in the Cerro Silva Nature Reserve,⁴⁵ In addition, Mrs. Acosta's work drew public attention to the use of police officers as private security guards in the service of Mr. Tsokos on communal lands.⁴⁶ Likewise, on March 16, 2002, less than one month after the murder of her husband, Mrs. Acosta had begun providing legal representation to various communities involved in a constitutional protection and action for restitution of 80 manzanas of the Rama indigenous territory taken over by Mr. Peter Tsokos⁴⁷.

38. Following the murder of Mr. García Valle, for security reasons and fearing for their lives, María Luisa Acosta and her children left Bluefields, where they lived, and went to Chinandega,⁴⁸ a city in the department of the same name. Mrs. Acosta specifically informed the District Civil and Criminal Law Judge that her fears were well founded because the murder of her husband had been perpetrated in their own home.⁴⁹ When they moved to Chinandega, Mrs. Acosta and her children had a police escort for their protection.⁵⁰

⁴² Appendix 3. Statement by *Nicaragua Emergency Response Network* on April 11, 2002. Trial court file No. 110-02, folio 350. Appendix 1. Letter from the Rector of the University of Tromsø to the Office of the United Nations High Commissioner for Human Rights (OHCHR), dated May 2, 2002. Trial court file No. 110-02, folio 353. Appendix to the petitioners' communication of July 13, 2007.

⁴³ Appendix 56. Communication from María Luisa Acosta, April 19, 2002. Trial court file No. 110-02, folio 331. Appendix to the petitioners' communication of July 13, 2007.

⁴⁴ Appendix 26 Letter to Peter Tsokos from the Office of the Prosecutor for the Defense of the Environment and Natural Resources, October 18, 2000. Appendix to the petitioners' communication of July 13, 2007.

⁴⁵ Appendix 13. "Marena multa al griego Peter Tsokos", *La Prensa*, May 18, 2001.

⁴⁶ Appendix 22. Appeal for constitutional protection (*amparo*) to the Civil Law Division of the Appeals Tribunal in Bluefields, October 2, 2002. Appendix to the petitioners' communication of July 13, 2007.

⁴⁷ Appendix 28. Judicial power of attorney granted to María Luisa Acosta, folio 13 of Registration File No. 2 of Attorney and Notary Public Gloria Mangas, March 16, 2002. Appendix to the petitioners' communication of July 13, 2007. The national press also reported on María Luisa's appointment as legal representative. Appendix 29 "Fiscalía pide procesar a Tsokos por crimen de profesor Francisco Valle en Bluefields", *Sucesos*. Case File No. 2019-2004 on the Appeal for Annulment to the Supreme Court, folio 98. Appendix to the petitioners' communication of July 13, 2007. Appendix 30, "Capturan Prófugo, Sucesos", *El Nuevo Diario*, September 1, 2004. Case File No. 2019-2004 on the Appeal for Annulment, to the Supreme Court, folio 92. Appendix to the petitioners' communication of July 13, 2007. Appendix 17 "Asesino de García ya está en Bluefields", *El Nuevo Diario*, September 6, 2004. Case File No. 2019-2004 on the Appeal for Annulment, to the Supreme Court, folio 95. Appendix to the petitioners' communication of July 13, 2007. CALPI, *Cronología del caso García*. Available at: <http://calpi.nativeweb.org/cronos.html>. Appendix 19. "Continúan denuncias en contra de inversionista griego", *La Prensa*, April 21, 2001. Information on this is also to be found in the initial petition of June 20, 2007.

⁴⁸ Appendix 57. Writ of the Assistant Prosecutor, April 24, 2002. Trial court file No. 110-02, folio 132. Appendix to the petitioners' communication of July 13, 2007. The petitioners also refer to this event, stating that "María Luisa Acosta had to change her address, and go and live at her father's house in Chinandega. As a result, her immediate surroundings changed. She was forced to leave behind her friends, family, and work in search of somewhere safer." Initial petition of June 20, 2007.

⁴⁹ Appendix 58. Undated document written by María Luisa Acosta, File No. 298-02 of the Bluefields District Civil and Criminal Court (In) (offense: false testimony and false accusation), folios 28 and 29. Appendix to the petitioners' communication of July 13, 2007.

⁵⁰ Appendix 57. Writ of the Assistant Prosecutor, April 24, 2002. Trial court file No. 110-02, folio 132. Appendix to the petitioners' communication of July 13, 2007.

3. The investigation and judicial proceedings related to the murder of Francisco García Valle (Judicial file No. 110-2002)

a. Initial investigation

39. The National Police conducted an on-site inspection of the scene of the crime on the same night that Mr. García Valle was murdered. Among the objects they found were the telephone and the cut wire, a reddish stick, the coffee machine and an iron machete, as well as cards and documents lying next to Mr. García Valle's corpse.⁵¹ In the back part of the room occupied by the alleged perpetrators of the crime, there were "a fingerprint being dragged" (*una huella de arrastre*),⁵² which was also noticed by the District Criminal Court Judge, during his own on-site inspection.⁵³ That same night the National Police requested a forensic examination of the body⁵⁴ and interrogated Mrs. María Luisa Acosta⁵⁵.

40. On the following day, April 9, 2002, the Alternate Forensic Scientist of Special Zone 11 established that the causes of death had been gunshot wounds from a 25-caliber firearm to the left side of the chest and hypovolemic shock as a result of damage to the heart, left lung, and major vessels.⁵⁶ The National Police interrogated other people between April 9 and 12, 2002.⁵⁷ On April 10, 2002, the National Police asked the National Archives for background information on Iván Argüello⁵⁸.

b. Referral of the criminal investigation file to the Criminal Court District Judge and preliminary investigation phase of the judicial proceedings

41. On April 15, 2002, the National Police sent the Criminal Court District Judge the criminal investigation file, in which it pointed to Iván Argüello as the principal perpetrator⁵⁹ That same day, and at the

⁵¹ Appendix 43. Minutes of the on-site inspection (dwelling and body of Mr. García Valle), National Police Criminal Investigations, April 8, 2002. Trial court file, folios 4 to 6. Appendix 31 Photographic evidence (*Foto Tabla Ilustrativa*), National Police, Atlántico Sur Autonomous Region, April 8, 2002. Trial court file, folios 17 to 37. Appendix to the petitioners' communication of July 13, 2007.

⁵² Appendix 31. Photographic evidence (*Foto Tabla Ilustrativa*), National Police, Atlántico Sur Autonomous Region, April 8, 2002. Trial court file No. 110-02, folio 37. Appendix to the petitioners' communication of July 13, 2007.

⁵³ Appendix 59. Criminal Court District Judge and Judicial Assistant Attorney (*Fiscal Auxiliar de Justicia*). Minutes of the on-site inspection. Trial court file No. 110-02, folios 84 and 85. Appendix to the petitioners' communication of July 13, 2007.

⁵⁴ Appendix 60 Request for medical opinion addressed to the forensic scientist. National Police Criminal Investigations, April 8, 2002. Trial court file, folio 9. Appendix to the petitioners' communication of July 13, 2007.

⁵⁵ Appendix 39. Statement by María Luisa Acosta, National Police Criminal Investigations, Police Operations Report (*Informe de la Guardia Operativo*), Bluefields, April 8, 2002. Trial court file, folio 3. Appendix to the petitioners' communication of July 13, 2007.

⁵⁶ Appendix 43. Forensic Opinion, Alternate Forensic Scientist, Special Zone 11, Bluefields, April 9, 2002. Trial court file, folios 10 and 11. Appendix to the petitioners' communication of July 13, 2007.

⁵⁷ On April 9, 2002, the National Police interrogated Mrs. Acosta's neighbor, María Esther Castrillo Chavarría, and the domestic worker, Natalia Isabel Omier Hulse. On April 12, 2002, they also questioned neighbor Eddy Eduardo Lira Miles. Appendix 40 Statement by witness María Esther Castrillo Chavarría (neighbor), National Police Criminal Investigations, April 9, 2002. Trial court file, folio 12. Appendix 61. Statement by witness Natalia Isabel Omier Hulse (domestic worker), National Police Criminal Investigations, April 9, 2002. Trial court file, folio 13. Appendix 37. Witness statement by Eddy Lira Miles. National Police. Criminal Investigations, April 12, 2002. Trial court file, folio 14. Appendix to the petitioners' communication of July 13, 2007.

⁵⁸ Appendix 62. Request for background information by the National Criminal Investigations Police to the Ministry of the Interior's National Archives, April 10, 2002. Trial court file, folio 13. Appendix to the petitioners' communication of July 13, 2007.

⁵⁹ That file contained a list of actions carried out: a) Accusation based on own knowledge of the facts (*Denuncia por conocimiento propio*); b) Police Operations Report; c) Minutes of the On-Site Inspection; d) Appendix to the On-Site Inspection Minutes; e) Appendix to the On-Site Inspection Minutes; f) Occupation Receipt No.1; g) Occupation Receipt No.2; h) Request for Forensic Opinion; i) Forensic Opinion j) Witness Statement by María Esther Castrillo Chavarría; k) Witness Statement by Natalia Isabel Omier Hulse; l) Witness Statement by Eddy Lira Miller; m) Model movement of persons application; and n) Request for records. Appendix 63. Remission of proceedings (*Remisión de Diligencias*) before the District Judge, April 15, 2002 Trial court file, folios 1 to 40. Appendix to the petitioners' communication of July 13, 2007.

request of the National Police,⁶⁰ the Criminal Court District Judge ordered a search of the premises of the La Paz funeral parlor, which had belonged to Mr. García Valle.⁶¹ In an order dated April 15, 2002, the Criminal Court District Judge issued a provisional arrest warrant against Iván Argüello and determined that the injured party in that proceeding was María Luisa Acosta.⁶²

42. In her statement of April 16, 2002, María Luisa Acosta indicated that the motive for her husband's murder had not been robbery "because the only things missing [from the house] were some costume jewelry ear rings, used bottles of perfume [and] two costume jewelry [...] necklaces"; she stated that she was the person they had been sent to kill, and as they couldn't, they killed her husband "[they being the] three men to whom [...] they had rent[ed] the apartment, because they disappeared after the death of [her] husband". According to her statement, those men had been paid to kill her husband and she "suspect[ed] that the instigator of [his] death [was] Peter Tsokos and his attorney Peter Martínez, because of the legal advice [...] she h[ad been giving] to the communities of Monkey Pont, Rama, and the Pearl Lagoon Basin, [in whose lands] they h[ad] stakes worth millions [...]."⁶³ Finally, she said that a person called Charles Junior Presida might be linked to her husband's murder, because he had been seen on the Wednesday after the crime with a group of unknown people at a place called Wiren Kay⁶⁴. On this, the petitioners stated that Charles Presida was the pilot of the boat with the outboard motor, who allegedly got the people suspected of killing Mr. García Valle out of Bluefields.

43. That same day, April 16, 2002, the District Criminal Court Judge took a statement from a neighbor, María Esther Castrillo, who, based on a picture in the newspaper, recognized Iván Argüello as one of the tenants of the apartment in Mrs. Acosta's house.⁶⁵ Between April 13 and 18, 2002, the judge in the case took statements from four people, including Charles Presida,⁶⁶ who said he knew nothing about the murder.⁶⁷

44. On April 18, 2002, the National Police sent the District Criminal Court the findings of the Alternate Forensic Scientist, reporting the extraction of the bullet that killed Mr. García Valle and its delivery to the National Police, as he considered it "of major importance for continuing relevant investigations into the

⁶⁰ Appendix 64. Application for a House Search Warrant, National Police Criminal Investigations, April 15, 2002. Trial court file, folio 38. Appendix to the petitioners' communication of July 13, 2007.

⁶¹ Appendix 65. Search warrant granted by the Bluefields District Criminal Court Judge, April 15, 2002. Trial court file, folio 43. Appendix to the petitioners' communication of July 13, 2007.

⁶² Appendix 66. Provisional arrest warrant against Iván Argüello Rivera, issued by the Bluefields District Criminal Court Judge, April 15, 2002. Trial court file, folio 46 judicial certificate of notification served on María Luisa at her home, April 16, 2002. Appendix 67. Court order, April 16, 2002. Trial court file, folio 44. Appendix to the petitioners' communication of July 13, 2007.

⁶³ Appendix 35. Statement by María Luisa Acosta to the District Court Judge, April 16, 2002. Trial court file, folio 56. Appendix to the petitioners' communication of July 13, 2007.

⁶⁴ Appendix 35. Statement by María Luisa Acosta to the District Court Judge, April 16, 2002. Trial court file, folio 56 Appendix to the petitioners' communication of July 13, 2007. On this, the petitioners stated that Charles Presida was the pilot of the boat with the outboard motor, who allegedly got the people suspected of killing Mr. García Valle out of Bluefields. Initial petition of June 20, 2007.

⁶⁵ Appendix 41. Witness statement by María Esther Castrillo Chavarría (neighbor), April 16, 2002. Trial court file, folio 51. Appendix to the petitioners' communication of July 13, 2007.

⁶⁶ On April 13, 2002, the Judge took a statement from Nathalia Isabel Omer Hulse (domestic worker).⁶⁶ Two days later, on April 18, 2002, statements were taken from neighbor Eddy Eduardo Lira Miles, carpenter Miguel Antonio López Balladares, and Charles Presida⁶⁶. Appendix 32. Witness statement by Natalia Omeir Halls, April 16, 2002. Trial court file, folios 53 and 54. Appendix 68. Witness statement by Eddy Eduardo Lira Miles before the Bluefields District Criminal Court Judge, April 17, 2002. Trial court file, folio 64. Appendix 69. Witness statement by Miguel Antonio López Balladares before the Bluefields District Criminal Court Judge, Thursday, April 18, 2002. Trial court file, folios 71 and 72. Appendix 70. Signed statement by Charles Jeremiah Presida, under preliminary investigation before the Bluefields District Criminal Court Judge, Thursday, April 18, 2002. Trial court file, folios 83 and 84. Appendix to the petitioners' communication of July 13, 2007.

⁶⁷ Appendix 70. Signed statement by Charles Jeremiah Presida, under preliminary investigation, before the Bluefields District Criminal Court Judge, Thursday, April 18, 2002. Trial court file, folios 83 and 84. Appendix to the petitioners' communication of July 13, 2007.

case."⁶⁸ That same day, the District Court Judge conducted an on-site inspection at the García Acosta family home.⁶⁹

45. At the request of the Prosecutor's Office,⁷⁰ on April 19, 2002, the District Criminal Court Judge issued a warrant to search the residence of Peter Tsokos⁷¹ and sent official letters to local bank managers to find out whether Iván Argüello had conducted any transactions. An official letter was also sent to the telephone company for the Atlántico Sur Autonomous Region, Empresa Nicaragüense de Telecomunicaciones (ENITEL), to obtain records of calls made to telephones of Mrs. Acosta and her husband.⁷²

46. That same day Peter Tsokos made his defendant's statement, denying the charges and saying that "María Luisa's pointing the finger at him flirt[ed] with the desperation and stupidity of someone who had lost her mind" and he accused María Luisa Acosta of abetting (*encubrimiento*) the murderers of her husband.⁷³ A defendant's statement was also taken from Peter Martínez, in which he denied the charges.⁷⁴ That same day and based on that statement, the District Criminal Court Judge issued an order for María Luisa Acosta to be summoned to give her defendant's statement in response to the charge of having abetted the murderers, advising her to appoint a defense lawyer. If she did not, the court would appoint one.⁷⁵

47. From that day to May 13, 2002, parallel investigations were conducted against Maria Luisa Acosta for abetting and against the murderers of her husband.

48. Thus, as part of the former proceedings against Maria Luisa Acosta on charges of abetting, she was summoned to make statements on April 23 and 25, 2002.⁷⁶ Although the Prosecutor's Office asked the District Criminal Court Judge to issue a letter rogatory to the Judge in Chinandega so that María Luisa Acosta could give her statement there due to her change of address,⁷⁷ that request was dismissed.⁷⁸ On April 26, 2002, given that María Luisa Acosta did not appear, the police were ordered to bring her to the Court on April 30,

⁶⁸ Appendix 71. Dispatch of findings. National Police Criminal Investigations, April 18, 2002. Trial court file, folios 78ff. Appendix to the petitioners' communication of July 13, 2007.

⁶⁹ Present during the inspection were the Assistant Prosecutor of the Atlántico Sur Autonomous Region, a National Police officer, Peter Martínez, and María Luisa Acosta. Appendix 59. Minutes of the on-site inspection by the Bluefields District Criminal Court Judge and the Assistant Prosecutor, April 18, 2002. Trial court file, folios 84 and 85. Appendix to the petitioners' communication of July 13, 2007.

⁷⁰ Appendix 72. Search warrant request by the Assistant Prosecutor to the Bluefields District Criminal Court, April 19, 2002. Trial court file, folio 88. Appendix to the petitioners' communication of July 13, 2007.

⁷¹ Appendix 73. Search warrant granted by the Bluefields District Criminal Court Judge, Friday, April 19, 2002. Trial court file, folio 116. Appendix to the petitioners' communication of July 13, 2007.

⁷² Appendix 74. Official Letter from the Bluefields District Criminal Court Judge to the Manager of BANCENTRO, April 19, 2002. Trial court file, folio 89. Appendix 75. Official Letter from the Bluefields District Criminal Court Judge to the Manager of Banco Calley Dagnall, April 19, 2002. Trial court file, folio 90. Appendix 76 Official Letter from the Bluefields District Criminal Court Judge to the Local Manager of ENTEL, April 19, 2002. Trial court file, folio 91. Appendix to the petitioners' communication of July 13, 2007.

⁷³ Appendix 77. Defendant's statement (*Declaración Indagatoria*) by Peter Tsokos, April 19, 2002/ Trial court file, folios 102 and 103. Appendix to the petitioners' communication of July 13, 2007.

⁷⁴ Appendix 78 Defendant's statement by Peter Martínez, April 19, 2002. Trial court file, folios 95 and 96. Appendix to the petitioners' communication of July 13, 2007.

⁷⁵ Appendix 79 Order issued by the Bluefields District Criminal Court, April 19, 2002 Trial court file, folio 115. Appendix to the petitioners' communication of July 13, 2007.

⁷⁶ Appendix 80. Summons issued to María Luisa Acosta, District Criminal Court, April 24, 2002. Trial court file, folio 138. Appendix to the petitioners' communication of July 13, 2007.

⁷⁷ Appendix 57. Writ of the Assistant Prosecutor, April 24, 2002. Trial court file, folio 132. Appendix to the petitioners' communication of July 13, 2007.

⁷⁸ Appendix 81. Order issued by the Bluefields District Criminal Court, Thursday, April 25, 2002 Trial court file, folio 139. Appendix to the petitioners' communication of July 13, 2007.

2002.⁷⁹ On April 29, 2002, Mrs. Acosta's legal representative, acting on the basis of a very broad power of attorney (*poder generalísimo*) granted by her, asked that he be officially allowed to be her legal representative in the proceedings and he accused Iván Argüello of being the person responsible for the murder of Mr. García Valle.⁸⁰ On May 2, 2002, the District Criminal Court Judge refused to admit the accusation against Iván Argüello because an extraordinary power of attorney (*poder especialísimo*) was required to file it.⁸¹ In that same order, and in view of the fact that María Luisa Acosta had failed to appear on two occasions, the Judge ordered her provisional arrest⁸² and, the next day, ordered her capture.⁸³ On May 3, Mrs. Acosta's legal representative filed an appeal,⁸⁴ but it was denied because it was not part of the proceedings.⁸⁵ On May 10, 2002, equipped with a special power of attorney to file an accusation in criminal proceedings, María Luisa Acosta's legal representative again requested to appear as the accusing party, denouncing Iván Argüello and any other person(s) who may be found to have been involved in the murder of Mr. García Valle.⁸⁶ On May 13, 2002, the District Criminal Court Judge allowed this accusation and authorized María Luisa Acosta's legal representative to act in the proceedings.⁸⁷

49. With respect to the parallel investigation into the death of Mr. García Valle, on April 22, 2002 and May 9, 2002, several local banks notified the District Criminal Court Judge that Iván Argüello was not a customer of theirs and had not conducted any transactions in the past 20 days.⁸⁸ On April 23, 2002, the National Police sent the District Judge the findings of the search conducted on April 16 in the La Paz Funeral Parlor and at the home of Peter Tsokos, which the police described as being of [no] police interest⁸⁹. The expert report from the National Police crime lab was also sent in, stating that it had not been possible to determine the blood type and group of the samples obtained from Mr. García Valle's corpse and other objects.⁹⁰ That report was supplemented on May 6, 2002, when it was concluded that Mr. García Valle's blood

⁷⁹ Appendix 82. Order issued by the Bluefields District Criminal Court, Friday, April 26, 2002 Trial court file, folio 148. Appendix to the petitioners' communication of July 13, 2007.

⁸⁰ Appendix 83. Document of Mrs. Acosta's legal representative, April 29, 2002. Trial court file, folios 151-154. Appendix to the petitioners' communication of July 13, 2007.

⁸¹ Appendix 84. Order issued by the Bluefields District Criminal Court, Thursday, May 02, 2002 Trial court file, folio 156. Appendix to the petitioners' communication of July 13, 2007.

⁸² Appendix 84. Order issued by the Bluefields District Criminal Court, Thursday, May 02, 2002 Trial court file, folio 156. Appendix to the petitioners' communication of July 13, 2007.

⁸³ Appendix 85. Order to Capture issued by the Bluefields District Criminal Court, Friday, May 3, 2002 Trial court file, folio 6. Appendix to the petitioners' communication of July 13, 2007.

⁸⁴ Appendix 86. Appeal filed by Mrs. Acosta's legal representative, May 3, 2002. Trial court file, folio 159. Appendix to the petitioners' communication of July 13, 2007.

⁸⁵ Appendix 87. Order issued by the Bluefields District Criminal Court, Monday, May 06, 2002 Trial court file, folio 162. Appendix to the petitioners' communication of July 13, 2007.

⁸⁶ Appendix 88. Accusation and incidental motion for permanent annulment filed by Mrs. Acosta's legal representative with the Bluefields District Civil Court and Criminal Court, May 10, 2002. Trial court file, folios 175 to 179. Appendix to the petitioners' communication of July 13, 2007.

⁸⁷ Appendix 89. Order issued by the Bluefields District Criminal Court, Monday, May 13, 2002 Trial court file, folio 181. Appendix to the petitioners' communication of July 13, 2007.

⁸⁸ Appendix 90. Note from Banco Caley Dagnall to the Bluefields District Criminal Court Judge, April 22, 2002. Trial court file, folio 128. Appendix 91. Note from BANCENTRO to the Bluefields District Criminal Court Judge, Thursday, May 9, 2002. Trial court file, folio 128. Appendix to the petitioners' communication of July 13, 2007.

⁸⁹ Appendix 92. National Police Criminal Investigations Search Report, April 23, 2002, folio 123.

⁹⁰ Appendix 93. National Police Crime Laboratory, April 15, 2002. Trial court file, folios 143 and 144. Appendix to the petitioners' communication of July 13, 2007.

group was "O".⁹¹ The supplement added that it had not been possible to determine the blood type or group for the blood found on other objects.⁹²

50. On May 10, 2002, Mrs. Acosta's legal representative presented the first of the four incidental motions for annulment (*incidentes de nulidad*) filed in the course of these judicial proceedings. Specifically, this incidental motion requested annulment as of the order of April 19, 2002, for Mrs. Acosta to give a defendant's statement due to the accusation made by Peter Martínez. Part of the grounds cited in this incidental motion was that no defense counsel for María Luisa Acosta had been appointed.⁹³ On May 13, 2002, the District Criminal Court Judge allowed María Luisa Acosta's accusation against Iván Argüello and others and officially authorized Mrs. Acosta's lawyer to represent her in the proceedings.⁹⁴

c. Definitive dismissal of proceedings in favor of Peter Martínez, Peter Tsokos, and Charles Presida

51. On that same day, May 13, 2002, the District Criminal Court Judge handed down a judgment dismissing proceedings against Peter Martínez, Peter Tsokos, Charles Presida, and María Luisa Acosta because he considered that "there[w]as evidence incrimin[ating] them as instigators or abettors because the file only contain[ed] an accusation, which [was] not enough to deduce criminal liability, because neither the National Police, nor the Prosecutor's Office [had] produc[ed] any evidence from which criminal responsibility could be deduced."⁹⁵ He also ordered that Iván Argüello be imprisoned as the alleged perpetrator of the murder⁹⁶ and he rejected the first incidental motion for annulment.⁹⁷

52. On May 15, 2002, Mrs. Acosta's legal representative filed an appeal against that judgment.⁹⁸ In the court order admitting the appeal, the District Criminal Court Judge ordered "the appellant to deliver to the Court secretariat the corresponding paper needed to record all the litigation,"⁹⁹ that is to say, to provide blank paper for photocopying the judicial file. Mrs. Acosta's representative was notified of that order the following day.¹⁰⁰

53. On May 22, 2002, Mrs. Acosta's representative filed an interlocutory appeal [*recurso de reforma*] against the Court order of May 17, 2002, due to the fact that an appellant could not be ordered to

⁹¹ Appendix 94. Dispatch to the District Court of findings of actions undertaken (supplementing the expert report), National Police Criminal Investigations. Trial court file, folios 165 to 167. Appendix to the petitioners' communication of July 13, 2007.

⁹² Appendix 94. Dispatch to the District Court of findings of actions undertaken (supplementing the expert report), National Police Criminal Investigations. Trial court file, folios 165 to 167. Appendix to the petitioners' communication of July 13, 2007.

⁹³ Appendix 95. Accusation and incidental motion for permanent annulment filed by Mrs. Acosta's legal representative with the Bluefields District Civil Court and Criminal Court, May 10, 2002. Trial court file, folios 175 to 179. Appendix to the petitioners' communication of July 13, 2007.

⁹⁴ Appendix 89. Order issued by the Bluefields District Criminal Court, Monday, May 13, 2002 Trial court file, folio 181. Appendix to the petitioners' communication of July 13, 2007.

⁹⁵ Appendix 96. Resolution dismissing proceedings. Bluefields District Criminal Court, May 13, 2002. Trial court file, folios 184 to 189. Appendix to the petitioners' communication of July 13, 2007.

⁹⁶ Appendix 96. Resolution dismissing proceedings. Bluefields District Criminal Court, May 13, 2002. Trial court file, folios 184 to 189. Appendix to the petitioners' communication of July 13, 2007.

⁹⁷ Appendix 96. Resolution dismissing proceedings. Bluefields District Criminal Court, May 13, 2002. Trial court file, folios 184 to 189. Appendix to the petitioners' communication of July 13, 2007.

⁹⁸ Appendix 97. Appeal against the dismissing of proceedings of May 13, 2002, filed by Mrs. Acosta's legal representative with the Bluefields District Criminal Court Judge, May 15, 2002. Trial court file, folio 195. Appendix to the petitioners' communication of July 13, 2007.

⁹⁹ Appendix 98. Order issued by the Bluefields District Criminal Court, May 17, 2002 Trial court file, folio 196. Appendix to the petitioners' communication of July 13, 2007.

¹⁰⁰ Appendix 98. Order issued by the Bluefields District Criminal Court, May 17, 2002 Trial court file, folio 196. Appendix to the petitioners' communication of July 13, 2007.

present paper within 24 hours because, according to the regulations in force, the party concerned had to be informed in advance of the order.¹⁰¹ Accordingly he asked “[to be] allow[ed] to deposit in the secretariat, sufficient local currency to cover the cost of copying the whole file.”¹⁰² He added that in accordance with the principle of procedural economy, he would deposit 200 córdobas with the secretariat to cover photocopying costs.¹⁰³ Mrs. Acosta's representative came up with the money that same day, but it was not accepted.¹⁰⁴ On May 31, 2002, the District Criminal Court judge rejected the interlocutory appeal, arguing that Article 464 of the Code of Civil Procedure established the obligation of the appellant to provide the paper.¹⁰⁵

54. On June 3, 2002, the District Criminal Court Judge declared the appeal filed on May 15, 2002 void, arguing that Mrs. Acosta's representative had failed to provide the paper needed to photocopy the file and had not offered the money required to that end.¹⁰⁶

d. Continuation of the proceedings against Iván Argüello and Wilberth Ochoa, appeals, and motions for annulment

55. On May 26, 2002, the District Criminal Court Judge ordered Iván Argüello to appear within 15 days to answer charges.¹⁰⁷ On May 29, 2002, the National Police presented an expert opinion determining that the bullet used to kill Mr. García Valle did not carry any identifying marks and that it pertained to a 25 caliber cartridge.¹⁰⁸

56. On June 10 and July 22, 2002,¹⁰⁹ Mrs. Acosta's legal representative filed the second incidental motion for annulment of all proceedings thus far with the District Criminal Court. The main complaint was that the authority had declared the appeal void, when such a declaration was no longer allowed under the Organic Law of the Judiciary.¹¹⁰ This appeal was declared groundless on August 5, 2002, because it was not a matter of annulments that might be asserted in the plenary phase.¹¹¹

¹⁰¹ Appendix 99. Interlocutory appeal filed by Mrs. Acosta's legal representative with the Bluefields District Criminal Court Judge, May 22, 2002. Trial court file, folio 202. Appendix to the petitioners' communication of July 13, 2007.

¹⁰² Appendix 99. Interlocutory appeal filed by Mrs. Acosta's legal representative with the Bluefields District Criminal Court Judge, May 22, 2002. Trial court file, folio 202. Appendix to the petitioners' communication of July 13, 2007.

¹⁰³ Appendix 99. Interlocutory appeal filed by Mrs. Acosta's legal representative with the Bluefields District Criminal Court Judge, May 22, 2002. Trial court file, folio 202. Appendix to the petitioners' communication of July 13, 2007.

¹⁰⁴ According to the Assistant Prosecutor, "a note by the secretariat on the back of folio 202 certifies the presentation of money by [Mrs. Acosta's representative] to cover photocopying costs, which was not accepted." Appendix 100. Second hearing writ (*Escrito de segundas vistas*) of the Assistant Prosecutor to the District Civil and Criminal Court. By operation of law, Bluefields, December 24, 2002. Trial court file, folios 184 to 270. Appendix to the petitioners' communication of July 13, 2007.

¹⁰⁵ Appendix 101. Resolution by the Bluefields District Criminal Court, May 31, 2002. Trial court file, folio 211. Appendix to the petitioners' communication of July 13, 2007.

¹⁰⁶ Appendix 102. Resolution handed down by the Bluefields District Criminal Court, June 3, 2002. Trial court file, folio 214. Appendix to the petitioners' communication of July 13, 2007.

¹⁰⁷ Appendix 103. Edict of the Bluefields District Criminal Court, May 27, 2002, folio 206.

¹⁰⁸ Appendix 104. National Police Crime Lab ballistic report, May 20, 2002. Trial court file, folio 209. Appendix to the petitioners' communication of July 13, 2007. This report was produced at the request of Deputy Commissioner Oswaldo Pérez, along with the dispatch of the investigated bullet, on May 17, 2002.

¹⁰⁹ In this document, Mrs. Acosta's legal representative added information to the incidental motion for annulment filed on June 10, 2002. Appendix 105. Addition to the incidental motion for annulment filed by Mrs. Acosta's legal representative, July 22, 2002. Trial court file, folios 225 and 226. Appendix to the petitioners' communication of July 13, 2007.

¹¹⁰ Appendix 106. Incidental motion for permanent annulment filed by Mrs. Acosta's legal representative with the Bluefields District Criminal Court Judge on June 10, 2002. Trial court file, folios 215 and 216. Appendix 105. Addition to the incidental motion for annulment filed by Mrs. Acosta's legal representative, July 22, 2002. Trial court file, folios 225 and 226. Appendix to the petitioners' communication of July 13, 2007.

¹¹¹ Appendix 107. District court order, August 5, 2002. Trial court file, folio 228. Appendix to the petitioners' communication of July 13, 2007.

57. On August 5, 2002, the District Criminal Court Judge declared the start of the plenary phase.¹¹² On October 8, 2002, the National Police provided the following information to the District Criminal Court:¹¹³

- Wilberth Ochoa, a close friend of Iván Argüello, accompanied him to Bluefields¹¹⁴
- Iván Argüello had worked for the *Master Security* security company as Peter Tsokos' security guard since 2001. He had then left the company to work independently for Mr. Tsokos.¹¹⁵
- The bullet that killed Mr. García Valle was fired from the 25-caliber LORCIN firearm belonging to Peter Tsokos.¹¹⁶

58. The resolution of August 5, 2002 rejecting the second incidental motion for annulment, was appealed and [Tr. the appeal?] declared unfounded on August 9, 2002.¹¹⁷ In view of that decisions, on August 29, 2002, Mrs. Acosta's representative filed an "extraordinary *de facto* appeal" (*recurso extraordinario de hecho*),¹¹⁸ which was rejected on September 23, 2002, due to the fact that "it did not [state] categorically that it was a *de facto* appeal (*apelación por la vía de hecho*)"¹¹⁹. On October 10, 2002, the appeal was resubmitted with the required correction,¹²⁰ but was rejected on October 11, 2002 as extemporaneous (*por caducidad*).¹²¹

59. On October 28, 2002, a court edict was issued announcing that if Iván Argüello failed to appear he would be tried *in absentia*.¹²²

60. On December 17, 2002, the District Civil and Criminal Court¹²³ ordered the Public Prosecutor's Office to proceed with second hearing formalities (*trámite de Segunda Vista al Ministerio Público*).¹²⁴ On December 24, 2002, the Assistant Prosecutor asked for all the badly handled proceedings to be annulled because the

¹¹² Appendix 108. Order issued by the Bluefields District Criminal Court, Monday, August 05, 2002 Trial court file, folio 230. Appendix to the petitioners' communication of July 13, 2007.

¹¹³ Appendix 109. Report on expansion of the murder investigations E.I.C. No. 00502-2002, National Police, Atlántico Sur Autonomous Region, October 8, 2002. Trial court file, folios 239 and 240. Appendix to the petitioners' communication of July 13, 2007.

¹¹⁴ Appendix 109. Report on expansion of the E.I.C [Tr. sic] murder investigations. No. 00502-2002, National Police, Atlántico Sur Autonomous Region, October 8, 2002. Trial court file, folios 239 and 240. Appendix to the petitioners' communication of July 13, 2007.

¹¹⁵ Appendix 110. Note from Master Security to the Director of Police Intelligence, September 3, 2002. Trial court file, folio 242. Appendix to the petitioners' communication of July 13, 2007.

¹¹⁶ Appendix 111. Ballistic expert's report (Registration No. BT-0716-2496-2002), National Police, Ministry of the Interior, Crime Lab, September 3, 2002. Trial court file, folios 247 to 251. Appendix to the petitioners' communication of July 13, 2007.

¹¹⁷ Appendix 112. District court order, Thursday, August 08, 2002. Trial court file, folio 230. Appendix to the petitioners' communication of July 13, 2007.

¹¹⁸ Appendix 113. "Extraordinary De Facto Appeal filed by Mrs. Acosta's legal representative with the Bluefields District Criminal Court Judge, August 29, 2002. De facto appeal file of the Atlántico Sur, District's Appeals Court, folios 1 and 2, Appendix to the petitioners' communication of July 13, 2007.

¹¹⁹ Appendix 114. Atlántico Sur District's Appeals Court decision of September 23, 2002. De facto appeal file of the Atlántico Sur, District's Appeals Court, folios 23 Appendix to the petitioners' communication of July 13, 2007.

¹²⁰ Appendix 115. De facto Appeal filed by Mrs. Acosta's legal representative, October 10, 2002. De facto appeal file of the Atlántico Sur, District's Appeals Court, folios 24 Appendix to the petitioners' communication of July 13, 2007.

¹²¹ Appendix 116. Atlántico Sur District's Appeals Court decision of October 11, 2002. De facto appeal file of the Atlántico Sur District's Appeals Court, folio 25. Appendix to the petitioners' communication of July 13, 2007.

¹²² Appendix 117. District court edict, Monday, October 28, 2002. Trial court file, folio 259. Appendix to the petitioners' communication of July 13, 2007.

¹²³ In view of the fact that the new Code of Criminal Procedure entered into force on December 24, 2002, since November 2002 the case of Mr. García Valle's murder moved, under the Criminal Investigation Code (*Instrucción Criminal* or "In"), to the Bluefields District Civil Law Court and the In by operation of law.

¹²⁴ Appendix 118. Order of the District Criminal Court of the C.C.P and the In. By operation of law, Bluefields, December 17, 2002. Trial court file, folio 265. Appendix to the petitioners' communication of July 13, 2007.

proceedings ha[d] been conducted abnormally, with the judge failing to guarantee due process, to the detriment of the parties."¹²⁵ She based those statements on the following grounds for annulment: a) that Mrs. Acosta was simultaneously taking part in the proceedings in two capacities; b) that there was no record of Mrs. Acosta defendant's statement and that she had been tried *in absentia* despite the fact that the Court knew where she was living; and c) the appeal had been declared void when the deadline for defraying expenses of photocopying the case file had not expired.¹²⁶

61. On January 13, the Public Prosecutor's Office indicted Wilberth Ochoa - who had already been detained by the Chinandega police - charging him as an alleged perpetrator of the murder of Mr. García Valle.¹²⁷ On January 22, 2003, the Assistant Prosecutor submitted evidence to the District Civil and Criminal Court Judge relating to Wilberth Ochoa's participation in the murder of Mr. García Valle¹²⁸.

62. With writs dated January 24, 2003 and February 4, 2003,¹²⁹ Mrs. Acosta's legal representative requested for the third time that the proceedings be annulled from the court order of April 19, 2002 onwards.¹³⁰ On March 4, 2003, the District Civil and Criminal Court declared the second hearing application submitted by the Prosecutor's Office and Mrs. Acosta's legal representative to be without merit, because the alleged [grounds for] annulment occurred during the preliminary investigations phase.¹³¹

63. On March 24, 2003, the interlocutory judgment of May 13, 2003 became final, granting dismissal of proceedings against Peter Tsokos, Peter Martínez, Charles Presida, and María Luisa Acosta¹³².

64. On September 23, 2003, the Criminal Division of the Appeals Tribunal (*Sala de lo Penal del Tribunal de Apelación*) refused to hear the fourth incidental motion filed by María Luisa Acosta on June 9,

¹²⁵ Appendix 100. Second hearing writ (*Escrito de segundas vistas*) of the District Civil and Criminal Court of the In. By operation of law, Bluefields, December 24, 2002. Trial court file, folios 184 to 270. Appendix to the petitioners' communication of July 13, 2007.

¹²⁶ Appendix 33. Second hearing writ (*Escrito de segundas vistas*) to the District Civil and Criminal Court of the In. By operation of law, Bluefields, December 24, 2002. Trial court file, folios 184 to 270. Appendix to the petitioners' communication of July 13, 2007.

¹²⁷ Appendix 33. Indictment of Wilberth José Ochoa for the crime of murder, Public Prosecution Service - Atlántico Sur Autonomous Region, January 13, 2013. Trial court file, folios 275 to 277. Appendix to the petitioners' communication of July 13, 2007.

¹²⁸ The evidence included the statement by Wilberth Ochoa, in which he stated that he had accompanied Iván Argüello on his trips to Bluefields during Holy Week and at the time Mr. García Valle. WAS KILLED. He also said that after 7 p.m. on April 8, 2002, he had heard a gunshot and, a second later, Iván Argüello had come to the room and told him that if they didn't leave there would be problems. For that reason, he suspected Iván Argüello of having murdered Mr. García Valle, but did not know why. Appendix 38. Statement by Wilberth Ochoa (under investigation) to the National Police in Chinandega, January 11, 2003. Trial court file, folio 306. Appendix to the petitioners' communication of July 13, 2007. See also Appendix 119. Writ by the Assistant Prosecutor to the In (by operation of law) District Civil and Criminal Court Judge, January 22, 2003. Trial court file, folios 299 to 312. Appendix to the petitioners' communication of July 13, 2007.

¹²⁹ Regarding this last writ, Mrs. Acosta's legal representative explains that it is supplemental to the one submitted on January 24, 2003. Appendix 120. Writ presented by Mrs. Acosta's representative in which he again requested annulment of the proceedings, February 4, 2003. Trial court file, folios 333 and 334. Appendix to the petitioners' communication of July 13, 2007.

¹³⁰ Specifically, that the appeal against the judgment of May 13, 2002 had been declared void, "rendering it impossible [...] to meet the requirement to deliver paper or money to photocopy the case file," and without considering that voiding for all parties to criminal matters had been repealed; and b) the dual status of María Luisa Acosta based on a mere remark by Peter Martínez, made without a trace of evidence); c) that no defendant's statement had been taken from Mrs. Acosta, which meant that she was being tried illegally; d) the refusal to allow the intervention of a legal representative for Mrs. Acosta and the failure to name a court-appointed defense counsel for her; e) the judge's denial of the rogatory letter allowing María Luisa Acosta to give a defendant's statement in Chinandega; and h) [Tr. sic] that the proceedings were dismissed against those responsible for Mr. García Valle's murder when "what was permissible was to impose a temporary stay of proceedings, at best." Appendix 121. Appeal for annulment to the District Civil Court Judge and District Criminal Court Judge by operation of law, January 24, 2003. Trial court file, folios 324 to 329, and 333 and 334. Appendix to the petitioners' communication of July 13, 2007.

¹³¹ Appendix 122. Resolution of the Bluefields District Civil and Criminal for the In, by operation of law Court, March 4, 2003. Trial court file, folio 365. Appendix to the petitioners' communication of July 13, 2007.

¹³² Appendix 123. Document formally embodying final judgment dismissing proceedings of May 13, 2002, issued by the District Civil and Criminal Court of the In by operation of law, March 24, 2003. Trial court file, folios 396 to 403, Appendix to the petitioners' communication of July 13, 2007.

2003,¹³³ arguing that "this Division must analyze grounds for annulment [...] with respect [to] the trial [of] Wilberth Ochoa [and the incidental motion filed] refers to the accused Iván Argüello, Peter Martínez, Peter Tsokos and María Luisa Acosta Castellón [...] regarding whom judgment [was already handed down] in [...] a Judgment of May 13, 2002."¹³⁴ Faced with that decision, on October 31, 2003, María Luisa Acosta filed a cassation appeal (*casación*) to the Supreme Court,¹³⁵ which was declared unfounded on April 18, 2005.¹³⁶

65. In a judgment handed down on April 21, 2004, the District Civil and Criminal Court sentenced Iván Argüello and Wilberth Ochoa to 20 years in prison for murdering Mr. García Valle¹³⁷. On April 26, 2004, the judgment was appealed by Mrs. Acosta's representative on the grounds that the punishment should have been to 30 years in prison, not 20.¹³⁸

66. On August 30, 2004, Iván Argüello was captured in Costa Rica. Until then, he had been convicted *in absentia*.¹³⁹ In statements broadcast by Costa Rica's Canal 11, on August 31, 2004, Iván Argüello said "that it had been Peter Tsokos, who had sent him to the García Acosta household [...] to commit the crime."¹⁴⁰

67. On November 29, 2004, the Criminal Division of the Appeals Tribunal amended the prison sentence for Iván Argüello and Wilberth Ochoa, sentencing them to 23 years in prison instead of 20. It also refused the request to annul the dismissal of proceedings against Martínez and Tsokos, on the grounds that "said judgment was now final and had become *res judicata*."¹⁴¹

68. On December 22, 2004, Mrs. Acosta's representative filed a cassation appeal (*casación*) to the Criminal Division of the Supreme Court against the judgment of the Appeals Tribunal of November 29, 2004, arguing that it had made improper use of the *res judicata* rules and requesting annulment of all the proceedings

¹³³ According to the petitioners, the irregularities include: the "illegal" declaration that the appeal against the interlocutory judgment dismissing proceedings against Peter Tsokos and Peter Martínez as extemporaneous; b) failure to process the incidental motion for recusal filed by the plaintiff; and c) in general, failure to process the various incidental motions filed.

¹³⁴ Appendix 124. Judgment of the Atlántico Sur, District Appeals Tribunal, Bluefields Criminal Division, September 23, 2003. Trial court file, folios 442 -447. Appendix to the petitioners' communication of July 13, 2007.

¹³⁵ Appendix 125. Filing of the Extraordinary Appeal for Annulment, October 31, 2003. Case File No. 1176-2003 on the Extraordinary Appeal for Annulment, to the Supreme Court, folios 1 to 19. Appendix to the petitioners' communication of July 13, 2007.

¹³⁶ Appendix 126. Judgment No. 11 of the Criminal Division of the Supreme Court of Justice, April 18, 2005, Case file No. 1176-2003 on the Extraordinary Appeal for Annulment, to the Supreme Court, folios 39 and 40. Appendix to the petitioners' communication of July 13, 2007.

¹³⁷ Appendix 127. Sentencing Resolution of the District Civil and Criminal for the In, by operation of law Court, April 22, 2004. Trial court file, folios 492 to 501, Appendix to the petitioners' communication of July 13, 2007.

¹³⁸ Appendix 128. Appeal filed by Mrs. Acosta's representative of the District Civil and Criminal Court of the In by operation of law Judge. Trial court file, folio 503 Appendix to the petitioners' communication of July 13, 2007. For its part, defense council asked for a shorter sentence than that handed down by the judge. Appendix 129. Appeal filed by the representative of Wilberth Ochoa to the aforementioned judge, April 27, 2002. Trial court file, folio 507 Appendix to the petitioners' communication of July 13, 2007.

¹³⁹ His capture was extensively covered by the media. "Prófugo por homicidio. Capturan nicaragüense", *Sucesos, El Nuevo Diario*; "Capturan Profugo", *Sucesos, El Nuevo Diario*, September 1, 2004. "Capturan a asesino del presidente de Cámara de Comercio de Bluefields", *La Prensa*, September 1, 2004. "Asesino rumbo a Bluefields", *Sucesos*, September 6, 2004. Appendix 130. Press reports. Case File No. 2019-2004 on the Appeal for Annulment, to the Supreme Court, folios 91, 92, 93 and 97. Appendix to the petitioners' communication of July 13, 2007.

¹⁴⁰ "Asesino de García ya está en Bluefields", *El Nuevo Diario*, September 6, 2004. "Asesino menciona a Tsokos en declaraciones a Canal 11 de Costa Rica comprometen a griego vende cayos" *Hoy*, September 2, 2004. Appendix 131. Press reports. Case File No. 2019-2004 on the Appeal for Annulment, to the Supreme Court, folio 95. Appendix to the petitioners' communication of July 13, 2007.

¹⁴¹ Appendix 132. Judgment of the Criminal Division of the Bluefields Appeals Tribunal, Atlántico Sur district, November 29 2004. Appendix to the petitioners' communication of April 8, 2014.

since the court order of April 19, 2002.¹⁴² On August 24, 2006, in the course of her intervention, the Assistant Prosecutor of Managua asked the Supreme Court of Justice to allow the cassation appeal (*casación*) and to partially annul the judgment of March 13, 2002 in the part referring to Peter Tsokos and Peter Martínez. The Assistant Prosecutor based her position on the insults inflicted on the appellant by the way the proceedings were handled.¹⁴³ On December 19, 2006, the Criminal Division of the Supreme Court rejected the cassation appeal stating that the judgment did have *res judicata* status because the parties were notified of the decision and consented to it in that they did not file any appeal against it.¹⁴⁴ María Luisa Acosta was notified of this decision on December 22, 2006.¹⁴⁵

4. Proceedings instituted by Peter Tsokos and Peter Martínez against María Luisa Acosta

69. In addition to the criminal investigation into Maria Luisa Acosta's alleged complicity in the murder, described *above* in paragraphs 46–51, Messrs. Tsokos and Martínez used other judicial mechanisms against her, which are described below.

a. Provisional attachment and claim for damages

70. On May 14, 2002, Peter Martínez, acting on his own behalf and that of Peter Tsokos, asked the Bluefields District Civil Court to issue a provisional attachment on María Luisa Acosta's house, because supposedly she owed them US\$100,000 and “[he had]good reason to fear that the debtor had [no] intention of paying.”¹⁴⁶ The attachment requested was granted the following day.¹⁴⁷ On May 15, 2002, Messrs. Tsokos and Martínez filed a claim for damages against María Luisa Acosta, amounting to US\$100,000 (plus 30% for alleged legal expenses), for having accused them of the murder of her husband. They requested confirmation of the attachment.¹⁴⁸

71. On June 26, 2002, Mrs. Acosta's representative filed an incidental motion for annulment aimed at having the provisional attachment lifted.¹⁴⁹ On October 1, 16, and 24, 2003, Mrs. Acosta's representative asked the District Civil Court Judge to pronounce on the matter given the serious damages these measures were causing Mrs. Acosta.¹⁵⁰ On October 24, 2002, the District Civil Court opened the discovery period for the incidental proceedings.¹⁵¹ On February 27, 2003, the District Court allowed the

¹⁴² Appendix 133. Appeal for annulment to the Supreme Court, filed by the legal representative of Mrs. María Luisa Acosta, on December 22, 2004. Case File No. 2019-2004 on the Appeal for Annulment, to the Supreme Court, folios 1 to 25. Appendix to the petitioners' communication of July 13, 2007.

¹⁴³ Appendix 134. Response of the Office of the Assistant Prosecutor of Managua regarding the mistreatment of the appellant filing the annulment appeal. File No. 2019-2004 of the appeal for annulment to the Supreme Court, folios 80-86. Appendix to the petitioners' communication of July 13, 2007.

¹⁴⁴ Appendix 135. Judgment No. 19 of the Supreme Court, Criminal Division, December 19, 2006. Case File No. 2019-2004 on the Appeal for Annulment, to the Supreme Court, folios 110ff. Appendix to the petitioners' communication of July 13, 2007.

¹⁴⁵ Appendix 136. Notification of the Supreme Court, Criminal Division, Friday, December 22, 2006. Case File No. 2019-2004 on the Appeal for Annulment, to the Supreme Court, folio 112. Appendix to the petitioners' communication of July 13, 2007.

¹⁴⁶ Appendix 137. Application for pre-judgment attachment filed by Peter Tsokos and Peter Martínez, May 14, 2002. File No. 350-02 of the Bluefields District Civil Court (Pre-judgment attachment /damages), folio 1. Appendix to the petitioners' communication of July 13, 2007.

¹⁴⁷ Appendix 138. Certificate of pre-judgment attachment of the Bluefields District Civil Court of May 15, 2002. File No. 350-02 of the District Court, (Pre-judgment attachment /damages), folio 5. Appendix to the petitioners' communication of July 13, 2007.

¹⁴⁸ Appendix 139. Complaint for damages, May 15, 2002. File No. 350-02 of the District Court, (Pre-judgment attachment /damages), folios 6 and 7. Appendix to the petitioners' communication of July 13, 2007.

¹⁴⁹ Appendix 140. Incidental motion for annulment filed by Mrs. Acosta's representative, June 26, 2002. File No. 350-02 of the District Court, (Pre-judgment attachment /damages), folios 18 and 21. Appendix to the petitioners' communication of July 13, 2007.

¹⁵⁰ Appendix 141. Document from Mrs. Acosta's representative, October 23, 2002. File No. 350-02 of the District Court, (Pre-judgment attachment /damages), folio 42. Appendix to the petitioners' communication of July 13, 2007.

¹⁵¹ Appendix 142. District Court decision, October 24, 2002. File No. 350-02 of the District Court, (Pre-judgment attachment /damages), folio 43. Appendix to the petitioners' communication of July 13, 2007.

incidental motion for annulment and ordered the embargo to be lifted as the resolution became final.¹⁵² However, on March 5, 2003, Peter Martínez filed an appeal,¹⁵³ which was admitted on March 25, 2003 by the Civil Law Division of the Appeals Tribunal.¹⁵⁴

72. For her part, on August 29, 2003, María Luisa Acosta filed an appeal with the Supreme Court against delay in the administration of justice because more than one year and five months had elapsed since she had answered and the Civil Law Division of the Appeals Tribunal had still not pronounced on the matter.¹⁵⁵

b. Complaint in respect of the offenses of "false testimony and false accusation"

73. On October 1, 2002, Peter Martínez, acting on his own behalf and in representation of Peter Tsokos, filed a complaint against Mrs. Acosta for the offenses of "false testimony and false accusation"¹⁵⁶ on account of the accusations she had leveled against them in the judicial proceedings in connection with the murder of Mr. García Valle¹⁵⁷. On October 18, 2002, the District Civil and Criminal Court admitted the complaint and notified Mrs. Acosta on October 21, 2002.¹⁵⁸ On August 14, 2003, Mrs. Acosta answered the complaint, pointing out that "this action [was] was clearly brought with manifest abuse of process and fraud in law; the plaintiffs want [...] to continue using criminal actions and the justice system as a means of harassment and coercion so that I desist from bringing the murderers of my husband to trial."¹⁵⁹

74. Given the absence of procedural activity by the parties, it was declared expired on August 23, 2004.¹⁶⁰ Peter Martínez appealed that decision¹⁶¹, and his appeal was declared inadmissible on October 12, 2004¹⁶².

¹⁵² Appendix 143. Bluefields District Civil Court decision, February 27, 2003. File No. 350-02 of the Bluefields District Civil Court (Pre-judgment attachment /damages), folio 65. Appendix to the petitioners' communication of July 13, 2007.

¹⁵³ Appendix 144. Appeal filed by Peter Martínez, March 5, 2003. File No. 350-02 of the Bluefields District Civil Court (Pre-judgment attachment /damages), folio 67. Appendix to the petitioners' communication of July 13, 2007.

¹⁵⁴ Appendix 145. Decision, Bluefields Appeals Tribunal, Civil Law Division, March 25, 2003. File No. 06-2003 of the Bluefields Appeals Tribunal, Civil Law Division, , folio 6. Appendix to the petitioners' communication of July 13, 2007.

¹⁵⁵ Appendix 146. Appeal against delay filed by Mrs. Acosta's representative with the Supreme Court, August 20, 2004. Appendix to the petitioners' communication of July 13, 2007.

¹⁵⁶ Article 353 of the Criminal Code of the Republic of Nicaragua establishes that "the offense of false testimony is committed when someone, be it as a witness, expert, interpreter, or translator asserts a falsehood or conceals the truth, in whole or in part, before a competent authority. That offense shall be punished with imprisonment for between one and five years if the false testimony is committed in a civil law case. If, however, it is committed in a criminal case, to the detriment of the accused, the punishment shall be the same as the applicable to the crime falsely ascribed." For its part, Article 356 stipulates that "whoever, knowing it to be untrue, falsely denounces or accuses a person of having committed a crime to any official with powers to punish the offense or misdemeanor denounced or the subject of the accusation shall be punished with the penalties for false testimony established in Article 353.

¹⁵⁷ Appendix 147. Complaint against false testimony and false accusation filed by Peter Tsokos and his partner, October 1, 2012. File No. 298-02 of the Bluefields District Civil and Criminal Court (In) (offense: false testimony and false accusation), folios 1 and 2. Appendix to the petitioners' communication of July 13, 2007.

¹⁵⁸ Appendix 148. Document from Mrs. Acosta's legal representative, addressed to the Bluefields District Civil and Criminal Court (In), October 22, 2001. File No. 298-02 of the Bluefields District Civil and Criminal Court (In) (offense: false testimony and false accusation), folios 1 and 2. Appendix to the petitioners' communication of July 13, 2007.

¹⁵⁹ Appendix 149. Document replying to the complaint filed by Mrs. Acosta's representative, August 14, 2003, File No. 298-02 of the Bluefields District Civil and Criminal Court (In) (Offense: false testimony and false accusation), folios 40 to 43. Appendix to the petitioners' communication of July 13, 2007.

¹⁶⁰ Appendix 150. Decision of the Bluefields District Civil and Criminal Court (In), August 28, 2004. File No. 298-02 of the Bluefields District Civil and Criminal Court (In) (offense: false testimony and false accusation), folio 46. Appendix to the petitioners' communication of July 13, 2007.

¹⁶¹ Appendix 151. Appeal filed by Peter Tsokos and Peter Martínez,, September 30, 2004. File No. 298-02 of the Bluefields District Civil and Criminal Court (In) (offense: false testimony and false accusation), folio 51. Appendix to the petitioners' communication of July 13, 2007.

5. Complaints to the Disciplinary Rules Commission of the Supreme Court of Justice

75. Between May 2002 and October 2003, Mrs. Acosta filed five disciplinary complaints against judicial officials hearing the case.¹⁶³ On April 9, 2003, Mrs. Acosta complained to the Office of the Prosecutor for the Defense of Human Rights (hereinafter "the PDDH") regarding the lack of replies to her disciplinary complaints.¹⁶⁴

76. On October 6, 2003 the PDDH concluded that the Disciplinary Rules Commission violated the right to prompt justice and recommended: i) that the President of the Supreme Court urge the Disciplinary Rules Commission in writing to resolve the complaint; ii) that a copy of the resolution be sent to the Office of the Attorney General of the Republic for follow-up; and iii) that within no more than 15 days the President of the Supreme Court inform the PDDH in writing regarding compliance with the recommendations."¹⁶⁵ On June 10, 2004, the PDDH issued its final report and concluded that the President of the Supreme Court had ignored the recommendations and had not remitted information in that regard.¹⁶⁶

6. Consequences of the murder of Mr. Francisco García Valle for the family members

77. As a result of the complaint against Mrs. Acosta for the offenses of "false testimony and false denunciation," her and her children's departure from Bluefields to Chinandega, and the closing of the family businesses that they lived off,¹⁶⁷ Mrs. Acosta told the court hearing her criminal case that the murder of Mr. García Valle had inflicted "profound emotional harm" (*profunda pena moral*) on the members of his family.¹⁶⁸

[... continuation]

¹⁶² Appendix 152. Decision of the Bluefields District Civil and Criminal Court (In) October 12, 2004. File No. 298-02 of the Bluefields District Civil and Criminal Court (In) (offense: false testimony and false accusation), folio 57. Appendix to the petitioners' communication of July 13, 2007.

¹⁶³ Appendix 153. Complaint filed by María Luisa Acosta, May 6, 2002. File No. 362-2002 of the Disciplinary Rules Commission of the Supreme Court of Justice, without folio number. Appended to the petitioners' communication of July 13, 2007; Appendix 154. Complaint filed by María Luisa Acosta, Friday, October 04, 2002. File No. 362-2002 of the Disciplinary Rules Commission of the Supreme Court of Justice, without folio number. Appended to the petitioners' communication of July 13, 2007; Appendix 155. Complaint filed by María Luisa Acosta, Friday, April 4, 2003. File No. 362-2002 of the Disciplinary Rules Commission of the Supreme Court of Justice, without folio number. Appendices to the petitioners' communication of July 13, 2007; Appendix 156. Complaint filed by María Luisa Acosta, Friday, June 13, 2003. File No. 362-2002 of the Disciplinary Rules Commission of the Supreme Court of Justice, without folio number. Appended to the petitioners' communication of July 13, 2007; Appendix 157. Complaint filed by María Luisa Acosta, Friday, October 31, 2003. File No. 362-2002 of the Disciplinary Rules Commission of the Supreme Court of Justice, without folio number. Appendix to the petitioners' communication of July 13, 2007. The complaints were directed against a number of authorities hearing the case and addressed multiple irregularities throughout the proceedings..

¹⁶⁴ Appendix 158. Final resolution, October 6, 2003, File No. 154-2003 of the Office of the Prosecutor for the Defense of Human Rights, folio 1. Appendix to the petitioners' communication of July 13, 2007.

¹⁶⁵ Appendix 158. Final resolution, October 6, 2003, File No. 154-2003 of the Office of the Prosecutor for the Defense of Human Rights, folio 1. Appendix to the petitioners' communication of July 13, 2007.

¹⁶⁶ Appendix 159. Final Follow-up Report, File No. 154-2003 of the Office of the Prosecutor for the Defense of Human Rights, June 10, 2004. Appendix to the petitioners' communication of July 13, 2007.

¹⁶⁷ Appendix 58. Undated document written by María Luisa Acosta, File No. 298-02 of the Bluefields District Civil and Criminal Court (In) (offense: false testimony and false accusation), folios 28 and 29. Appendix to the petitioners' communication of July 13, 2007. Appendix 65. Search warrant issued by the Bluefields District Criminal Court Judge, April 15, 2002. Trial court file No. 110-02, folio 43. Appendix to the petitioners' communication of July 13, 2007. The petitioners also pronounced on this in their initial petition of June 20, 2007 and in their written observations on the merits of September 19, 2011 and December 6, 2013.

¹⁶⁸ Appendix 58. Undated document written by María Luisa Acosta, File No. 298-02 of the Bluefields District Civil and Criminal Court (In) (offense: false testimony and false accusation), folios 28 and 29. Appendix to the petitioners' communication of July 13, 2007.

IV. LEGAL ANALYSIS

A. Right to a Fair Trial and Judicial Protection (Articles 8(1)¹⁶⁹ and 25(1)¹⁷⁰ of the American Convention in connection with Article 1(1) thereof), with respect to the murder of Mr. García Valle

78. According to the consistent case law of the organs of the inter-American system, as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated in accordance with the rules of due process of law.¹⁷¹ Furthermore, the Court has held that the right of access to justice should ensure, within a reasonable time, the right of the alleged victims or their next of kin to have everything necessary done to learn the truth about what happened and to investigate, try and, as appropriate, punish those responsible.¹⁷² That obligation, which relates to means rather than to results, must be assumed by the State as its own legal duty and not as a mere formality preordained to be ineffective.¹⁷³ In this sense, the investigation should be undertaken with due diligence¹⁷⁴, effectively, seriously, impartially, and within a reasonable period of time¹⁷⁵.

79. Taking into account the unique characteristics of this case, the Commission recalls that the most effective way to protect human rights defenders is by effectively investigating the acts of intimidation or violence against them, and punishing the persons responsible.¹⁷⁶ In that regard, the Inter-American Court has held that “the threats and attacks on the lives and personal integrity of human rights defenders, as well as the impunity enjoyed by those responsible for such acts, are particularly grave because they have not only individual, but also collective effects, inasmuch as society is prevented from learning the truth concerning the

¹⁶⁹ Article 8(1) of the American Convention provides: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

¹⁷⁰For its part, Article 25 of the American Convention states: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

¹⁷¹I/A Court H.R. Case of Rodríguez Vera et al. (Persons Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, par. 435, citing Cf. Velásquez Rodríguez Case v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, par. 91; and Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. IACHR, *Annual Report 2011*, OEA/Ser.L/V/II, Doc. 283, par. 199.

¹⁷²I/A Court H.R. Case of Rodríguez Vera et al. (Persons Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, par. 435. Citing. Cf. Case of Bulacio v. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. IACHR, *Annual Report 2011*, OEA/Ser.L/V/II, Doc. 100, para. 114; and Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. IACHR, *Annual Report 2011*, OEA/Ser.L/V/II, Doc. 283, par. 199.

¹⁷³I/A Court H.R., Velásquez Rodríguez Case v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, par. 177; I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. IACHR, *Annual Report 2011*, OEA/Ser.L/V/II, Doc. 167, par. 131.

¹⁷⁴I/A Court H.R., *Case of García-Prieto et al. v. El Salvador. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 20, 2007, Series C No. 168; IACHR, *Annual Report 2011*, OEA/Ser.L/V/II, Doc. 168, par. 101; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers. v. Peru.* Judgment of July 8, 2004. IACHR, *Annual Report 2011*, OEA/Ser.L/V/II, Doc. 110, par. 146; I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru.* Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. IACHR, *Annual Report 2011*, OEA/Ser.L/V/II, Doc. 167, par. 130.

¹⁷⁵I/A Court H.R., *Case of Bulacio Vs. Argentina.* Sentencia de 18 de septiembre de 2003. Serie C No. 100, par. 114; I/A Court H.R., *Case of Masacre de la Rochela Vs. Colombia.* Judgment of May 11, 2007. Series C. No. 163, par. 146; I/A Court H.R., *Case of Penal Miguel Castro Castro Vs. Perú.* Judgment of November 25, 2006. Series C No. 160, par. 382.

¹⁷⁶IACHR, Report No. 56/12, Merits (Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al.), Guatemala, March 21, 2012, par. 126; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, par. 112. IACHR, *Report on the Situation of Human Rights Defenders in the Americas* OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006.

observance or the violation of the rights of those subject to the jurisdiction of a specific State.¹⁷⁷ For its part, the Office of the United Nations High Commissioner for Human Rights has stated that failure to investigate and punish those responsible for violations committed against human rights defenders "constitutes the factor that most increases the risk to defenders, because it leaves them in a situation of defenselessness and vulnerability."¹⁷⁸

80. The special and heightened obligations to investigate where human rights defenders are concerned, are wholly applicable in this case as there are clear indications that a link existed between Mr. García Valle's murder and María Luisa Acosta's work in defense of rights.

81. Taking into account the established facts and the arguments of the parties, the Commission will pronounce, first, on the duty to investigate with due diligence; second, on the denial of the appeal against the dismissal of the possible masterminds; and, third, on the guarantee of a reasonable time.

1. The duty to investigate with due diligence

82. As to the substance of the duty to investigate with due diligence, the Inter-American Court has held that this duty entails that the investigation be undertaken utilizing all the legal means available and should be oriented toward the determination of the truth.¹⁷⁹ The Court has also held that the State may be liable for a failure to order, practice or evaluate evidence that may have been essential for a proper clarification of the facts.¹⁸⁰ Thus, the IACHR recalls that the obligation to investigate and punish every act that entails a violation of the rights protected by the Convention requires that not only the direct perpetrators of human rights violations be identified, but also the masterminds.¹⁸¹ In that regard, the authorities should also adopt all reasonable measures to guarantee the necessary probative material in order to carry out the investigation.¹⁸²

83. The commission will analyze whether the state fulfilled its duty to investigate with due diligence taking into account the following: (i) the lack of investigation into the motive for the murder; and (ii) the lack of investigation of the third perpetrator.

1.1 The lack of investigation into the motive for the murder

84. The Inter-American Court has held that it is not the task of the organs of the inter-American system to "analyze the hypothesis about perpetrators prepared during the investigation of the events of the ... case and determine individual responsibility, whose definition corresponds to domestic criminal tribunals, but rather evaluate the acts and omission of State agents, pursuant to the evidence submitted by the

¹⁷⁷I/A Court H.R., Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 192, par. 96. Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Exceptions and Merits*. Judgment of November 28, 2006. Series C No. 161, par. 76.

¹⁷⁸OHCHR. *Defender los derechos humanos: entre el compromiso y el riesgo [Defending human rights: between the commitment and the risk]* Executive Summary, para. 7. <http://www.hchr.org.mx/documentos/libros/informepdf.pdf>

¹⁷⁹I/A Court H.R., *Case of García-Prieto et al. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2007, Series C No. Series C No. 168. par. 101.

¹⁸⁰I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, par. 230. See also IACHR, Report No. 56/12, Merits (Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al.), Guatemala, March 21, 2012, par. 126; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, par. 41.

¹⁸¹IACHR, Report No. 56/12, Merits (Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al.), Guatemala, March 21, 2012, par. 110; IACHR, Report 100/11, Merits (Carlos Antonio Luna López et al.), Honduras, July 22, 2011, par. 188. See, also, IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, par. 109.

¹⁸²I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 122.

parties."¹⁸³ However, in cases that involve the violent death or disappearance of a person, the Commission and the Court have held that the investigation initiated should be carried out in such a manner as guarantee proper analysis of the hypotheses as to responsibility arising from it,¹⁸⁴ and, in order to demonstrate the diligence of its inquiries, the State must show that it carried out an immediate, exhaustive and impartial investigation¹⁸⁵ in which all possible lines of inquiry have been explored in a bid to identify the perpetrators of the crime with a view to their subsequent prosecution and punishment.¹⁸⁶ Furthermore, as part of the requisite due diligence in investigating violations of the rights of human rights defenders, the investigating authority should take into account the work of the defender attacked in order to identify which interests could have been harmed in the pursuit of that work in order, thus, to establish lines of inquiry and theories for the crime¹⁸⁷.

85. In this case, the Commission observes that the context, Mrs. Acosta's professional history, and the information contained in court file in the domestic proceeding, clearly point to the hypothesis that Mr. García Valle's murder may have been due to María Luisa Acosta's intense activity in defense of indigenous peoples' rights.

86. Thus, the Commission notes that María Luisa Acosta's legal representation of the indigenous peoples in the Pearl Lagoon basin in various administrative and judicial suits against Peter Tsokos and his partner Peter Martinez clearly harmed their interests. The IACHR finds that as a result of María Luisa Acosta's efforts, Peter Tsokos was warned on several occasions that he could be liable to penalties in civil and criminal proceedings if he continued "disturbing" communal properties, and that he was fined for slash-and-burn activities in the Cerro Silva Natural Reserve.¹⁸⁸ Mrs. Acosta's work also drew public attention to the fact that policemen were acting as private guards at the service of Mr. Tsokos on communal lands.¹⁸⁹ Furthermore, on March 16, 2002, less than one month before the murder of her husband, Mrs. Acosta had begun legal representation of the various communities in cases concerning a petition for constitutional relief and a suit for the return of 80 blocks of indigenous Rama indigenous land in Peter Tsokos' possession.

87. The Commission notes that despite the existence from the outset of the possibility that these individuals might be the instigators/masterminds, that eventuality was not meaningfully and diligently investigated. Thus, the commission observes that the efforts of the National Police were less rigorous in the inspection of a property owned by Peter Tsokos than in the one at the property of Mr. García Valle. In that connection, the record and results of the search at the home of Peter Tsokos, unlike the search of La Paz funeral home, did not specify the type of investigative procedures carried out to determine that the results were not of interest to the police; nor did it state the purpose of the search.¹⁹⁰ In addition, the IACHR notes

¹⁸³ Cf. I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, par. 79, *Case of Cantoral-Huamaní and García-Santa Cruz. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, par. 87.

¹⁸⁴I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, par. 112.

¹⁸⁵IACHR, Report on Merits No. 55/97, *Juan Carlos Abella et al.* (Argentina), November 18, 1997, par. 412.

¹⁸⁶IACHR, Report No. 25/09, Merits (Sebastião Camargo Filho) Brazil, March 19, 2009, par. 109. See, too, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, par. 41; I/A Court H.R., *Case of Gonzalez-Medina and Family v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240*, par. 115. See, also, IACHR, Report No. 111/09, Case 11.324, Merits, Narciso González Medina, Dominican Republic, November 10, 2009, par. 240.

¹⁸⁷ IACHR, Report No. 56/12, Merits (*Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al.*), Guatemala, March 21, 2012, par. 126. See also IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, par. 236. Available at <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>

¹⁸⁸ Appendix 13. "Marena multa al griego Peter Tsokos", La Prensa, May 18, 2001.

¹⁸⁹ Appendix 22. Appeal to the Civil Law Division of the Court of Appeals in Bluefields, October 2, 2002. Appendix to the petitioners' communication of July 13, 2013.

¹⁹⁰Appendix 160. Record and results of the search of the property of Peter Tsokos, National Police Criminal Investigations, April 20, 2002. Trial court file No. 110-02, folio 127. Appendix to the petitioners' communication of July 13, 2007. The record and results

[continues ...]

that the persons who gave statements were not questioned in order to inquire further about the possible masterminds of Mr. García Valle's murder. For example, despite the fact that in her statement María Luisa Acosta mentioned her suspicions that Peter Tsokos and Peter Martínez were the ones behind her husband's murder, the relevant authorities asked no questions in an attempt to obtain more information in that respect.

88. In addition, in spite of the fact that on April 18, 2002, the National Police sent the District Court the bullet that killed Mr. García Valle on the ground that it was "of major importance for continuing relevant investigations into the case,"¹⁹¹ the judge ordered no further measures to ascertain its origin. As the section on established facts shows, the significance of that projectile—which was revealed after Peter Tsokos was acquitted—was that the weapon that discharged it belonged to Mr. Tsokos.

89. Another element relating to lack of diligence in pursuing the line of inquiry concerning the instigators has to do with the fact that in his statement in the preliminary investigation, Charles Presida—a key person in the proceeding because, according to María Luisa Acosta, it was he who got the three men involved in her husband's killing out of Bluefields—was not questioned about the cause of the García Valle murder, or about the possible involvement of the alleged instigators in it, or about the latter's connection with Iván Argüello, the perpetrator of the murder. The IACHR also notes that the District Criminal Court only sent an official letter to the manager of the telephone company requesting records of calls made to the telephones of Mrs. Acosta and her husband. However, the relevant authorities did not attempt to obtain information about possible telephone communications from Peter Tsokos and Peter Martínez to Iván Argüello.

90. Following these omissions in collecting key evidence about the possible instigators, despite all the indications that emerged from the information about Mary Luisa Acosta's professional activities and her own statements, the judicial authorities ordered a dismissal a few days after Peter Tsokos and Peter Martínez gave their preliminary investigation statements, without justification based on the performance of investigative procedures and their objective results. The dismissal also lacked justification in terms of the scenarios envisaged in the domestic rules and regulations. Thus, Article 186 of Nicaragua's Code of Preliminary Criminal Procedure sets out the following causes for definitive dismissal: (a) The offense being prosecuted did not exist or the act under investigation is not legally punishable; and (b) the evidence or suspicions against a particular person have ceased to exist in the preliminary investigation stage, such as to prove or make evident the innocence of the suspect.

91. The Commission cannot help but note that the dismissal was upheld in spite of the fact that the Assistant Prosecutor of the RAAS and the Assistant Prosecutor in Managua, in briefs dated December 24, 2002,¹⁹² and August 24, 2006,¹⁹³ requested the District Criminal Court and the Supreme Court of Justice, respectively, to overturn said acquittal owing to the anomalous processing of the case and the "unexhausted investigation."

[... continuation]

of the search of La Paz funeral home, by contrast, states the purpose of the search, which was to "seize any documents found linked to the proceeding against Iván Argüello Rivera"; it also specifies what documents were found. Appendix 161. Record and results of the search of La Paz funeral home, National Police Criminal Investigations, April 16, 2002. Trial court file No. 110-02, folio 125. Appendix to the petitioners' communication of July 13, 2007.

¹⁹¹Appendix 71, procedures, National Police Criminal Investigations to the District Criminal Court in Bluefields, April 18, 2002. Trial court file No. 110-02, folios 78 and ff. Appendix to the petitioners' communication of July 13, 2007.

¹⁹²Appendix 100. Second hearing writ (*Escrito de segundas vistas*) to the District Civil and Criminal Court. of the In. By operation of law, Bluefields, December 24, 2002. Trial court file No. 110-02, folios 268-270. Appendix to the petitioners' communication of July 13, 2007.

¹⁹³Appendix 134. Response of the Assistant Prosecutor in Managua to the grievances raised by the applicant in the appeal for annulment. Case file No. 2019-2004 of the appeal for annulment to the Supreme Court of Justice, folios 80-86. Appendix to the petitioners' communication of July 13, 2007.

92. Given the inexplicable and hurried way in which the acquittal was issued, with the aforementioned omissions, in disregard of the causes envisaged by domestic law and just days after those individuals gave statements in the preliminary investigation, the Commission believes that, in addition to a clear breach of the duty to investigate with due diligence, there could be deliberate abetment (*encubrimiento*) in this case.

93. Added to this evidence of abetment is the fact that Mrs. Acosta, as an accused person, encountered difficulties both in giving her statement in the preliminary investigation at the location to which she fled for safety reasons, and in presenting evidence during the preliminary proceeding in the case because she had not been legally recognized as a party in time. Those difficulties amounted to an obstruction by the authorities, preventing her from presenting information to show the possible part played by Messrs. Tsokos and Martínez in Mr. García Valle's murder. The foregoing is significant bearing in mind that Mrs. Acosta named Messrs. Tsokos and Martínez in her initial statement as alleged instigators. The Commission also notes as further evidence of abetment that Mrs. Acosta's counsel was only formally granted the right to participate in the proceeding on May 13, 2002, the very day on which the dismissal was issued, by which time he could no longer present evidence.

94. The Commission finds that even after the acquittal the domestic authorities continued deliberately to omit to carry out an investigation to identify the instigators of Mr. García Valle's murder, even though it was imperative to do so based on the information that continued to emerge.

95. Thus, the Commission notes that following the acquittal, the National Police presented to the judge presiding over the case a certificate of employment which showed that Iván Argüello—the perpetrator—worked as a security guard for Peter Tsokos, together with the ballistics report that showed that Peter Tsokos was the owner of the firearm used to take Mr. García Valle's life. In addition, the record shows that both the Office of the Prosecutor and Mrs. Acosta's legal counsel requested the relevant authorities to take both exhibits into consideration. Indeed, the IACHR finds that one of the arguments used by the Assistant Prosecutor in Managua to request the Supreme Court of Justice to annul the definitive dismissal of May 13, 2002, was the failure to give consideration to the aforesaid exhibits¹⁹⁴.

96. In spite of the fact that the new evidence highlighted the need to explore and exhaust an investigation into the identity of the instigators and the motive for the murder even more clearly, the domestic authorities, without offering an explanation, refused to reopen the investigations into Messrs. Tsokos and Martínez. To the contrary, when the second perpetrator—Wilberth Ochoa—was named as a suspect in the proceeding, he was not questioned about the possible reasons for Mr. García Valle's murder or the possible relationship between himself or Iván Argüello— as perpetrators—and the alleged instigators. Particularly serious is the fact that, although Iván Argüello told the press that Peter Tsokos had sent him to murder Mr. García Valle, there is nothing in the record to show that the authorities attempted to follow up on that statement or make inquiries in that regard.

1.2. The lack of investigation of the third perpetrator

97. As this report has already noted, the obligation effectively to investigate acts that violate human rights entails making every effort to identify and punish all those responsible for such acts.¹⁹⁵ In that regard, the IACHR notes that according to the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, one of the focuses of investigations of crimes of this type must be to identify everyone who was involved in the homicide¹⁹⁶.

¹⁹⁴ Appendix 134. Response of the Office of the Assistant Prosecutor of Managua regarding the mistreatment of the appellant filing the annulment appeal. File No. 2019-2004 of the appeal for annulment to the Supreme Court, folios 80-86. Appendix to the petitioners' communication of July 13, 2007.

¹⁹⁵ I/A Court H.R., Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, par. 275.

¹⁹⁶ See U.N. Doc E/ST/CSDHA/.12 (1991).

98. In this case, in addition to the deliberate omission to investigate the identities of the instigators of Mr. García Valle's murder, the IACHR finds that various irregularities occurred in the course of the investigation that obstructed the identification of the third perpetrator, including: (a) failure to question witnesses and the convicted persons; (b) the absence of tests on the drag marks found in the room rented by the three individuals; (c) failure to establish where Charles Presida was at the time of the events; and (d) failure to show the photograph of Charles Presida to witnesses who might have been able to identify him as the third perpetrator.

99. The Commission observes that, in spite of the fact that from the outset of the investigation and in the course of several stages therein, the police and judicial authorities were aware of the involvement of a third person in the murder of Mr. García Valle,¹⁹⁷ there is no evidence that any steps were taken to ascertain their identity.

100. The foregoing is demonstrated by the fact that the witnesses who could have identified the alleged third perpetrator—such as the neighbors María Esther Castrillo Chavarría and Eddy Eduardo Lira Miles, the domestic worker Natalia Omeir Hulse, and the carpenter Miguel Antonio López Balladares¹⁹⁸—were not questioned on the subject by the National Police or the judge presiding in the case. In fact, they were not even asked to describe the person in question's physical features, as a result of which no artist's impression was made. The IACHR also notes that nor was Wilberth Ochoa, one of the convicted perpetrators of the above crime, questioned about the part played by the third perpetrator. In addition, the Commission observes that various procedures were limited that could have provided important elements for identifying the perpetrator. In that connection, the information presented by the parties contains nothing to indicate that tests were carried out on the drag marks found at the rear of the room occupied by the alleged perpetrators of the crime, or on the marks found at the scene of the crime.¹⁹⁹ Nor were any tests done on hairs and fibers found at the crime scene.

¹⁹⁷According to the testimony of several witnesses presented to the court and the prosecutor's office, the third individual was seen with Iván Argüello and Wilberth Madariaga during Holy Week, had also rented the ground floor of María Luisa Acosta's house, and disappeared after Mr. García Valle was killed. Appendix 35. Statement by María Luisa Acosta, National Police Criminal Investigations, April 16, 2002. Trial court file No. 110-02, folio 56. Appendix 41. Witness statement by María Elena Castrillo Chavarría, April 16, 2002. Trial court file No. 110-02, folio 50. Appendix 32. Witness statement by Natalia Omeir Hulse, April 16, 2002. Trial court file No. 110-02, folios 53 and 54. Appendix 32. Statement by Miguel Antonio López Balladares, National Police Criminal Investigations, April 17, 2002. Trial court file No. 110-02, folio 61. Appendix 38. Statement by Person under Investigation (Wilberth Ochoa), National Police, Chinandega, January 11, 2003. Trial court file No. 110-02, folio 306. The National Police also refer to the involvement of this third individual in their own documents. Appendix 33. Document from Prosecutor Gloria Robinson addressed to the District Criminal Court Judge in Bluefields, May 9, 2002. Trial court file No. 110-02, folio 168. Accusation against Wilberth José Ochoa for the crime of murder, Public Prosecution Service, Atlántico Sur Autonomous Region, January 13, 2013. Trial court file No. 110-02, folios 275-277. Appendices to the petitioners' communication of July 13, 2007. The investigative procedures of the National Police in which they mention a third person are: Model application for movement of persons valid for codes A, J, Q, and S, National Police, Ministry of the Interior, National Archive, April 10, 2002. Trial court file No. 110-02, folio 15. Appendix to the petitioners' communication of July 13, 2007. Furthermore, the respective courts refer to in their own writings to the participation of a third person in Mr. García Valle's murder. Appendix 163. Interlocutory judgment, District Civil and Criminal Court of Bluefields, by operation of law, January 24, 2003. Trial court file No. 110-02, folios 319-323. Appendix to the petitioners' communication of July 13, 2007. Furthermore, the respective courts refer in their own writings to the participation of a third person in Mr. García Valle's murder. Appendix 163. Interlocutory judgment, District Civil and Criminal Court of Bluefields, by operation of law, January 24, 2003. Trial court file No. 110-02, folios 319-323.

¹⁹⁸ Those witnesses saw the three individuals who rented the house from María Luisa Acosta and abandoned it after Mr. García Valle's murder. Appendix 40. Witness statement by María Esther Castrillo Chavarría, National Police Criminal Investigations, April 9, 2002. Trial court file No. 110-02, folio 12. Appendix 41. Witness statement by María Elena Castrillo Chavarría, April 16, 2002. Trial court file No. 110-02, folio 50. Appendix 61. Witness statement by Natalia Isabel Omier Hulse, National Police Criminal Investigations, April 9, 2002. Trial court file No. 110-02, folio 13. Appendix 32. Witness statement by Natalia Omeir Hulse, April 16, 2002. Trial court file No. 110-02, folios 53 and 54. Appendix 69. Witness statement by Miguel Antonio López Balladares before the Bluefields District Criminal Court Judge, Thursday, April 18, 2002. Trial court file No. 110-02, folios 71 and 72. Appendix 37. Witness statement by Eddy Lira Miles (neighbor), National Police Criminal Investigations, April 12, 2002. Trial court file No. 110-02, folio 14. Appendix 68. Witness statement by Eddy Eduardo Lira Miles, Bluefields District Criminal Court Judge, April 17, 2002. Trial court file No. 110-02, folio 64. Appendices to the petitioners' communication of July 13, 2007.

¹⁹⁹Appendix 31. Photographic evidence, National Police, Atlántico Sur Autonomous Region, April 8, 2002. Trial court file No. 110-02, folio 37. Appendix to the petitioners' communication of July 13, 2007.

101. The Commission notes with regard to the line of inquiry regarding the possible participation of Charles Presida as a possible perpetrator of the crime—who, it is alleged, got the other two perpetrators of Mr. García Acosta's murder out of the city of Bluefields—that according to the record the only step taken by the authorities was to take his statement in the preliminary investigation. In that statement, Charles Presida said that on the day of the murder he was in Bluefields with two other persons.²⁰⁰ There is nothing in the record to show that this was investigated. Nor does the record indicate that Charles Presida's photograph was shown to the witnesses who had seen the three individuals who rented the ground floor of María Luisa Acosta's house and who would have been able to say whether or not Mr. Presida was the third person mentioned since the start of the investigation. Furthermore, when Wilberth Ochoa, the second perpetrator, gave his statement he was not questioned about Charles Presida's possible participation either. In short, there is no record of any additional investigative measure being taken to pursue and exhaust that line of inquiry in a meaningful way. On the contrary, as was described, it was simply discarded when the man questioned about his possible participation denied it, with no follow-up of any kind.

102. Based on the foregoing in this section, the Commission considers that these serious omissions, despite all the evidence that emerged in the investigation, further abetted the alleged instigators, which, in the Commission's opinion, goes beyond a breach of the duty to investigate with due diligence. Furthermore, the Commission concludes that the State also failed in that duty with respect to the search for, identification, and punishment, as appropriate, of the third perpetrator of Mr. García Valle's murder, in spite of the fact that the existence of a third perpetrator emerged from the outset and there were multiple investigative steps to complete, which were not carried out. The foregoing sends a message of tolerance of potential situations of use of violence as a mechanism of retaliation and intimidation against the work of human rights defenders.

2. Barriers to justice

103. The Commission notes that another aspect that highlights the lack of a meaningful probe to establish the identity of the instigators in this case is what happened with regard to the denial of the appeal against the definitive dismissal of Peter Tsokos and Peter Martínez. As the established facts show, that appeal was refused because Mrs. Acosta's representative did not supply the court with the paper to issue the relevant copies, in accordance with Article 471 of the Code of Civil Procedure.

104. In that regard, the Inter-American Court has held that “the procedural system is a means of attaining justice and ... the latter cannot be sacrificed for the sake of mere formalities.”²⁰¹ This Court has also found that a pointless formality arises “when it is shown that remedies are denied for trivial reasons or without an examination of the merits, ... the effect of which is to impede certain persons from invoking internal remedies that would normally be available to others.”²⁰² While states “may and should establish admissibility principles and criteria for domestic recourses,” those principles should ensure “legal certainty, for the proper and functional administration of justice and the effective protection of human rights.”²⁰³

105. The Commission considers that to give priority to economic aspects over access to justice for those seeking protection for their rights finds no justification in legal certainty or in the proper and functional administration of justice; rather, it constitutes a requirement that places additional burdens on those seeking

²⁰⁰Appendix 70. Signed statement by Charles Jeremiah Presida, under preliminary investigation, before the Bluefields District Criminal Court Judge, April 18, 2002. Trial court file No. 110-02, folios 83 and 84. Appendices to the petitioners' communication of July 13, 2007.

²⁰¹I/A Court H.R., Case of Castillo Petruzzi et al. Judgment of May 30, 1999. Series C No. 52, par. 61; I/A Court H.R., *Cayara Case*, Preliminary Objections, Judgment of February 3, 1993. Series C No. 14, par. 42. Similarly, see I/A Court H.R., *The “Panel Blanca” Case (Paniagua Morales et al.)*. Judgment of March 8, 1998, Series C No. 37, par. 70.

²⁰²I/A Court H.R., *Godínez Cruz Case v. Honduras, Merits* Judgment of January 20, 1989. Series C No. 5, par. 71.

²⁰³I/A Court H.R., 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. pars. 126 and 127.

access justice. As the Inter-American Court has stated, “any domestic law or measure that imposes costs or in any other way obstructs individuals’ access to the courts and that is not warranted by what is reasonably needed for the administration of justice must be regarded as contrary to Article 8(1) of the Convention.”²⁰⁴

106. Having said that, quite apart from the fact that the supply of paper for making photocopies is, *per se*, an excessive requirement for accessing justice, the Commission finds that in this case, the failure to provide paper was not even applicable as a cause of inadmissibility since the appellant did not refuse to cover the expenses of the referral of the proceeding.²⁰⁵ On the contrary, as was established in the section on facts, Mrs. Acosta’s representative expressed an interest in complying with that requirement and, on May 22, 2002, presented the money for the photocopying expenses to the secretary of the court, but the money was not taken. Furthermore, in his brief lodging the interlocutory appeal [*recurso de reforma*] of May 22, 2002, María Luisa Acosta’s representative requested that “when the time came for admitting the appeal [he] be permitted to deposit the necessary amount in local currency to photocopy the entire record.”²⁰⁶

107. In this connection, the IACHR also notes that both the Assistant Prosecutor of the RAAS and the Assistant Prosecutor in Managua spoke out against the denial of the appeal in question. The former said that the rejection of the appeal “flew in the face of all legal logic,”²⁰⁷ while the latter said that the appeal had been wrongly denied and that the decision confirmed the errors in the proceeding connected with the investigation into the murder of Mr. García Valle.²⁰⁸

108. In this regard, the IACHR finds that by rejecting the appeal against the acquittal of the alleged instigators based on an unreasonable formality, and by having prevented Mrs. Acosta’s representative from meeting said formality, the State stopped a proceeding aimed at establishing the identities of the persons who masterminded the murder of Mister García Valle from continuing.

3. The right to have Francisco García Valle’s murder investigated within a reasonable time

109. Article 8(1) of the Convention establishes as one of the elements of a fair trial that tribunals reach a decision on cases submitted for their consideration within a reasonable time. In that regard, a prolonged delay may constitute, in itself, a violation of the right to a fair trial,²⁰⁹ and that, therefore, it is for the State to explain and prove why it has required more time than would be reasonable to deliver final judgment in a specific case.²¹⁰ In that connection, reasonableness of time must be analyzed with regard to the

²⁰⁴ I/A Court H.R., *Cantos Case v. Argentina*. Merits, Reparations and Costs. Judgment of November 28, 2002. Series C No. 97, par. 50.

²⁰⁵ In that regard, Article 471 of the Code Of Civil Procedure stipulates that an appeal shall be declared void when the appellant refuses to cover the expenses of the referral of the proceeding. In addition, Article 2045 of that code provides that judges have the power to order the secretary to require the parties to provide the necessary paper to make copies of the record and to impose a fine on any who refuses to provide it. The same provision states that if the appellant does not supply the paper by the third day after the fine is imposed, the judge may set aside the appeal.

²⁰⁶ Appendix 99. Interlocutory appeal filed by the representative of Mrs. Acosta with the District Criminal Court of Bluefields, May 22, 2002. Trial court file No. 110-02, folio 202. Appendix to the petitioners’ communication of July 13, 2007.

²⁰⁷ Appendix 100. Second hearing writ [*Escrito de segundas vistas*] to the District Civil and Criminal Court. of the In. of Bluefields, December 24, 2002. Trial court file No. 110-02, folios 268-270. Appendix to the petitioners’ communication of July 13, 2007.

²⁰⁸ Appendix 134. Response of the Assistant Prosecutor in Managua to the grievances raised by the applicant in the appeal for annulment. Case file No. 2019-2004 of the appeal for annulment to the Supreme Court of Justice, folios 80-86. Appendix to the petitioners’ communication of July 13, 2007.

²⁰⁹ IACHR, Report No. 56/12, Merits (*Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al.*), Guatemala, March 21, 2012, par. 148; I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, par. 166; I/A Court H.R., *Case of Gómez Palomino v. Peru*. Judgment of November 22, 2005. Series C No. 136, par. 85; and I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, par. 160.

²¹⁰ IACHR, Report No. 56/12, Merits (*Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al.*), Guatemala, March 21, 2012, par. 148; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, par. 142.

total duration of the criminal process.²¹¹ Under the terms of Article 8(1) of the Convention, the Commission will consider, in light of the specific circumstances of the case, the three elements that it consistently takes into account in keeping with its case-law: (a) the complexity of the case; (b) the conduct of the judicial authorities; and (c) the procedural activity of the interested party²¹². The Commission considers that the fourth element established in the case law of the inter-American system is not essential to the analysis in this case.

110. In this case, the investigation began on April 8, 2002, and concluded on December 22, 2006, when a decision was issued on the cassation appeal (*casación*) lodged by Mrs. Acosta. Therefore, the investigation and criminal proceeding lasted four years and eight months.

111. As regards the first element, the Commission notes that there were no complexities in this case and that the State, for its part, did not make submissions or offer evidence along those lines. Indeed, this is not a case in which there were multiple victims, the circumstances of the murder were not particularly complex and, on the contrary, each of the possible perpetrators and instigators was singled out and there were witnesses.

112. As to the conduct of the authorities, the Commission finds that there were delays that were not warranted according to the specific procedural time limits. Thus, for example, with regard to the cassation appeal (*casación*) against the judgment lodged with the Criminal Division of the Supreme Court of Justice, the Commission sees that the appeal was presented by Mrs. Acosta's representative on December 27, 2004, and, in spite of the fact that the processing was encompassed by a procedural stage in which no evidence was being gathered, it took two years for the Criminal Division of the Supreme Court of Justice to turn down the appeal. The Commission also notes that the authorities delayed in conducting procedures that would have helped to clarify the facts in this case and that those procedures directly concerned Mr. Tsokos' part in Mr. García Valle's murder. In that regard, it took the police more than five months after receiving the bullet from the Alternate Forensic Scientist to provide the District Criminal Court with the ballistic report that determined that the bullet had been discharged from a firearm owned by Peter Tsokos.

113. However, quite apart from the specific delays that occurred in the collection of evidence and the various appeals, the Commission notes on this point the ommissive attitude of the state authorities in following up on circumstantial evidence concerning the identities of the instigators and in opening and pursuing lines of inquiry in that regard. That omission—which the Commission has already found to be a form of abetment (*encubrimiento*)—has gone on for more than a decade without any justification. The same is true of the delays in taking steps to identify the third perpetrator. On this point it is worth mentioning the delay and contempt (*desacato*) committed by the Committee for Disciplinary Matters and the Supreme Court of Justice in responding to the complaints presented by Mrs. Acosta and toward the recommendations made by the PDDH.

114. With regard to the third element, there is nothing in the record to suggest that the delays could be attributed to Mr. García Valle's family. On the contrary, in spite of the fact that the State had an *officio* obligation to move the investigation forward in this case, the Commission notes that Mr. García Valle's family adopted an active position from the start of the process by bringing the information in their possession to the attention of the authorities—when they were permitted to do so. They also attempted a number of

²¹¹IACHR, Report No. 56/12, Merits (*Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al.*), Guatemala, March 21, 2012, par. 148; I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, par. 129; I/A Court H.R., *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, par. 104; and I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, par. 168.

²¹²IACHR, Report No. 56/12, Merits (*Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al.*), Guatemala, March 21, 2012, par. 148; IACHR, Report No. 77/02, Merits, *Waldemar Gerónimo Pinheiro y José Víctor dos Santos* (Case 11.506), December 27, 2002, par. 76. See also I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, par. 132; I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, par. 166.

appeals and motions on incidental matters in the proceedings, in addition to disciplinary remedies, with the aim of moving the process forward.

115. In sum, the Commission considers that there were several unwarranted delays during the investigation and criminal proceeding, particularly in disposing of the a cassation appeal (*casación*), which amounted to a violation of the reasonable-time guarantee

4. Conclusion

116. Based on the foregoing, the Commission concludes that, in spite of the fact that at the time of this writing two people have been convicted for the crime, the domestic authorities did not act with due diligence in terms of a thoroughgoing investigation of the perpetrators of the deeds or in investigating the motive for Mr. García Valle's murder and its instigators, the latter being key elements in the clarification of crimes such as the one in this case, particularly when it may have concerned an act of reprisal and intimidation in response to work in defense of human rights. The Commission also concludes that Mr. García Valle's family was not afforded a simple and effective recourse against the dismissal of the alleged instigators and that the State has infringed the reasonable-time guarantee. Consequently, the Commission concludes that the State's violated the rights to a fair trial and judicial protection envisaged in Articles 8(1) and 25(1) of the American Convention, in connection with Article 1(1) thereof, to the detriment of María Luisa Acosta, Ana María Vergara Acosta, Álvaro Arístides Vergara Acosta, Leonor del Carmen Valle de García, and Rodolfo García Solari.

B. Right to a Fair Trial and Judicial Protection (Articles 8(1) and 25(1) of the American Convention in connection with Article 5 thereof), with respect to the proceedings instituted against Mrs. Acosta

117. As the established facts show, three proceedings—two of them of a criminal nature—were instituted against Mrs. Acosta: (a) the criminal investigation for alleged abetment (*encubrimiento*) in the investigation of Mr. García Valle murder; (b) the criminal investigation for the crimes of "false testimony and false accusation"; and (c) the civil suit for damages. The Commission will analyze below if in the context of the proceedings brought against Mrs. Acosta violations occurred of Articles 5, 8, and 25 of the American Convention. The Commission will examine each of these proceedings individually before pronouncing on the petitioners' submission that they constituted a means to harass or intimidate Mrs. Acosta for her activities as a human rights defender.

1. The criminal investigation for alleged abetment in the investigation of Mr. García Valle murder

118. The Commission recalls that this proceeding was initiated based on claims made by Mr. Martínez in his statement in the preliminary proceeding. According to those claims Mrs. Acosta had withheld information about the identity or location of one of the individuals alleged to have killed her husband. In spite of the fact that it may be clearly deduced from Mrs. Acosta's statement that such a claim was untrue, the District Criminal Court ordered that she be investigated. The Commission would like to note that the lack of grounds for opening that investigation was confirmed by several investigative officials. In particular, the Assistant Prosecutor in Managua said that Mrs. Acosta was being investigated in order to frighten her,²¹³ while the Assistant Prosecutor in the RAAS said that her change of status from aggrieved party to suspect was "highly irregular" and "a juridical absurdity."²¹⁴

²¹³Appendix 134. Response of the Assistant Prosecutor in Managua to the grievances raised by the applicant in the appeal for annulment, File 2019-2004, Appeal for Annulment to the Supreme Court of Justice. Trial court file No. 110-02, folios 80-86. Appendix to the petitioners' communication of July 13, 2007.

²¹⁴Appendix 100. Second hearing writ [Escrito de segundas vistas] to the District Civil and Criminal Court. of the In. of Bluefields, December 24, 2002. Trial court file No. 110-02, folios 268-270. Appendix to the petitioners' communication of July 13, 2007.

119. As regards the right to be assisted by legal counsel, recognized in Article 8(2) of the American Convention, the Commission notes that owing to the fact that the power of attorney by which Mrs. Acosta's legal representative requested leave to intervene on her behalf in the proceeding as a person under investigation and brought an accusation against Iván Argüello was "very broad" and not "extraordinary," the judge presiding in the case refused to admit that accusation. Furthermore, the record shows that in its order the court did not address the legal representative's request to intervene in the criminal proceeding as Mrs. Acosta's counsel or appoint a public defender for her. The Commission finds that this action contrasts with the measures adopted with respect to other suspects in the same case, particularly Mr. Presida, who was appointed a public defender,²¹⁵ and Mr. Argüello, who was appointed such a defender when his counsel had health problems.²¹⁶ It was not until the day of the dismissal that Mrs. Acosta's representative was granted leave to intervene in the proceedings.²¹⁷

120. In addition to the lack of counsel between the opening of the investigation for alleged abetment and the acquittal, the Commission notes that, despite the fact that Mrs. Acosta had to leave the city for Chinandega for security reasons after her husband's murder, the court refused to allow her to give her statement in that investigation from her location, where she had gone, as mentioned, for security reasons. Thus, even though the judge was aware of the possible danger to María Luisa Acosta in the city of Bluefields, he dismissed that request "in the interest of ensuring that the other parties in the proceeding [had] a genuine opportunity to exercise their rights,"²¹⁸ and he ordered the forces of public order to bring María Luisa Acosta to his court in Bluefields.²¹⁹ The Commission considers that this situation, coupled with the absence of defense counsel in the terms described, constituted an abridgment of Mrs. Acosta's right to defend herself.

121. The Commission also notes that, in spite of the fact that Mr. Tsokos used expressions that Mrs. Acosta found disrespectful and offensive, such as that her pointing the finger at him "flirted with the desperation and stupidity of someone who had lost her mind," nothing was done to ensure that said person did not violate the obligations that the parties were required to satisfy under the Organic Law of the Judiciary, specifically, the duty to behave with "respect" and "probity."

122. The Commission highlights that although all these aspects were raised by Mrs. Acosta in the five disciplinary complaints that she presented to the Committee for Disciplinary Matters of the Supreme Court of Justice, the latter ignored those allegations. The Commission notes that the PDDH itself found that the omission to respond to any of those complaints "violat[e] Mrs. María Luisa Acosta's right of access to prompt justice by reason of the delay thereof..." As the established facts show, despite the fact that the Supreme Court of Justice was recommended to respond to Mrs. Acosta's complaints about behavior of the judicial authorities in the proceedings against her, the Supreme Court did not implement those recommendations, which led the PDDH declare that it was guilty of contempt (*desacato*).²²⁰

123. Based on the foregoing, the Commission concludes that the State violated Mrs. María Luisa Acosta's right to defend herself. Furthermore, the Commission finds that when analyzed together, (i) the opening of this investigation into Mrs. Acosta based exclusively on the claims of the possible instigators that

²¹⁵Appendix 164. Order, Bluefields District Criminal Court, June 3, 2002 Trial court file No. 110-02, folio 75. Appendix to the petitioners' communication of July 13, 2007.

²¹⁶Appendix 165. Judicial notice issued by the Bluefields District Criminal Court, December 12, 2002 Trial court file No. 110-02, folio 264. Appendix to the petitioners' communication of July 13, 2007.

²¹⁷Appendix 89. Order issued by the Bluefields District Criminal Court, May 13, 2002 Trial court file No. 110-02, folio 181. Appendix to the petitioners' communication of July 13, 2007.

²¹⁸Appendix 81. Order issued by the Bluefields District Criminal Court, April 25, 2002 Trial court file No. 110-02, folio 139. Appendix to the petitioners' communication of July 13, 2007.

²¹⁹Appendix 82. Order issued by the Bluefields District Criminal Court, April 26, 2002 Trial court file, folio 148. Appendix to the petitioners' communication of July 13, 2007.

²²⁰Appendix 159. Final Follow-Up Report, Case File No. 154-2003, State Attorney for the Defense of Human Rights, June 10, 2004. Appendix to the petitioners' communication of July 13, 2007.

she was accusing, despite the fact that those claims were out of step with reality, as the case file before the respective authority showed; (ii) the imposition of obstacles preventing Mrs. Acosta from participating properly in this proceeding; and (iii) the complete lack of a response to the disciplinary complaints about the behavior of the judicial authorities, lead to the conclusion that the investigation was a mechanism to harass and intimidate Mrs. Acosta because of the charge that the motive for her husband's murder had to do with her work as a defender of human rights. This conclusion is further strengthened when one contrasts the opening of this completely baseless investigation with the above-described omission to carry out a meaningful and diligent investigation into the alleged instigators, in spite of the existence of relevant circumstantial evidence of their possible responsibility.

2. The criminal investigation for the crimes of "false testimony and false accusation" and the civil suit for damages

124. As regards the two other proceedings initiated against María Luisa Acosta, the Commission recalls that two days after the definitive dismissal of the alleged instigators of Mr. García Valle's murder, the Bluefields District Civil Court ordered the attachment of the house of María Luisa Acosta and her husband. That attachment was ordered at the request of Messrs. Tsokos and Martinez who claimed that Mrs. Acosta "owed them money." The attachment was subsequently maintained in the suit for damages brought against Maria Luisa Acosta for the "unfounded" charges that she had made against the complainants.

125. The Commission also finds that on October 18, 2002, another criminal proceeding was instituted as a result of the complaint filed by Mrs. Tsokos and Martinez against Mrs. Acosta for the alleged crimes of "false testimony and false accusation." In her answer to the suit Mrs. Acosta said the following:

This action [was] clearly a patent abuse of rights and constitutes fraud; the intention of the complainants is[...] to continue using criminal action and the judicial system as a means of harassment and coercion to make me desist from bringing my husband's murderous to trial.²²¹

126. The Commission recalls that, Article 8 of the American Convention gives every person subject to a judicial proceeding the right to a hearing by a competent judge or court, with due guarantees and within a reasonable time.²²² Bearing in mind the considerations for analyzing reasonableness of time described hereinabove, the Commission finds that neither of the additional proceedings instituted against Mrs. Acosta was complex. As was described, both the civil suit for damages and the criminal proceeding for false accusation and false testimony were based on the claims made by Mrs. Tsokos and Martinez, which, in turn, were based on the charges that Mrs. Acosta made against them. Therefore, in the framework of these two proceedings, it was incumbent upon the domestic authorities to determine if Mrs. Acosta's accusation was a legitimate exercise of her rights in seeking justice for her husband's murder, or if it was cause for punishment in civil or criminal proceedings. With regard to the second element of analysis, the information available offers no justification as to why it took the judicial authorities more than two years to reach this determination.

127. On the contrary, the Commission sees unwarranted delays in simple procedures, particularly in response to the requests made by Mrs. Acosta. Thus, for example, in the civil suit the court took almost 8 months to admit the motion in which Mrs. Acosta's attorney requested that the attachment be lifted.²²³ That was in spite of the fact that in several briefs submitted by Mrs. Acosta's attorney the court was

²²¹ Appendix 149. Answer to the suit filed by Mrs. Acosta's representative, August 14, 2003, File No. 298-02, Bluefields District Civil and Criminal Court (Offense: False testimony and false accusation), folios 40-43. Appendix to the petitioners' communication of July 13, 2007.

²²² IACHR, Application to the Inter-American Court of Human Rights, Case 11.219 (Nicholas Chapman Blake), August 3, 1995, p. 32.

²²³ Appendix 140. Incidental motion for permanent annulment filed by Mrs. Acosta's legal representative, June 26, 2002, folios 18-21, File 35-02, Bluefields District Civil Court (Attachment / damages).

requested to issue its ruling promptly because of the harm that the attachment was causing. This behavior contrasts with the 20 days that the same judicial authority took to admit the appeal presented by Peter Martinez against the admission of the incidental motion to annul entered by Mrs. Acosta.²²⁴ There is nothing in the record to show that Mrs. Acosta obstructed the progress of these proceedings or was in any way responsible for the delay in their resolution. On the contrary, her reiterated requests for them to be disposed of promptly are on record.

128. The IACHR has established that unjustified prosecutions of human rights defenders entail psychological and financial burdens, which harass and frighten them and diminish their work. These burdens are aggravated by the unreasonable prolongation of the criminal processes.²²⁵ With respect to judicial proceedings of this type the Commission had held that a timely judicial decision contributes to the public and complete disclosure of truth, making it less likely for defenders subject to proceedings to be stigmatized by the proceedings, and also making it less likely that the community of human rights defenders will be hampered from continuing to report human rights violations.²²⁶

129. The Commission concludes that the State of Nicaragua committed a violation of the reasonable-time guarantee in the context of the two proceedings analyzed in this section. Furthermore, the Commission considers that in light of the grounds on which these proceedings were initiated, coupled with the failure to adopt decisions in a timely manner and the above-described context in which the judicial authorities deliberately omitted to investigate the allegations that the persons who instituted the proceedings against Mrs. Acosta were the alleged instigators, these proceedings, like the one brought for abetment examined in the preceding section, were mechanisms for her intimidation and harassment in reprisal for her quest for justice for her husband's murder.

3. Conclusion

130. Based on the foregoing, the Commission concludes that the State of Nicaragua violated Mrs. María Luisa Acosta's right to a hearing in a reasonable time and the right to defend herself recognized in Articles 8(1) and 8(2) of the American Convention. In addition, the Commission concludes, based on the ineffectiveness of the remedies invoked to seek protection against such violations, that the State also violated her right to judicial protection recognized at Article 25 of the Convention, all in connection with the obligations enshrined in Article 1.1 thereof.

131. Finally, the Commission deems it appropriate to recall that criminalization affects defenders both individually and collectively. The IACHR has noted that for a human rights defender personally, it can cause anguish, insecurity, frustration, and a feeling of powerlessness before State authorities, as well as unexpected economic burdens and damage to the defender's reputation and credibility. The IACHR has also

²²⁴Appendix 145. Order, Court of Appeals in Bluefields, Civil Division, March 25, 2003. Case file No. 06-2003 Court of Appeals in Bluefields, Civil Division, folio 6. Appendix to the petitioners' communication of July 13, 2007.

²²⁵In this regard, it is important to mention that the IACHR referred to criminal proceedings in its "Second Report on the Situation of Human Rights Defenders in the Americas"; however, bearing in mind the consistent case law of the inter-American system, the application of Article 8 of the American Convention (fair trial) is not limited to judicial remedies in a strict sense, "but [to] all the requirements that must be observed in the procedural stages," (This translator's version of the quotation.) in order for all persons to be able to defend their rights adequately vis-à-vis any type of State action that could affect them. That is to say that the due process of law must be respected in any act or omission on the part of the State bodies in a proceeding, whether of a punitive administrative, or of a judicial nature. I/A Court H.R., Baena Ricardo et al. Case v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, par. 124. Cf. I/A Court HR., Case of the Constitutional Court, Judgment of January 31, 2001. Series C No. 71, para. 49, par. 69; and Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, par. 27. See also IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, par. 109. Available at <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>

²²⁶IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, par. 111. Available at <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>

said that criminalization stigmatizes human rights defenders collectively and sends an intimidating message to anyone who intended to denounce or had already denounced human rights violations.²²⁷

132. Therefore, the IACHR considers that initiation of baseless criminal cases against a defender can lead to a violation of the right to personal integrity when the harassment caused by bringing criminal actions affects the normal development of daily life and causes great tumult and perturbation to the person subject to legal proceedings and to his family,²²⁸ the severity of which is verified by the person's uncertainty about his future.²²⁹

133. Taking into account its conclusions regarding the way in which the two criminal proceedings and the civil suit were instituted and pursued as mechanisms for intimidation and harassment against Mrs. Acosta's work in defense of human rights as well as her search for justice for her husband's murder, the Commission also concludes that the State violated her right to respect for her mental and moral integrity recognized in Article 5 of the American Convention, in connection with the obligations contained in Article 1(1) of that instrument.

C. Right to humane treatment (Article 5(1) of the American Convention) in connection with Article 1(1) with respect to María Luisa Acosta and other of Mr. Garcia Valle's relatives

134. Article 5(1) of the American Convention, "Every person has the right to have his physical, mental, and moral integrity respected." The Inter-American Court has indicated that the next-of-kin of victims of certain human rights violations may, in turn, become victims.²³⁰ Specifically, the Court found that the right to mental and moral integrity of the next of kin of victims [may be] violated based on the ... particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts.²³¹

135. The Commission has already concluded in this report that a thorough and effective investigation of the facts was not conducted. In this regard, the Court has held:

The absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.²³²

²²⁷IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, par. 78. On the harm that being subjected to an unfounded criminal proceeding causes to a defender, see IACHR *Hearing on Criminalization of Human Rights Defenders*, 140th regular session, October 26, 2010.

²²⁸IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, par. 120. Available at <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf> IACHR, Report on Merits No. 43/96, Case 11.430, José Francisco Gallardo (Mexico), October 15, 1996, par. 79.

²²⁹IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, par. 120. Available at <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf> IACHR, Report on Merits No. 43/96, Case 11.430, José Francisco Gallardo (Mexico), October 15, 1996, par. 79.

²³⁰I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 112; I/A Court H.R., *Case of Bueno-Alves*. Judgment of May 11, 2007. Series C No. 164, par. 102.

²³¹I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 112; I/A Court H.R., *Case of Vargas-Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, par. 96.

²³²I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par. 102. Cf. I/A Court H.R., *Case of the Rochela Massacre v. Colombia*, Judgment of May 11, 2007. Series C No. 163, par. 195; I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*. Judgment of July 29, 1988, Series C No. 4, par. 181; I/A Court H.R., *Case of*

[continues ...]

136. Based on the foregoing, the Commission considers that the loss of a loved one in circumstances such as those described in this case, as well as the lack of a thorough and effective investigation which in turn causes pain and anguish if the truth is not revealed, in themselves constitute harm to the mental and moral integrity of the members of García Valle's family.

137. Furthermore, based on available information from the petitioners and not contested by the state, the IACHR notes that the following relatives of Mr. Garcia by have suffered "profound moral pain": Mrs. María Luisa Acosta; her children, María Álvaro Arístides Vergara Acosta; Mr. García Valle's mother, Mrs. Leonor del Carmen Valle de García, and his father, Mr. Rodolfo García Solari. In particular, the petitioners say that the loss of Francisco García Valle has led to poor academic performance in his children caused by an inability to concentrate and despondency; a serious decline in the health of his parents; and generalized depression in María Luisa Acosta.²³³

138. The Commission also notes that as a result of Mr. García Valle's murder, fearing for their lives, María Luisa Acosta and her children left the city where they were living and moved to the city of Chinandega.²³⁴ The change of residence—according to the petitioners and not challenged by the State—also demanded a hefty financial investment and the closure of family businesses that were the mainstay of the family's financial income.

139. In light of the foregoing, especially the anxiety that the relatives of Mr. Garcia Valle have endured in their search for justice for his murder, as well as the profound suffering and radical changes in their lives brought about by all of the above-described circumstances, the Commission concludes that the State violated the right of María Luisa Acosta and the aforementioned family members to respect for their mental and moral integrity recognized in Article 5(1) of the American Convention, in conjunction with the obligations set forth in Article 1(1) thereof.

V. CONCLUSIONS

140. Based on the determinations as to fact and law contained in this report, the Commission concludes that the State of Nicaragua is responsible for violation of the rights to a fair trial, judicial protection, and respect for one's mental and moral integrity envisaged in Articles 8(1), 25, and 5(1) of the American Convention, in connection with the obligations enshrined in Article 1(1) thereof, to the detriment of María Luisa Acosta, Ana María Vergara Acosta, Álvaro Arístides Vergara Acosta, Leonor del Carmen Valle de García, and Rodolfo García Solari. The IACHR further concludes that the State violated María Luisa Acosta's rights to humane treatment, a fair trial, and judicial protection established in Articles 5, 8(1), 8(2), and 25 the American Convention, in connection with the obligations enshrined in Article 1(1) thereof.

[... continuation]

Heliodoro-Portugal v. Panama. Judgment of August 12, 2008. Series C No. 186, par. 146; I/A Court H.R., *Case of García-Prieto et al. v. El Salvador*. Judgment of November 20, 2007, Series C, No. 168, par. 102.

²³³Observations of the petitioners on merits, September 19, 2011.

²³⁴In the petition, the petitioners say, in particular, that "María Luisa Acosta had to change her address and go and live at her father's house in Chinandega. As a result, her immediate surroundings changed. She was forced to leave behind her friends, family and work in order to look for somewhere safer." Initial petition of June 20, 2007. The assistant prosecutor also expressed her opinion on this point. Appendix 57. Writ of the Assistant Prosecutor, April 24, 2002. Trial court file No. 110-02, folio 132. Appendix to the petitioners' communication of July 13, 2007.

VI. RECOMMENDATIONS

141. Based on the foregoing conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF NICARAGUA:

1. Provide full reparation for the human rights violations found in the instant report, including both material and moral dimensions.

2. Conduct and complete a full, effective, impartial judicial investigation in a prompt manner in order to clarify the circumstances of Francisco García Valle's death, investigate thoroughly logical lines of investigation as to the perpetrators and instigators of the murder, identify all those who participated in the different decision-making levels and execution, and, as applicable, impose the appropriate penalties.

3. Impose appropriate administrative, disciplinary or criminal penalties for the acts or omissions of state officials that contributed to the abetment and the attendant denial of justice and partial impunity of the deeds in the case.

4. Adopt measures of a legislative, institutional or judicial character aimed at reducing the exposure to risk of human rights defenders in a vulnerable situation. In that connection the State should:

4.1 Strengthen the institutional capacity to combat the pattern of impunity surrounding cases of threats and murders of human rights defenders, by designing investigative protocols that, taking into account the risks attendant upon the work of those who defend human rights, particularly the right to a health environment, lead to punishment of those responsible and adequate reparation for victims. In addition, the State should ensure that when public officials are implicated in investigations of human rights violations those investigations are effective and independent.

4.2 Strengthen mechanisms to provide effective protection to any witnesses, victims, and family members who might be at risk as a result of their links to the investigations.

4.3 Develop swift and adequate institutional response measures which allow effective protection for human rights defenders in situations of risk.

4.4 Adopt legislative, institutional, and judicial measures to prevent the misuse of civil and criminal proceedings as mechanisms for intimidation and harassment of human rights defenders.

Done and signed in the city of Washington, D.C., on the 26 day of the month of March, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; José de Jesús Orozco Henríquez, Second Vice President, Felipe González and Tracy Robinson, Commissioners.