

REPORT No. 46/16
CASE 11.388
REPORT ON ADMISSIBILITY AND MERITS
MARÍA EUGENIA VILLASEÑOR AND FAMILY
GUATEMALA
NOVEMBER 29, 2016

I. SUMMARY

1. On September 22, 1994, the Inter-American Commission on Human Rights (hereinafter the "Commission," the "Inter-American Commission," or the "IACHR") received a petition lodged by the Human Rights Office of the Archdiocese of Guatemala¹ (hereinafter "the petitioners"), which claimed that the Republic of Guatemala (hereinafter the "State," the "Guatemalan State," or Guatemala) bore international responsibility for alleged threatening and intimidating acts against María Eugenia Villaseñor in the course of that year because of her status as a judge, as well as for failing to investigate those acts and to identify and punish those responsible. The petition was presented months after the Commission granted precautionary measures in relation to the alleged situation. With respect to admissibility requirements, they invoked the unwarranted delay exception established in Article 46.2.c of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

2. For its part, the Guatemalan State argued that the petition was inadmissible because the investigations into the alleged acts were ongoing. As to merits, it maintained that it had not been demonstrated that state agents had a hand in the threats against Mrs. Villaseñor. It pointed out that since 1996 it had adopted security measures to protect Mrs. Villaseñor and her family. In particular, it had ordered security personnel to protect their home.

3. After analyzing the information available, the Commission determined that the admissibility requirements set forth in Articles 46 and 47 of the American Convention had been met, and concluded that the State was responsible for violation of the rights to humane treatment (personal integrity), a fair trial (due guarantees), and judicial protection recognized under Article 5.1, 8.1, and 25.1 of the American Convention taken in conjunction with the obligations enshrined in Article 1 (1) of that instrument, to the detriment of the persons named throughout this report. Bearing in mind Mrs. Villaseñor's status as a judge, in respect of all the violations established, the Commission also considered the State's obligations derived from the principle of the independence of the judiciary established in Article 8.1 of the American Convention.

II. PROCEEDINGS BEFORE THE IACHR

A. Processing of the case

4. The Human Rights Office of the Archdiocese of Guatemala presented the initial petition on September 22, 1994. The next day, the IACHR forwarded that communication to the State with a request that it provide information on the alleged acts and on whether domestic remedies had been exhausted. The State submitted its response on September 27, 1994. Between that date and October 2001, the IACHR received written communications from the petitioners and the State, which were duly forwarded to the parties.

5. On December 18, 2002, the Commission informed the State of Guatemala and the petitioners that it had decided to invoke Article 37.3 of its Rules of Procedure then in force and defer its treatment of admissibility until the debate and decision on the merits. Following that decision, the State presented observations in writing on February 28, 2005. In a communication dated June 13, 2013, Mrs. Villaseñor indicated that she would continue defending herself in this case. On May 7, 2014, Mrs. Villaseñor presented

¹ Mrs. Villaseñor subsequently notified the IACHE that she would continue representing herself in the instant case.

her observations on the merits, which were remitted to the Guatemalan State on June 10, 2015, within the regulatory four-month deadline. The State presented its observations on the merits on October 9, 2015. Mrs. Villaseñor presented further communications on June 8 and 28, 2016, which were duly forwarded to the State for its information.

B. Processing of the precautionary measure

6. In a communication dated July 21, 1994, the Human Rights Office of the Archdiocese of Guatemala asked the IACHR to grant precautionary measures on behalf of María Eugenia Villaseñor, Mario Salvador Jiménez, and Héctor Orellana, due to the threats they allegedly received because of their status as judges of the Court of Appeals.

7. On July 25, 1994, the IACHR requested that the Guatemalan State adopt precautionary measures to protect the life and personal integrity of María Eugenia Villaseñor, Mario Salvador Jiménez, and Héctor Orellana. Those precautionary measures were "issued in response to reports that these magistrates have been stalked, threatened, and harassed in recent days, and that such threats are related to judicial proceedings which they are hearing in that Court and which pertain to rights protected by the American Convention on Human Rights."²

8. While the precautionary measures were in effect, the IACHR received written communications from the petitioners and the State, which were duly forwarded to the parties. On July 26, 2013, the IACHR let Mrs. Villaseñor know that it had decided to lift the precautionary measures.

9. In drawing up this report, the Commission took into account the information presented by the parties during precautionary measures procedure. On June 10, 2015, the IACHR sent the State a note indicating that it had decided to include the file relating to processing of the precautionary measures in its analysis of the instant case.

III. POSITION OF THE PARTIES

A. Position of the petitioners

10. The petitioners indicated that the State is responsible for a series of verbal and written death threats, stalking, attempts to enter María Eugenia Villaseñor's home, and other acts placing her at risk. They stated that those acts had begun at the beginning of 1994. They pointed out that those acts were due to Mrs. Villaseñor being a judge, who had heard cases involving senior officers in the Guatemalan army accused of serious crimes against property and human rights violations. They maintained that, although they had denounced the acts in question, the authorities had not shed light on them or identified those responsible. The details about the facts and domestic proceedings will be referred to in the Commission's factual analysis, based on information provided by both parties.

11. With respect to admissibility requirements, the petitioners invoked the unwarranted delay exception established in Article 46.2.c of the American Convention. They argued that, even though the threats to which Mrs. Villaseñor was subjected had been denounced, investigations had not got beyond the initial stage, no light had been shed on the facts of the case, and those responsible had not been identified.

12. As to the merits, they argued that there had been violations of their rights to humane treatment, personal liberty, a fair hearing, privacy, protection of the family, and judicial protection, set forth in Articles 5, 7, 8, 11, 17, and 25 of the American Convention, in conjunction with Article 1.1 of the same instrument.

² IACHR, Press Release N° 16/94 of July 25, 1994.

13. The petitioners pointed out that the harassment of Mrs. Villaseñor due to the functions she performed as a judge constituted a serious threat to her personal integrity. They said that some of those threats had been made by State agents, making the State directly responsible for them. The acts denounced included the theft of her belongings by an unknown man while she was driving, attempts by unidentified persons to break into her vehicle and home, verbal death threats outside her home, an attempt to kidnap her daughter, and death threats over the phone.

14. The petitioners added that, after they had told the authorities about the aforementioned threats, the State delayed before adopting security measures to protect Mrs. Villaseñor. They acknowledged that the State provided policemen to protect Mrs. Villaseñor and her family. They pointed out that, nonetheless, there had been several shortcomings in the provision of that protection in practice. The petitioners singled out irregularities in the way the officers were rotated as well as the lack of financial resources to pay for their meals and/or transportation.

15. The petitioners said that the right to personal liberty of Mrs. Villaseñor and her family had been violated by the State's withdrawal of security measures for them in 2013. They said that the State had taken that decision after the IACHR had suspended precautionary measures. The petitioners claimed that the State had not conducted an assessment of the risk to which the alleged victim was exposed, so that she did not know on what grounds they had withdrawn protection measures.

16. The petitioners argued that all the threats and attacks against Mrs. Villaseñor applied also to her family, thereby violating the right to protection of the family. With respect to the incident that had occurred in 2007 (see below, paragraph 80), they pointed out that the State had violated her right to have her honor respected and her dignity recognized by not investigating the facts.

17. The petitioners further claimed that in March 2004 a local newspaper had published that Mrs. Villaseñor had been declared ineligible by the International Commission against Impunity in Guatemala in connection with her possible candidacy to a position as judge of the Supreme Court of Justice. She maintained that there was no documentary evidence to support that claim. The petitioners added that in August 2005 another local newspaper had published a note stating, without any basis whatsoever, that Mrs. Villaseñor had received money "to favor General Efraín Ríos Montt", by allowing him an alternative to detention. She maintained that those acts insulted her honor and dignity.

18. The petitioners also argued that the State violated Mrs. Villaseñor's and her family's rights to judicial guarantees and judicial protection. They indicated that the remedies offered were neither adequate nor effective for guaranteeing real protection for the alleged victims. They maintained that no steps were taken to identify those responsible for the various acts of violence and threats against the alleged victim and the members of her family. They added that none of the complaints lodged got beyond the initial stage, so that no progress has been made with shedding light on the facts or punishing those responsible.

19. In addition, they maintained that in 2013 Mrs. Villaseñor was improperly dismissed from her position as Supervisor General of Courts (*Supervisora General de Tribunales*). According to the petitioners, Mrs. Villaseñor was notified of that dismissal without a hearing and without her being able to challenge that decision. They added that she had no adequate and effective remedy to question her dismissal. In respect of this last fact, the petitioners alleged violation of the right to work and to just, equitable and satisfactory conditions of work set forth in Articles 6 and 7 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights - "Protocol of San Salvador".

B. Position of the State

20. The State's initial position was that the principle of equality of the parties and of their right to defense was violated during the proceedings before the IACHR. According to the State, "although the Commission indicates that [the] case is at the merits stage, (...) it is not known what proceedings have been carried out." Likewise, the State maintained that the petitioners had not explained in what way the members

of Mrs. Villaseñor's family should be considered victims. it explained that " in no way is it pointed out, expressed, or shown how, directly or indirectly, the other persons regard themselves as affected."

21. As to the admissibility of the petition, the State argued that domestic remedies had not been exhausted since the investigations into the threats received were still ongoing. The Commission takes note of the fact that the State did not present information or documentation regarding the status of the investigations nor the steps undertaken in connection with those investigations.

22. As regards the merits, the State acknowledged Mrs. Villaseñor's career as a public servant. It also acknowledged that she had received threats against her, which may have had to do with the cases she had heard as a judge. However, it maintained that the State was not responsible because the threats were attributed to non-State actors.

23. It pointed out that once Mrs. Villaseñor had lodged a complaint regarding those fact internally -- and as requested by the Commission when it granted precautionary measures in her favor -- the State had taken the necessary steps to provide her with protection. The State pointed out that between August 1994 and 1997, Mrs. Villaseñor had had four National Civilian Police officers for her personal security. The State added that two of them had been withdrawn as of 1997.

24. The State maintained that only in 2013, after almost 19 years of having provided protection measures on Mrs. Villaseñor's behalf, it had withdrawn that protection because the Inter-American Commission decided to suspend precautionary measures on behalf of the alleged victim. The State pointed out that, consequently, it had complied with its function of protecting Mrs. Villaseñor.

25. In addition, the State maintained that when it withdrew the protection measures n Mrs. Villaseñor's behalf, she "was engaged in other professional activities, different from those she had been carrying out when her circumstances were regarded as extremely urgent and serious." It stated that, nevertheless, a risk assessment was conducted, in which it was determined that the alleged victim was at medium risk because "there was no record of acts endangering her life and bodily integrity." The State added that Mrs. Villaseñor had not provided new information regarding facts that violated her rights. It pointed out that, on the contrary, her arguments were based on the same facts that gave rise to the precautionary measure.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. The Commission's competence *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

26. The petitioners have standing under Article 44 of the American Convention to lodge petitions. In addition, María Eugenia Villaseñor and her family were individuals under the jurisdiction of the State of Guatemala at the time of the facts adduced. Therefore, the Commission has *ratione personae* competence to examine the petition. The Commission is competent *ratione loci* to take cognizance of the petition, insofar as it alleges violations of the American Convention that are said to have taken place in the territory of a state party to that treaty.

27. Similarly, the IACHR has *ratione materiae* competence because the petition refers to alleged violations of the American Convention. The Commission is also competent *ratione temporis* to examine the claim as Guatemala has been a state party to the American Convention since May 25, 1978, when it deposited its instrument of ratification. Therefore, the obligation of the State to respect and ensure the rights recognized in the American Convention was in force at the time that the alleged facts are said to have occurred.

28. Pursuant to Article 19.6 of the Protocol of San Salvador, the Commission is competent to examine pleadings regarding alleged violations of rights established in Articles 8 and 13. Accordingly, the

IACHR does not have subject-matter jurisdiction to examine cases regarding alleged violations of rights established in Articles 6 and 7 of the Protocol of San Salvador in connection with an individual petition..

B. Exhaustion of domestic remedies

29. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission pursuant to Article 44 of the same instrument to be admissible, one must have pursued and exhausted domestic remedies in keeping with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve them before they are taken up in an international proceeding.

30. That said, the prior exhaustion rule applies when there are actually available in the national system suitable and effective remedies to repair the alleged violation of human rights. In that regard, Article 46(2) of the Convention specifies that the requirement does not apply when: (i) there is no due process under domestic law to protect the right in question; (ii) the alleged victim did not have access to remedies under domestic law; or (iii) there is an unwarranted delay in the decision under those remedies. The IACHR reiterates its view that analysis of the requirements set forth in Articles 46 and 47 of the American Convention should be conducted in light of the situation given at the time a pronouncement is made regarding the admissibility or inadmissibility of the petition.³

31. The information available indicates that the alleged victim filed a series of complaints regarding the alleged threats and other acts of harassment and that currently the investigations are still at a preliminary stage without a final decision, without light having been shed on the facts, and without identification of those responsible. The Commission recalls that when petitioners invoke one of the exceptions set forth in Article 46 (2) of the Convention, as in this case, it is up to the State to demonstrate that those exceptions do not apply to that specific case.

32. The Commission observes that the Guatemalan State did not submit any justification whatsoever, in accordance with the preliminary assessment standard corresponding to that stage, why the investigations had taken as many as 21 years - since the first pleadings concerning threats and acts of aggression. The Commission stresses that the same applies to the complaints about subsequent deeds, in the sense that investigations are still at a preliminary stage without any specific justification by the State of why they are taking so long.

33. Therefore, without prejudging the merits of the matter, the Commission finds that, *prima facie*, the State is guilty of unwarranted delay and, therefore, the exception recognized in Article 46 (2) (c) of the American Convention applies.

C. Timeliness of the petition

34. Article 46(1)(b) of the Convention establishes that in order for a petition to be declared admissible it must be presented within six months counted from the date on which the petitioner was notified of the final decision that exhausted remedies in the domestic jurisdiction. This rule shall not apply when the Commission finds that one or more of the exceptions to the rule of prior exhaustion of domestic remedies set forth in Article 46(2) of the Convention are applicable. In such cases, the Commission must determine whether the petition was presented within a reasonable time, in accordance with Article 32 of its Rules of Procedure.

35. The Commission concluded that in this case there has been an unwarranted delay, as envisaged at Article 46(2)(c) of the American Convention. The initial petition was presented on September 22, 1994, that is to say, within a reasonable period of time since the first acts alleged by Mrs. Villaseñor

³ IACHR, Report No. 8/15, Petition 1413-04 and others, Admissibility, Gloria Jorge López et al., Peru, par. 303; and Report No. 108/10, Petition 744-98 and others, Admissibility, Orestes Auberto Urriola Gonzáles et al., Peru, August 26, 2010, par. 54.

occurred. The Commission also takes into account in this matter the nature of the allegations and the alleged risks faced by the alleged victim.

D. Duplication of proceedings and international res judicata

36. Article 46(1)(c) provides that the admissibility of petitions is subject to the requirement that the subject “is not pending in another international proceeding for settlement,” while Article 47(d) of the Convention stipulates that the Commission shall not admit a petition that “is substantially the same as one previously studied” by the Commission or by another international organization. In the instant case, the parties have not argued the existence of either of those circumstances, nor can they be deduced from the record.

E. Colorable claim (characterization of the facts alleged)

37. For purposes of admissibility, the Commission must decide whether the petition states facts that tend to establish a violation, as stipulated in Article 47(b) of the American Convention, whether the petition is “manifestly groundless” or whether it is “obviously out of order,” as per Article 47(c). The standard by which to assess these extremes is different from the one needed to decide the merits of a petition. The Commission must perform a *prima facie* evaluation to examine whether the complaint establishes a basis for an apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. Such a review is a summary analysis that does not imply any pre-judging or anticipation of an opinion on the merits.

38. Neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

39. The Commission considers that the petitioners' pleadings points to deeds that could constitute violation of the rights to personal integrity, judicial guarantees and judicial protection established in Articles 5.1, 8.1 and 25.1 of the American Convention, in conjunction with the obligations established in Article 1.1 of the same instrument. Furthermore, bearing in mind the causal relationship alleged by the petitioners between the acts against Mrs. Villaseñor and the performance of her functions as a judge, the Commission will take into account, in respect of all the violations established, the State's obligations derived from the principle of the independence of the judiciary that prove to be relevant in its analysis of the case. At the same time, the IACHR considers that it lacks sufficient information to establish possible violations of the rights to personal liberty, protection of honor and dignity, and protection of the family, set forth in Articles 7, 11, and 17 of the American Convention.

40. Finally, with respect to the press releases published in 2014 and 2015 that are alleged to have been detrimental to Mrs. Villaseñor's honor and dignity, and the arguments relating to her allegedly improper dismissal from her position as Supervisor General of Courts, the Commission does not discern, on the basis of the information submitted, factors that would enable it to relate such recent events with the core subject matter of the instant case.

V. PROVEN FACTS

A. Background on the situation of justice system operators in Guatemala

41. The Inter-American Commission pronounced on the lack of security for judges in Guatemala during the 1990s. In its 1993 report on the human rights situation in Guatemala, it pointed out that judges

who have handed down "exemplary judgments (...) risk their jobs and even their life."⁴ The IACHR maintained that the judiciary in Guatemala "faced numerous internal difficulties and threats from outside" when it came to "achieving due process and punishment of State agents responsible for violations."⁵

42. Subsequently, in its 2001 Report on the Situation of Human Rights in Guatemala, the Commission described the "widespread threats and attacks against judges in order to influence judicial proceedings" as one of the most serious problems for the administration of justice."⁶ It maintained that judges at all levels had complained of threats and security issues."⁷ It added that "the acts of intimidation range from death threats and other threats (...) to harassment, assault, the sending of packages containing bombs, and, in the most extreme cases murder."⁸

43. The Commission concluded that "the severity of this problem is exacerbated and perpetuated by the lack of an effective response by the State."⁹ Accordingly, it explained that that lack of a response by the State "means that the State did not protect the individuals at risk; nor did it investigate where the intimidation was coming from; nor did it try and punish those responsible."¹⁰

44. In its concluding observations on Guatemala in 1996, the United Nations Human Rights Committee had the following to say:

The Committee notes with concern that members of various social sectors, particularly members of the judiciary, lawyers (...) are subject to intimidation, death threats and even murder, thus facing serious obstacles in the legitimate performance of their duties. The Committee deplores that effective measures have not yet been taken to prevent the recurrence of such acts.¹¹

45. That concern was reiterated by the same Committee in its concluding observations on Guatemala in 2001.¹² The Committee added that Guatemala "must adopt all necessary -- prevention and protection -- measures to ensure that members of various social sectors, particularly members of the judiciary, lawyers (...) may perform their duties without any kind of intimidation."¹³

46. Furthermore, the Special Rapporteur at the time on the independence of judges and layers pointed out in his January 2000 report that in Guatemala, in matters relating to human rights violations, "Judges have been the victims of threat, act of intimidation, and harassment."¹⁴ Given that situation, the Rapporteur maintained that the State, "adducing lack of financial resources, has not provided protection for

⁴ IACHR, *Fourth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.83 Doc. 16, June 1, 1993, Conclusions.

⁵ IACHR, *Fourth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.83 Doc. 16, June 1, 1993, Chapter II: Legal and Institutional Guarantees.

⁶ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111 Doc. 21 rev. April 6, 2001, par. 47.

⁷ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111 Doc. 21 rev. April 6, 2001, par. 50.

⁸ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111 Doc. 21 rev. April 6, 2001, par. 50.

⁹ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111 Doc. 21 rev. April 6, 2001, par. 47.

¹⁰ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111 Doc. 21 rev. April 6, 2001, par. 52.

¹¹ United Nations, Human Right Committee, *Concluding Observations. Guatemala*, April 3, 1996, par. 18. Available at: <http://www.refworld.org/docid/3ae6b0290.html>

¹² United Nations, Human Right Committee, *Concluding Observations. Guatemala*, Saturday, August 27, 2011, par. 21.

¹³ United Nations, Human Right Committee, *Concluding Observations. Guatemala*, Saturday, August 27, 2011, par. 21.

¹⁴ U.N., *Report of the Special Rapporteur on the independence of judges and lawyers*, Mr. Param Coomaraswamy, Guatemala. January 6, 2000, par. 35.

judges (...) who are the butt of threats."¹⁵ He added that "on the rare occasions when protection is granted, the persons assigned by the authorities are apparently not ideal and some even have criminal records."¹⁶

47. Later on, in October 2009, the Special Rapporteur at the time on the independence of judges and lawyers presented a new report on Guatemala, in which he pointed out that "the attacks on justice operators are still a matter of grave concern."¹⁷ He explained that "despite the establishment of the Unit for Crimes against Justice Operators within the Public Prosecution Service [*Ministerio Público*], no progress has been made with the investigations into such crimes and with bringing their perpetrators to justice."¹⁸

48. Finally, in its 2013 report, "Guarantees for the Independence of Justice System Operators," the Inter-American Commission compiled the following information on the situation of justice system operators in Guatemala between 2009 and 2012:

Seven justice system operators were reported to have been murdered in 2009. In addition, at least three judges were allegedly murdered between 2009 and February 2011, along with a prosecutor murdered in 2011. According to information received by the Commission, between 2002 and 2012, 640 judges and magistrates were subjected to threats and intimidation, 24 were assaulted, and 5 kidnapped. Eleven administrators of justice were murdered. Thirty-two of the cases of threats and intimidation occurred in first half 2012. According to information provided by the Guatemalan State, there were 54 denunciations of crimes against prosecutors in 2010; 57 in 2011; and 61 in 2012(...).¹⁹

B. Regarding María Eugenia Villaseñor, her immediate family, and her work in the Judiciary

49. Based on the information and documentation provided by the parties, the Commission notes that there is no disagreement regarding the fact that María Eugenia Villaseñor was actively serving in the judiciary as a judge throughout the period of the alleged facts.

50. Mrs. María Eugenia Villaseñor indicated that her immediate family consisted of her daughter Beatriz Eugenia Villaseñor; her brother Francis Antonio Villaseñor Velarde; and her sister Rosa Antonieta Villaseñor Velarde.²⁰

51. Mrs. Villaseñor provided information regarding a number of cases she had examined as a judge and various activities she had engaged in that, in her opinion, had triggered the threats and other forms of persecution against her described below. The State did not question the specific information regarding María Eugenia Villaseñor's work as a judge or the cases she had heard, so that the IACHR considers the details regarding her activities, as described below, as proven.

52. Mrs. Villaseñor pointed out that she had examined the investigation into the murder of anthropologist Myrna Mack Chang, involving government officials.²¹ According to information in the public

¹⁵ U.N., Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Coomaraswamy, Guatemala. January 6, 2000, par. 35.

¹⁶ U.N., Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Coomaraswamy, Guatemala. January 6, 2000, par. 35.

¹⁷ U.N., Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Coomaraswamy, Guatemala. October 1, 2009, par. 78.

¹⁸ U.N., Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Coomaraswamy, Guatemala. October 1, 2009, par. 79.

¹⁹ IACHR, Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas. OEA/Ser.L/V/II. Doc. 44, December 05, 2013, par. 155.

²⁰ Petitioners' communication of May 7, 2014.

²¹ Petitioners' communication of September 30, 1994.

domain, in July 1991, Mrs. Villaseñor examined the case and order the arrest of Noël de Jesús Beteta Alvarez.²² The Commission notes that that case was later examined by the organs of the [inter-American] system and culminated in a judgment of the Inter-American Court of Human Rights, handed down on November 25, 2003. In that judgment, the Inter-American Court ruled that Guatemala bore international liability for the murder of Myrna Mack Chang in September 1990 by military personnel and for failure to investigate and punish the perpetrators.²³

53. Mrs. Villaseñor also pointed out that she had taken part in the proceedings regarding the purchase/sale of three helicopters in which three government officials had been accused of over valuation.²⁴

54. In his January 2000 report , the Special Rapporteur at that time on the independence of judges and lawyers referred to Mrs. Villaseñor 's situation as follows:

(...) María Eugenia Villaseñor, a member of the Court of Appeals, also complained of the persecution she said she had suffered for participating in high-profile human rights-related cases, such as the proceedings regarding the murder of the anthropologist Myrna Mack.²⁵

55. According to information provided by the petitioners, in 1994 María Eugenia Villaseñor was a judge in the Third Court of Appeals.²⁶ At the time, she also took part in conferences on the independence of the judiciary.²⁷ In addition, along with other attorneys and Fundación Mack, she was a co-proponent of amendments to the draft Public Prosecution Service Act.²⁸

56. In 1994, Mrs. Villaseñor published a book entitled "Myrna Mack and her encounter with justice."²⁹ Mrs. Villaseñor stated that that book included a history of the Judiciary in 1980, which recounts the murders of judges, along with the facts regarding the death of Myrna Mack and the response of the judiciary.³⁰ That book was cited in the report of the Commission for Historical Clarification.³¹

57. Mrs. Villaseñor pointed out that in January 1997 she had played a part in handing down a judgment that was widely publicized in the media in which it was resolved, pursuant to the American Convention, not to ratify a death sentence in a kidnapping case.³² She also participated as a judge of the Court of Appeals in the proceedings relating to the execution of University student Julio Cu Quim in April 1992.³³ In that case, the Court of Appeals sentenced some 30 policemen and private guards for the death of Mr. Cu Quim.³⁴

²² Scientists and Human Rights in Guatemala: Report of a Delegation (1992). Appendix D.

²³ See: I/A Court HR. *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101,

²⁴ Petitioners' communication of September 30, 1994.

²⁵ U.N., Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Coomaraswamy, Guatemala. Thursday, January 06, 2000, par. 37.

²⁶ Petitioners' communication of September 20, 1994.

²⁷ Petitioners' communication of Friday, September 30, 1994.

²⁸ Petitioners' communication of Friday, September 30, 1994.

²⁹ See: <http://www.worldcat.org/title/myrna-mack-y-su-encuentro-con-la-justicia/oclc/31358110>

³⁰ Petitioners' communication of November 23, 1994.

³¹ Report of the Commission for Historical Clarification. Volume III, Human Rights Violations and Acts of Violence, footnote 325.

³² Petitioners' communication of April 1, 1997.

³³ See: <http://www.prensalibre.com/hemeroteca/condenan-a-22-policias-a-prision-en-1993>. Petitioners' communication of April 1, 1997.

³⁴ See: <http://www.prensalibre.com/hemeroteca/condenan-a-22-policias-a-prision-en-1993>. Petitioners' communication of April 1, 1997.

58. The petitioners pointed out that in 2000 Mrs. Villaseñor was elected President of the Association of Judges and Magistrates of the Judiciary.³⁵

59. In May 2014, Mrs. Villaseñor was working as a judge pro tempore in the Fifth Division of the Court of Appeals, based in Quetzaltenango.³⁶

C. Regarding the threats against Mrs. Villaseñor

60. The case file before the Commission describes a series of occurrences between 1994 and 2002 that amounted to various forms of threat, intimidation, and harassment related to Mrs. Villaseñor's activities as a judge in Guatemala. As regards the evidence for these occurrences, the Commission has the description given by the victim to the IACHR and to a number of State authorities, as well as press releases and a number of pronouncements by the Human Rights Ombudsman (*Procurador de los Derechos Humanos*). Following is an account of those occurrences in chronological order, with indications of the documentation in the possession of the Commission regarding each one.

61. According to Mrs. Villaseñor's description, towards the end of February 1994, she was robbed of her belongings by an unknown man on a motorbike, while she was in her car.³⁷ She said that on May 20, 1994, an unknown person attempted to enter her vehicle and destroyed the lock on her car.³⁸ She added that on July 6 of the same year, an unknown person destroyed one of the tires on her car.³⁹

62. Mrs. Villaseñor stated that on June 11, 1994 two men, "who appeared to be soldiers," wanted to get into her home.⁴⁰ She said that June 20 of the same year, unknown persons "threatened to kill her."⁴¹ She also said that in mid-July, 1994 she hear some men saying outside her home "we have got to kill that old woman."⁴²

63. According to Mrs. Villaseñor's statement, on August 29, 1994, the policeman guarding her home, Miguel Pacheco, was stopped and beaten by three unknown people who allegedly told him to "get away from here because we, the people who live here, are going to kill her."⁴³ Mr. Pacheco said that the people who stopped him interrogated him about Mrs. Villaseñor's activities, in particular about the routes she took⁴⁴ and her relationship to Helen Mack, the sister of the deceased Myrna Mack.⁴⁵

64. Mrs. Villaseñor said that a few days later there was an attempt to kidnap her daughter.⁴⁶ She also said that she had received several anonymous phone calls threatening to kill her because of the publication of her book about Myrna Mack.⁴⁷

³⁵ Petitioners' communication of June 20, 2000.

³⁶ Petitioners' communication of May 7, 2014.

³⁷ Petitioners' communication of September 30, 1994.

³⁸ Petitioners' communication of September 30, 1994.

³⁹ Petitioners' communication of September 30, 1994.

⁴⁰ Petitioners' communication of September 30, 1994.

⁴¹ Petitioners' communication of September 30, 1994.

⁴² Petitioners' communication of Friday, September 30, 1994.

⁴³ Petitioners' communication of September 20, 1994.

⁴⁴ Press release, "Agente Pacheco relata los momentos en que estuvo secuestrado" , September 1, 1994. Attached to the petitioners' communication of September 20, 1994.

⁴⁵ Press release, "Magistrada Villaseñor analiza posibilidad de exiliarse" , August 31, 1994. Attached to the petitioners' communication of September 20, 1994.

⁴⁶ Petitioners' communication of May 7, 2014.

65. Mrs. Villaseñor stated that, because of all the threats she had been subjected to, on September 1 of that year she left Guatemala to go to Costa Rica.⁴⁸ She said she had asked for 30 days' leave, which the Supreme Court granted.⁴⁹ She said she returned to Guatemala on September 30, 1994.⁵⁰

66. On September 5, 1994, the Human Rights Ombudsman issued a resolution in which he concluded that, given the threats she had been subjected to, Mrs. Villaseñor's right to integrity and safety had been violated because "the State, failing to do its duty, did not guarantee those rights by deploying security forces."⁵¹ The Commissioner requested the Ministry of the Interior to conduct an exhaustive investigation of the facts.⁵²

67. Mrs. Villaseñor stated that in October 1994 she was appointed to the Ninth Division of the Appeals Court in Antigua Guatemala as part of a series of appointments made by Congress.⁵³ On October 16, 1994, she filed an action with the Supreme Court for protection of rights guaranteed by the Constitution (*amparo*) on account of the violation of her right to life, safety, equal working conditions and independence in the judiciary.⁵⁴ She asked that she be reinstated as a judge in one of the Divisions of the Court of Appeals in criminal matters in the capital.⁵⁵ María Eugenia Villaseñor maintained that that application was denied.⁵⁶ The Commission does not have a copy of that decision nor information as to why the request was turned down.

68. Mrs. Villaseñor reported new occurrences in December 1995.⁵⁷ She said that unknown men had entered her home.⁵⁸ She said they also cut the telephone wire.⁵⁹ She added that various unidentified vehicles using the same number plate were watching her house.⁶⁰ She said that on January 2, 1996, she had notified the President of the Judiciary of these occurrences.⁶¹

69. Mrs. Villaseñor maintained that on January 17, 1996, a Honduran gentleman had told her that he knew of a plan to kill some (male and female) judges, and that she was one of them.⁶² She said that that person was detained and no further information could be found about what Mr. Lagos had said.⁶³

[... continuation]

⁴⁷ Petitioners' communication of May 7, 2014.

⁴⁸ Petitioners' communication of May 7, 2014.

⁴⁹ Petitioners' communication of Wednesday, November 23, 1994.

⁵⁰ Petitioners' communication of Wednesday, May 07, 2014.

⁵¹ Official letter from the Human Rights Ombudsman, September 5, 1994. Attached to the petitioners' communication of November 23, 1994.

⁵² Official letter from the Human Rights Ombudsman, September 5, 1994. Attached to the petitioners' communication of November 23, 1994.

⁵³ Petitioners' communication of November 23, 1994.

⁵⁴ Action for protection of rights protected by the Constitution (*recurso de amparo*) Attached to the petitioners' communication of November 23, 1994.

⁵⁵ Action for protection of rights protected by the Constitution (*recurso de amparo*) Attached to the petitioners' communication of November 23, 1994.

⁵⁶ Statement by María Villaseñor on March 10, 1997. Appendix 1 to the petitioners' communication of April 1, 1997.

⁵⁷ Petitioners' communication of January 5, 1996.

⁵⁸ Petitioners' communication of January 5, 1996.

⁵⁹ Petitioners' communication of January 5, 1996.

⁶⁰ Petitioners' communication of January 5, 1996.

⁶¹ Petitioners' communication of May 7, 2014.

⁶² Petitioners' communication of April 1, 1997.

⁶³ Petitioners' communication of April 1, 1997.

70. Mrs. Villaseñor indicated that at the beginning of 1997, following the judgment not to apply the death penalty (see above, par. 57), there were a series of negative reactions by various public figures, such as the then Attorney General.⁶⁴

71. Mrs. Villaseñor said that on March 16, 1998 she received an order to move to the Tenth Division of the Court of Appeals in Guatemala City.⁶⁵

72. Mrs. Villaseñor stated that on May 25, 1999, the Special Cases Attorney in the Public Prosecutors' Office denounced that she, in her capacity as a judge, had received a sum of money in return for ordering the release of former President of Guatemala Efraín Ríos Montt.⁶⁶ She said that she had filed a complaint against that accusation with the Human Rights Ombudsman, who issued a resolution on the subject on July 23, 1999.⁶⁷ In that resolution, the Ombudsman criticized the statement of the (then) attorney for special cases "for making accusations of corruption against the judge that were detrimental to her honor," without any kind of proof.⁶⁸ Mrs. Villaseñor said that the attorney in question did not reply.⁶⁹

73. The State reported that in December 1999 Mrs. Villaseñor was working as a judge of the Third Division of the Court of Appeals in Guatemala.⁷⁰

74. Mrs. Villaseñor stated that on June 20, 2000, her brother-in-law told her that there was a man, a former member of a security company, who was watching her house.⁷¹ She said her brother-in-law had noticed that and that when he approached that person, the latter told him that three men were planning to murder Rosa Villaseñor Velarde.⁷² Mrs. Villaseñor stated that that person was arrested.⁷³ She added that she had denounced the situation to the Public Prosecutors' Office, as follows:

(...) what I am asking the Public Prosecutor's Office to do is to conduct an in-depth investigation into where such occurrences are coming from, because I consider that they are placing my security and that of my family at risk, in this case my sister, her husband and their children; there is no reason why they should be unnecessarily subjected to intimidation and fear, just because they live with me.⁷⁴

75. Mrs. Villaseñor maintained that on **October 3, 2001** -- in connection with the start of the trial against those charged in the death of Myrna Mack -- General Edgar Godoy and Colonels Juan Valencia and Juan Oliva made statements attacking the book she had written.⁷⁵

⁶⁴ Petitioners' communication of April 1, 1997.

⁶⁵ Petitioners' communication of May 15, 1998.

⁶⁶ Communication from the petitioners received by the IACHR on August 11, 1999.

⁶⁷ Resolution issued by the Human Rights Ombudsman on July 23, 1999. Attached to the petitioners' brief received by the IACHR on August 6, 1999.

⁶⁸ Resolution issued by the Human Rights Ombudsman on July 23, 1999. Attached to the petitioners' brief received by the IACHR on August 6, 1999.

⁶⁹ Petitioners' communication of May 7, 2014.

⁷⁰ State's communication of December 17, 1999.

⁷¹ Petitioners' communication of May 7, 2014.

⁷² Petitioners' communication of May 7, 2014.

⁷³ Petitioners' communication of May 7, 2014.

⁷⁴ Petitioners' communication of May 7, 2014.

⁷⁵ Petitioners' communication of October 5, 2001.

76. Mrs. Villaseñor stated that in 2003 further violent acts and threats were committed against her and her family. She pointed out that on January 1, 2003 her niece Julia María Balconi Villaseñor died after being hit by a car.⁷⁶ She said that on May 2, 2003 an unidentified person had attempted to get into her home.⁷⁷ She added that on July 22, 2003, one of the tires on her vehicle was cut.⁷⁸ She also claimed that there were various instances of telephonic interference.⁷⁹

77. The State pointed out that in a telephone call to the Presidential Commission coordinating the Executive's Policy on Human Rights (COPREDEH), Mrs. Villaseñor had said that at that time she was not being subjected to threats and intimidation.⁸⁰

78. The State reported that in February 2005, Mrs. Villaseñor was serving as a judge of the Fifth Division of the Court of Appeals for criminal matters, drug trafficking and crimes against the environment in the department of Quetzaltenango.⁸¹

79. Mrs. Villaseñor stated that in July 2005 she had gone to the cemetery and noticed that on her brother's tomb there were plastic flowers, on each petal of which there was a letter, which together spelled her name. She pointed out that that constituted a threat to her family.⁸² She added that during that month a couple of unidentified people had followed her from her office in Quetzaltenango to Guatemala City.⁸³ She also declared that on August 22, 2005 a group of unknown people entered her home, beat her sister, stole passports belonging to family members, and drew a swastika on the door.⁸⁴

80. On November 21, 2007, a person identified as Karina Montes wrote to the then President of the Supreme Court of Justice and referred to Mrs. Villaseñor in the following manner:

(...) Doña María Eugenia Villaseñor is capable of killing just to stay in power, she threatens mercilessly, removes and maltreats anyone who appears not to suit her lucrative corruption purposes, has the backing of people in organized crime (...). Investigate (...) and you will see that this is true.⁸⁵

81. Mrs. Villaseñor pointed out that she had denounced these occurrences to the Public Prosecutors' Office, because "it was being shown falsities that were impairing her honor, personal dignity, and judicial independence."⁸⁶ She maintained that she did not know who that person had been.

82. In addition, Mrs. Villaseñor stated that on February 13, 2008, personal information had been stolen from her office in the Fifth Division of the Court of Appeals in Quetzaltenango.⁸⁷

⁷⁶ Petitioners' communication of May 7, 2014.

⁷⁷ Petitioners' communication of May 7, 2014.

⁷⁸ Petitioners' communication of May 7, 2014.

⁷⁹ Petitioners' communication of May 7, 2014.

⁸⁰ State's communication of February 28, 2005.

⁸¹ State's communication of February 28, 2005.

⁸² Petitioners' communication of May 7, 2014.

⁸³ Petitioners' communication of May 7, 2014.

⁸⁴ Petitioners' communication of May 7, 2014.

⁸⁵ Communication dated November 21, 2007. Attached to the petitioners' communication of May 7, 2014.

⁸⁶ Precautionary measures file. Attached to the petitioners' communication of August 11, 2013.

⁸⁷ Petitioners' communication of May 7, 2014.

83. On March 12, 2009, the Human Rights Ombudsman issued a resolution addressing the complaint filed by Mrs., Villaseñor, in which she argued that her right to security had been violated "by unknown persons"⁸⁸. Mrs. Villaseñor also alleged that she was the victim of accusations and false charges regarding her work as a judge.⁸⁹ The Ombudsman considered the following:

(...) since 1994, in the course of her work as a trial judge and judge on the Court of Appeals, Mrs. (...) Villaseñor Velarde has been the object of threats, acts of intimidation and coercion committed by unknown persons, trial attorneys, and officials and employees of several State institutions, triggered by her interventions and performance in various criminal proceedings dealing with nationally and internationally high-profile cases.

(...) It has been established that on November 21, 2007, Mrs. (...) Villaseñor Velarde (...) was the object of attacks, this time using electronic means, because on that date an e-mail was circulated to various dependencies of the Supreme Court of Justice in which someone calling herself Karina Montes falsely depicted various situations detrimental to Judge Villaseñor's honor, personal dignity, and judicial independence (...).

(...) This series of situations show that an attack has been made against the judge's security and judicial independence (...) and, considering that those rights are indispensable in a member of the judiciary (...) it is hereby determined that said official is in a situation of risk preventing her from exercising the jurisdictional authority invested in her to administer justice within her sphere of competence.⁹⁰

84. In light of the above, the Ombudsman concluded that (i) the right to order and security had been violated to the detriment of Mrs. Villaseñor "by unknown persons, since her independence within the administration of justice in Guatemala has been impaired"; and (ii) "there is sufficient circumstantial evidence to hold the Government of the Republic of Guatemala responsible for those violations, due to its failure to guarantee and protect the security of its inhabitants and for omitting to perform its duties."⁹¹

85. Mrs. Villaseñor declared to the Civilian National Police that **in 2012** she had received at least four text messages "containing around five lines the letter p... coming from an unknown number."⁹²

86. The petitioners reported that in 2013 Mrs. Villaseñor was working as a pro tempore judge in the Court of Appeals.⁹³

D. Regarding the investigations conducted

87. With respect to the occurrences in 1994, the petitioners stated that Mrs. Villaseñor had complained about them.⁹⁴ For its part, the State acknowledged that, regarding the occurrences in 1994, Mrs. Villaseñor had filed complaints with the Office of the Prosecutor General of the Republic (*Fiscalía General de*

⁸⁸ Resolution issued by the Human Rights Ombudsman, on March 12, 2009. Attached to the petitioners' communication of May 7, 2014.

⁸⁹ Resolution issued by the Human Rights Ombudsman on March 12, 2009. Attached to the petitioners' communication of May 7, 2014.

⁹⁰ Resolution issued by the Human Rights Ombudsman on March 12, 2009. Attached to the petitioners' communication of May 7, 2014.

⁹¹ Resolution issued by the Human Rights Ombudsman on March 12, 2009. Attached to the petitioners' communication of May 7, 2014.

⁹² Minutes No. 089/-2012 of the Directorate-General of the Civilian National Police. Attached to the State's communication of October 9, 2015.

⁹³ Precautionary measures file. State's communication of November 23, 2012.

⁹⁴ Petitioners' communication of September 20, 1994.

la República), the National Police, and the Human Rights Ombudsman,⁹⁵ and that "the respective files" had been opened.⁹⁶

88. In particular, according to the petitioners, a denunciation had been filed concerning what had happened on August 29, 1994, when Mr. Pacheco, the security guard at Mrs. Villaseñor's residence had been beaten and interrogated.⁹⁷ The State, for its part, specified that the Office of the Prosecutor General of the Republic, via the Second Magistrate's Criminal Court of the department of Guatemala is conducting the investigations into the events of August 29, 1994.⁹⁸

89. In respect of the occurrences of December 1995, the petitioners pointed out that complaints were filed with the Human Rights Ombudsman and the Police.⁹⁹ They stated that police officers had told Mrs. Villaseñor that she had "already got them into a lot trouble."¹⁰⁰ The State did not contest the fact that these complaints had been filed.

90. As regards the e-mails received in 1997, the petitioners stated that Mrs. Villaseñor had complained about them to the Public Prosecutors' Office.¹⁰¹ The State did not contest the fact that this complaint had been filed.

91. Mrs. Villaseñor stated that on July 19, 2007, she had been visited by an assistant prosecutor regarding the complaint filed in respect of the events of July 2005. The State did not contest the fact that this complaint had been filed. Mrs. Villaseñor pointed out that no inquiries had been made regarding them and she complained about the State's failure to act.¹⁰²

92. Regarding the occurrences of November 2007, Mrs. Villaseñor said she had filed a complaint with the Public Prosecutor's Office.¹⁰³ She said that in January 2008 she had requested information from the Judiciary concerning the status of the investigation, but had not received a reply from the judicial authorities.¹⁰⁴

93. As for the events in February 2008, Mrs. Villaseñor declared that she had lodged a complaint.¹⁰⁵ The State did not contest the fact that this complaint had been filed.

94. Taking into account, the petitioners' repeated statements about her complaints and the fact that the State does not contest them, the Commission considers it established that Mrs. Villaseñor did file criminal complaints regarding the threats and harassment described. Furthermore, based on the information available, the Commission considers it established that Mrs. Villaseñor notified the State of a series of acts that she regarded as threats and intimidation against her through other means as well, including complaints to the Human Rights Ombudsman and her petition and request to the inter-American system for precautionary measures. Bearing in mind the information at its disposal, the Commission concludes that, apart from the resolutions issued by the Human Rights Ombudsman, no investigation has made any progress

⁹⁵ State's communication of September 27, 1994.

⁹⁶ State's communication of September 27, 1994.

⁹⁷ Petitioners' communication of September 20, 1994.

⁹⁸ State's communication of Tuesday, September 27, 1994.

⁹⁹ Petitioners' communication of January 5, 1996.

¹⁰⁰ Petitioners' communication of January 5, 1996.

¹⁰¹ Precautionary measures file. Attached to the petitioners' communication of Sunday, August 11, 2013.

¹⁰² Petitioners' communication of May 7, 2014.

¹⁰³ Precautionary measures file. Attached to the petitioners' communication of August 11, 2013.

¹⁰⁴ Petitioners' communication of May 7, 2014.

¹⁰⁵ Petitioners' communication of May 7, 2014.

with identifying the perpetrators or instigators, or with shedding light on the sources of risk. This is the case despite the fact that several State institutions - judicial, police, COPREDEH, and the Human Rights Ombudsman - have acknowledged at various times the facts denounced and the risk posed to Mrs. Villaseñor.

E. Measures adopted by the State

95. The Commission notes that both parties acknowledge that following the aforementioned occurrences in the first half of 1994 the State granted Mrs. Villaseñor police protection for her home.

96. Mrs. Villaseñor stated that on 30 August 1994 she had asked the Ministry of Defense to provide security.¹⁰⁶ She stated that the next day she had held a press conference making the State and the security forces responsible "for anything that might happen to her."¹⁰⁷ The State did not contest that information.

97. María Eugenia Villaseñor reported that, in response to a request by the Human Rights Ombudsman, the police provided two security guards, one of them unarmed.¹⁰⁸ The State pointed out that in September 1994, as a security measure, the Directorate General of the National Police, appointed personnel responsible for protecting Mrs. Villaseñor and her family.¹⁰⁹ The State maintained that Mrs. Villaseñor had turned down the offer of protection, "on the grounds that at that time the threats she had been subjected to had stopped."¹¹⁰

98. Mrs. Villaseñor said that, in December 1995, at the request of the President of the Judiciary, she was assigned two security guards and their replacements.¹¹¹

99. The State said that in 1997, the Civilian National Police had been in charge of Mrs. Villaseñor's security.¹¹² It claimed that the security arrangement was for four guards rotating every 8 days, with two guards per shift.¹¹³ It added that one of the guards took care of her protection, while the other protected her mother and daughter.¹¹⁴ The State added that two guards had been withdrawn as of 1997.¹¹⁵

100. In their brief of April 1997, the petitioners indicated that during that period Mrs. Villaseñor had had to defray the costs of feeding the two security guards provided by the State for her and her daughter.¹¹⁶ The State acknowledged the shortcomings in the arrangements for the security guards' meals and indicated that COPREDEH would talk to the Director General of the Civilian National Police "with a view to finding a satisfactory solution."¹¹⁷ The State submitted no further information in this regard.

101. Mrs. Villaseñor said that in early October 2001, one of the security guards had gone off on vacation and was not replaced.¹¹⁸ She placed on record that the personnel section chief in the Seprose police

¹⁰⁶ Petitioners' communication of September 30, 1994.

¹⁰⁷ Petitioners' communication of Friday, September 30, 1994.

¹⁰⁸ Petitioners' communication of September 30, 1994.

¹⁰⁹ State's communication of September 27, 1994.

¹¹⁰ State's communication of November 7, 1994.

¹¹¹ Petitioners' communication of April 1, 1997.

¹¹² State's communication of October 10, 1997.

¹¹³ State's communication of Friday, October 10, 1997.

¹¹⁴ State's communication of Friday, October 10, 1997.

¹¹⁵ State's communication of Monday, February 28, 2005.

¹¹⁶ Petitioners' communication of April 1, 1997.

¹¹⁷ State's communication of October 10, 1997.

¹¹⁸ Petitioners' communication of October 5, 2001.

station had said it was impossible to send a replacement "because they were short of staff."¹¹⁹ According to Mrs. Villaseñor, the replacement was sent on October 9.¹²⁰

102. On March 7, 2002, the Human Rights Ombudsman issued a resolution regarding Mrs. Villaseñor's complaint about the situation referred to in the foregoing paragraph.¹²¹ The Ombudsman argued as follows:

Based on analysis of the complaint, inquiries undertaken, and reports received, it was established that the Civil National Police Department for Protection and Security Services omitted to send (...) María Eugenia Villaseñor Velarde, in a timely fashion, a replacement for the policeman providing her with security (...) who was on leave, arguing that it was short-staffed. That meant that the aforementioned judge was at risk during his absence, even though the situation was subsequently corrected.

(...) The administrative response was detrimental to María Eugenia Villaseñor's (...) interests (...). The resolution singles out the personnel section chief of the Civil National Police Department for Protection and Security Services - SERPROSE - (...) as responsible for not having foreseen and covered the gap left by the leave of absence (for vacation time) granted to a member of the above-mentioned judge's security detachment. (...) Recommends that the Director General of the Civilian National Police (...) issue instructions to the aforementioned police department to coordinate their personnel's leave in such a way as to ensure that persons needing to be protected are not suddenly bereft of that service (...).¹²²

103. The State pointed out that in the conversation over the phone with COPREDEH on February 28, 2004, Mrs. Villaseñor stated that the precautionary measures were proving effective and that the security guards were providing her with the necessary security.¹²³ Mrs. Villaseñor did not deny having made that statement on the date indicated by the State.

104. Mrs. Villaseñor told the Civilian National Police that in 2009 the Human Rights Ombudsman had requested that the protection measures be continued "given the positions she holds and the risk it entails."¹²⁴

105. On October 19, 2012, at COPREDEH's request, the Deputy Director-General of Operations of the Civilian National Police conducted an assessment of the risks to which Mrs. Villaseñor was exposed.¹²⁵ According to the Minutes No. 089-2012 of the Directorate General of the Civilian National Police, Mrs. Villaseñor was interviewed and made the following statement:

That she served as a lower court judge from 1989 to 1992, (...) from 1992 to 2009 as a judge on the Court of Appeals, and from March 2010 until the present as Supervisor General of Courts. That because of the threats against her (...) they granted her the above-mentioned precautionary measure (...) As of that date, she has been given personal security protection

¹¹⁹ Official letter 3145-2001, dated October 3, 2001. Attached to the petitioners' communication of Friday, October 5, 2001.

¹²⁰ Petitioners' communication of Wednesday, May 07, 2014.

¹²¹ Resolution issued by the Human Rights Ombudsman on March 7, 2002. Attached to the petitioners' communication of May 7, 2014.

¹²² Resolution issued by the Human Rights Ombudsman on March 7, 2002. Attached to the petitioners' communication of May 7, 2014.

¹²³ State's communication of February 28, 2005.

¹²⁴ Minutes No. 089/-2012 of the Directorate-General of the Civilian National Police. Attached to the State's communication of October 9, 2015.

¹²⁵ Minutes No. 089/-2012 of the Directorate-General of the Civilian National Police. Attached to the State's communication of October 9, 2015.

by the Civilian National Police, with [two] police officers currently assigned to her personal security (...).¹²⁶

106. In addition, in this interview Mrs. Villaseñor stated that she complained of the various threats and acts of aggression to the Public Prosecutors' Office, to COPREDEH, and to the Human Rights Ombudsman. She maintained that, despite that, there is "no information about any progress being made in the investigation."¹²⁷ She requested that the Civilian National Police continue providing the personal security detail assigned to her.¹²⁸

107. In Order No. 1741-2012 of the Directorate-General of the Civilian National Police of October 31, 2012, it was specified that there would be two police officers providing security for Mrs. Villaseñor, for eight-day intervals per shift, followed by eight days off, with the changeover taking place on Wednesdays.¹²⁹ That document concluded that:

(...) Mrs. María Eugenia Villaseñor Velarde, currently Supervisor- General of Courts, is currently at medium risk, because while she has benefited from precautionary measures (MC-01-1994), there have been no attacks on her life or bodily integrity, just the risk inherent in the position she holds.

(...)

Based on the interview with (...) María Eugenia Villaseñor (...) [it is] recommended (...) that the personal security measures currently provided by this division be canceled, taking into the account that in the events that gave rise to them there are no threats placing her life at serious risk. Moreover, in the written records there are no reports by the officers regarding criminal acts against her.¹³⁰

108. Mrs. Villaseñor stated that on September 11, 2013, the Civilian National Police Inspector drew up a document recording the decision to withdraw the security detail.¹³¹ She said that the Inspector had followed instructions from COPREDEH, "in view of the fact that the Inter-American Commission on Human Rights had decided to suspend the precautionary measure and archive it."¹³² She said that the document read as follows:

(...) Mr. Ronaldo Ernesto Galeano [the head of the International Mechanisms Unit of the Human Rights Ombudsman's office] suggests extending the security measure for a reasonable period of time as a way of establishing a transition period that would enable the beneficiary to get into contact with the Inter-American Commission and to find security mechanisms of her own (...). Dr. María Eugenia Villaseñor comments as follows: That this is the first official notification by the State of Guatemala regarding the withdrawal of precautionary measures, that she does not know whether a risk assessment has been

¹²⁶ Minutes No. 089/-2012 of the Directorate-General of the Civilian National Police. Attached to the State's communication of October 9, 2015.

¹²⁷ Minutes No. 089/-2012 of the Directorate-General of the Civilian National Police. Attached to the State's communication of October 9, 2015.

¹²⁸ Minutes No. 089/-2012 of the Directorate-General of the Civilian National Police. Attached to the State's communication of October 9, 2015.

¹²⁹ Order (*Providencia*) No. 1741/-2012 of the Directorate-General of the Civilian National Police. Attached to the State's communication of October 9, 2015.

¹³⁰ Order (*Providencia*) No. 1741/-2012 of the Directorate-General of the Civilian National Police. Attached to the State's communication of October 9, 2015.

¹³¹ Petitioners' communication of May 7, 2014.

¹³² Petitioners' communication of Wednesday, May 07, 2014.

conducted, and that, if it has, she would like a copy of it, (...) and that, in addition, there is no investigation regarding either the facts that gave rise to the precautionary measures or those that occurred subsequently (...).¹³³

109. The Commission has no information regarding a continuation of the protection measures subsequent to this date. It is the Commission's understanding that they were withdrawn after the official September 2013 document was drawn up.

VI. ANALYSIS OF LAW

A. Right to humane treatment, due guarantees and judicial protection (Articles 5.1,¹³⁴ 8.1¹³⁵, and 25¹³⁶ of the American Convention in conjunction with Article 1.1 thereof)

110. Bearing in mind that the subject matter of this case has to do with a series of occurrences that both parties have identified as related to Mrs. Villaseñor's work as a judge, the Commission considers that the following analysis of law must take into account international standards with respect to the independence of the judiciary. The principle of an independent judiciary is contemplated in Article 8.1 of the American Convention and constitutes one of the basic pillars of the democratic system. Here, the Inter-American Commission and the Inter-American Court have considered that one of the main purposes of the separation of powers is to guarantee the independence of judges.¹³⁷

111. The Inter-American Commission has pointed out that although the principle of judicial independence is regulated in the American Convention as a right pertaining to defendants (*justiciales*) or persons turning to the justice system to resolve their disputes, the duty to respect and guarantee that right has direct implications for individual judges' exercise of their human rights.¹³⁸

112. As the Court has held in this regard:

(...) judges, unlike other public servants, have guarantees that are reinforced by the need for the judiciary to be independent, a requirement the Court has deemed "essential for the performance of the judicial function."¹³⁹ The autonomous exercise of that function must be guaranteed by the State both in its institutional facet, i.e., in relation to the judiciary as a system, and in its ramifications for the individual, i.e., for a specific judge. The purpose of protection is to avoid the judicial system in

¹³³ Petitioners' communication of May 7, 2014.

¹³⁴ Article 5.1 of the American Convention: Every person has the right to have his physical, mental, and moral integrity respected.

¹³⁵ Article 8.1 of the American Convention: 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.

¹³⁶ Article 25.1 of the American Convention: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights 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.

¹³⁷ IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*. December 5, 2013, pars. 32 and 34. See I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, par. 67.

¹³⁸ IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*. December 5, 2013, par. 24 and IACHR Report No. 65/11, Case 12.600, Merits, Hugo Quintana Coello et al. Judges of the (Supreme Court of Justice) Ecuador, March 31, 2011, par. 77.

¹³⁹ I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 02, 2004. Series C No. 107, par. 171.

general and its members in particular being subjected to possible unlawful restrictions on the exercise of their function (...).¹⁴⁰

113. The Inter-American Commission and the Inter-American Court, in harmony with the consolidated jurisprudence of the European Court of Human Rights, have repeatedly pointed out that the individual guarantees for judges that derive from the principle of judicial independence include: appropriate appointment procedures, pre-established duration in office, and safeguards against external pressure.¹⁴¹

114. From the established facts and the arguments of the parties, the Commission is of the understanding that this instant case relates to the State's obligation to protect Maria Eugenia Villaseñor, in her capacity as a judge, from outside pressure. In the circumstances of the instant case, this obligation is directly related to Mrs. Villaseñor's right to personal integrity. Following is a list of the specific obligations of the State needed to comply with its duty to safeguard judges against outside pressure.

115. Various different international instruments and bodies have referred to guarantees to protect judges from outside pressure. In a United Nations context, the Basic Principles on the Independence of the Judiciary indicate the following:

The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.¹⁴²

116. The Human Rights Committee has indicated that States must adopt effective protective measures against attacks on judges as a result of their work. The Committee maintained that such acts "should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress."¹⁴³

117. In addition, in one of her reports in 2010, the then Special Rapporteur of the United Nations on the independence of Judges and Lawyers observed that the specific impacts on judges were in the form of murders, threats, and intimidation, which continue to constitute the principal obstacles they encounter to the performance of their functions.¹⁴⁴ She stressed that the worst thing was that most of these crimes are not adequately investigated, much less punished as criminal acts, thereby contributing to an atmosphere of impunity.¹⁴⁵

118. In the inter-American system, the Commission has pointed out that protecting the personal integrity of justice operators is an obligation of the State that derives from that right recognized in Article 5 of the American Convention.¹⁴⁶ It is also a prerequisite for guaranteeing due process and judicial protection of

¹⁴⁰ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197 par. 67.

¹⁴¹ IACHR. Application to the Inter-American Court of Human Rights. Case 12.565. *Reverón Trujillo v. Venezuela*. November 9, 2007. par. 75. I/A Court H.R., *Case of the Constitutional Court v. Peru*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, par. 75; and *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, par. 156. ECHR, *Langborger v. Sweden*, decision of 27 January 1989, para. 32.

¹⁴² Basic Principles on the Independence of the Judiciary. Principle 2.

¹⁴³ United Nations Human Rights Committee, General Comment No. 34: Article 19. Freedom of opinion and expression. 12 September 2011, para. 23.

¹⁴⁴ For further information, see: United Nations, Report of the Special Rapporteur on the independence of Judges and Lawyers, Gabriela Knaul, A/HRC/14/26/Add.2, 15 April 2010.

¹⁴⁵ United Nations, Report of the Special Rapporteur on the independence of Judges and Lawyers, Gabriela Knaul, A/HRC/14/26/Add.2, 15 April 2010, p.53 53.

¹⁴⁶ IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*. December 5, 2013, par. 146.

investigations relating to violations of the human rights of justice operators.¹⁴⁷ For its part, the Court has pointed out in its case law that " the State [must] provide its judicial officers (...) and other justice officials with recourse to an adequate security and protection system that takes into account the circumstances of the cases under their jurisdiction and their places of work so that they may perform their duties with due diligence."¹⁴⁸

119. In this way, the IACHR stresses that it is up to each State to protect justice operators against attacks, acts of intimidation, threats, and harassment; to investigate those who commit violations of their rights; and to punish them effectively.¹⁴⁹ Otherwise, if States do not guarantee the security of their justice operators against all kinds of outside pressure, including reprisals directly targeting them and their families, performance of the judicial function as such may be gravely impaired, frustrating access to justice.¹⁵⁰

120. This is because many of the attacks on justice operators are related to their work and thus seek to frighten and exert pressure and thereby weaken their impartiality and independence.¹⁵¹ In the case of judges, the Commission has seen how the attacks are meant to send a message to prevent them from ruling on cases independently and impartially out of fear for their own safety.¹⁵²

121. Furthermore, the Commission has observed how in general attacks on justice operators tend to increase when they are dealing with nationally high profile cases involving serious human rights violations.¹⁵³ On many occasions, assassinations are preceded by acts of intimidation directed not only at the justice operator himself but also at the members of their immediate family.¹⁵⁴ Many such threats are perpetrated in writing, using pamphlets or e-mail, sometimes combined with stalking by unknown persons, the photographing of homes or vehicles, as well as unlawful searches of operators' offices.¹⁵⁵

122. Given this situation, the Commission underscores that, in accordance with the obligations arising out of the American Convention, States have a duty to pursue an effective policy of prevention and protection for justice operators that includes carrying out prompt, exhaustive, and diligent investigations of threats, harassment, attacks and murders directed against them, as well as when their privacy is violated by phone tapping or other illegal interceptions of their communications.¹⁵⁶ The Commission considers that one essential step is to ensure that States keep statistical information and records of attacks and acts of

¹⁴⁷ IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*. December 5, 2013, par. 146.

¹⁴⁸ I/A Court HR. *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, par. 297.

¹⁴⁹ IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*. December 5, 2013, par. 147.

¹⁵⁰ IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*. Thursday, December 05, 2013, par. 147.

¹⁵¹ IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*. December 5, 2013, par. 160.

¹⁵² IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*. December 05, 2013, par. 160.

¹⁵³ IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*. December 5, 2013, par. 161.

¹⁵⁴ IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*. December 5, 2013, par. 161.

¹⁵⁵ IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*. December 5, 2013, par. 161.

¹⁵⁶ IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*. December 5, 2013, par. 165.

intimidation against justice operators, so as to be able to detect patterns and identify the sources of risk with a view to providing appropriate and effective protective measures.¹⁵⁷

123. As indicated in the foregoing section, judges have a right to see that they are protected against outside pressure relating to the functions they perform that may impair their right to life and personal integrity as well as the independent and impartial performance of their work. Derived from those rights is a corresponding duty of the State to adopt the measures needed to ensure effective protection of judges against the many different forms of outside pressure that may be exerted. In addition, once the State becomes aware of such circumstances, it has the obligation to initiate an investigation with all due diligence, within a reasonable period of time, while at the same time respecting the other guarantees of due process, in order to shed light on the aforementioned pressures, detect where they come from, including possible risks to the life of personal integrity of the judge in questions, and single out and punish those responsible. The Commission considers that there is a crucial link between proper investigation of the acts of aggression, threats, harassment, or intimidation to which a judge may be subjected and their dismantlement, including the implementation of protective measures that are genuinely tailored to dealing with specific pressures and the sources thereof.

124. In the instant cases, the parties do not dispute the complaints lodged with respect to the various threats, acts of aggression, harassment, and intimidation to which María Eugenia Villaseñor was subjected in her capacity as a judge. Accordingly, the Commission stresses that, while she participated in a number of judicial proceedings between 1991 and 2012, Mrs. Villaseñor complained through various channels that she was the victim of (i) house searches; (ii) death threats by phone, text messages and even by unknown persons outside her home; (iii) an attempt to kidnap her daughter and to kidnap one of the policemen guarding her home, the beating of her sister and death of her niece after she was hit by a car; (iv) theft, on more than one occasion, of her personal information; (v) attempts to break into her car, and destruction of tires and a telephone line; and (vi) statements and communications from unidentified persons denigrating her work as a judge.

125. As described above in the section on proven facts, those denunciations were filed in a context of insecurity for judges in Guatemala, particularly in relation to the hearing of cases of human rights committed by State agents. That context has been described not only by the IACHR, but also by other international organizations, such as the United Nations Human Rights Committee, as well as by United Nations Special Rapporteurs on the Independence of Judges and Lawyers.

126. While it is familiar with that context and with the complaints filed by judge María Eugenia Villaseñor, the Commission has no information at all indicating that steps have been taken to investigate them. The Commission underscores the fact that in her written communication of May 2014, Mrs. Villaseñor maintained that at the time of her communication the investigations were at an initial stage and those responsible had not been identified. The State did not contest that information. Consequently, the Commission concludes that the complaints and the information that the State had regarding Mrs. Villaseñor 's situation were not duly investigated with a view to identifying sources of risk, helping to eradicate them, singling out those responsible, and imposing appropriate sanctions.

127. The IACHR considers that the lack of an effective investigative response is exacerbated when one takes into account Mrs. Villaseñor 's participation as a judge, in the performance of a public function, in various proceedings relating to human rights violations or crimes against property allegedly committed by State agents, including military personnel and policemen. In fact, the Commission underscores the following circumstantial evidence of a possible link between state agents and the various outside pressures to which judge Villaseñor was subjected: (i) the two men who attempted to raid her home in June 1994 appeared to be soldiers, according to Mrs. Villaseñor 's account; (ii) security agent Miguel Pacheco, who was kidnapped outside Mrs. Villaseñor 's home, stated that he was interrogated about her ties to the sister of Myrna Mack,

¹⁵⁷ IACHR *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*. December 5, 2013, par. 165.

who was murdered by military personnel; (iii) at the beginning of 1997, several different State authorities, including the Attorney General at the time, had criticized Mrs. Villaseñor's participation in the proceedings relating to non-enforcement of the death penalty; (iv) in May 1999, the Attorney for Special Cases at that time denounced Mrs. Villaseñor for acts of corruption in connection with the proceedings against former President Efraín Ríos Montt on charges of human rights violations; and (v) in October, 2001, various generals and colonels in the Armed Forces had questioned the book written by Mrs. Villaseñor about the murder of Myrna Mack.

128. In addition, the Commission points to the series of resolutions by the Human Rights Ombudsman (issued in 1994, 1999, and 2009) in which he stressed the importance of an exhaustive investigation of the facts. Moreover, the Ombudsman also identified the possible participation of State agents in the various threats and acts of intimidation denounced by Mrs. Villaseñor. In his resolution of March 1999, the Human Rights Ombudsman concluded that the judge was "being subjected to threats, acts of intimidation and coercion by (...)officials and staff of various public institutions."

129. The Commission stresses that, pursuant to above-mentioned international standards, State must be particularly diligent in their investigations when there are threats or acts of aggression against judges, an obligation that is even more imperative when those pressures are possibly being exerted by State agents. Along those same lines, the Court has established the importance of establishing logical threads to be pursued in investigations based on the proofs and evidence collected.¹⁵⁸

130. In the instant case, the IACHR considers that the State did not conduct diligent investigations within a reasonable period of time designed to throw light on what happened, identify those responsible -- including their possible membership of or ties to State agents -- and punish them. The Commission stresses that, given the content and context of the complaints about threats and acts of aggression described, the State authorities were required to draw up and exhaustively pursue a serious investigative hypothesis linking Mrs. Villaseñor's activities as a judge to the various military and police personnel, as well as other actors, involved in the proceedings in which she participated as a judge. Consequently, there is in the instant case a situation of complete impunity with respect to the multiple forms of pressure, threats and harassment described by the judge, despite the long time that has elapsed since the first complaints.

131. Furthermore, the IACHR reiterates that guaranteeing judges protection against outside pressure entails -- in addition to conducting the investigations needed to detect the source of risk, shed light on what happened, and identify and punish those responsible -- crafting and implementing protective measures to safeguard the life and integrity of whoever denounces threats and harassment.

132. In the instant case, the Commission decided to grant precautionary measures on Mrs. Villaseñor's behalf "following complaints of stalking, threats, and harassment (...), threats apparently related to the judicial proceedings which [...] she is hearing." From that date on until precautionary measures were lifted in July 2013, the Commission monitored via that mechanism the protective measures adopted by the State on behalf of Mrs. Villaseñor. Likewise, as specified in the section on proven facts, the IACHR has received information and documentation from both parties as it processed the instant case with regard to the protective measures adopted.

133. On this, the Commission takes note of the fact that once those measures were adopted, the State initially designated two police officers to protect Mrs. Villaseñor's home, one of whom lacked the appropriate equipment. Subsequently, and at the request of the President of the Judiciary, two security guards, with their replacements, were assigned: a situation that continued until 1997, when two of them were withdrawn. The Commission notes that while at some point Mrs. Villaseñor apparently indicated that the threats had stopped, prior to and after that point in time she consistently complained of the risk to which she was exposed.

¹⁵⁸ I/A Court H.R., *Case of González Medina and Family v. Dominican Republic*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 27, 2012, Series C No. 240, par. 115.

134. The Commission takes note of a series of shortcomings in the implementation of the protective measures that may have contributed to the continuity of the risk that Mrs. Villaseñor faced in the performance of her functions. Thus, the Commission takes note of the fact that there were periods in which only one security guard was on duty, because the other went on vacation leave and was not replaced. The Commission underscores the various resolutions issued by the Human Rights Ombudsman in reference to the protective measures implemented by the State. In his resolution of September 1994, the Ombudsman concluded that the State violated Mrs. Villaseñor's right to integrity by "failing to do its duty." In his resolution of March 2002, he pointed to "the existence of behavior (...) detrimental to the interests (...) of María Eugenia Villaseñor." Subsequently, in his resolution of March 2009, the Ombudsman concluded that the State had not guaranteed Mrs. María Eugenia Villaseñor's security. In addition, the IACHR takes note of other irregularities, such as the obligation imposed on Mrs. María Eugenia Villaseñor to defray the cost of feeding the security guards.

135. The shortcomings identified in the protective measures are, precisely, related to the failure to conduct a diligent and timely investigation of Mrs. María Eugenia Villaseñor's complaints, as detailed in this report. The Commission considers that if the State had conducted an effective investigation from the time of Mrs. María Eugenia Villaseñor's first complaints it would have been able to design measures to protect her personal integrity based on the specific sources of risk and pressure. Moreover, it would have been possible to prevent the impact on that integrity caused by the persistence of this situation for almost two decades. Accordingly, the instant case exemplifies the link that exists between the lack of effective investigation, shortcomings in the protective measures, and the impairment of the personal integrity of a judge, due to the many years of denunciations of different forms of pressure, threats, and harassment derived from her judicial functions. That situation constitutes a denial of justice and a permanent violation of the mental and moral integrity of Mrs. María Eugenia Villaseñor and her family, derived from the latent risk and anguish to which they have been subjected for a prolonged period of time.

136. Finally, the Commission would like to note, as well, that both the lack of adequate protection based on a serious diagnostic assessment of the sources of risk and pressure and the lack of diligent and effective investigation, affected Mrs. María Eugenia Villaseñor's work as a judge in proceedings with considerable national and international repercussions. Just as the Human Rights Ombudsman concluded in his resolution of March 2009, the situation of risk that Mrs. Villaseñor faced at the time "did not allow her to exercise the judicial authority she possesses to administer justice within her sphere of competence." In that sense, the instant case also constitutes an example of how the lack of an effective response with regard to both protection and the investigation of outside pressures on a judge may pose a risk to the independent and impartial exercise of her important function of administering justice.

137. In light of all the above considerations, the IACHR concludes that the State of Guatemala violated the rights judicial guarantees and judicial protection established in Articles 8.1 and 25.1 of the American Convention, in conjunction with Article 1.1 of the same instrument, to the detriment of María Eugenia Villaseñor. Likewise, the IACHR concludes that the State violated the right to personal integrity established in Article 5.1 of the American Convention, in conjunction with Article 1.1 of the same instrument, to the detriment of María Eugenia Villaseñor, her daughter Beatriz Eugenia Villaseñor Velarde, her brother Francis Villaseñor Velarde and her sister Rosa Antonieta Villaseñor Velarde.

VII. CONCLUSIONS

138. Based on the considerations of fact and law set out above, the Inter-American Commission concludes that it is competent to hear the instant case, that it satisfies admissibility requirements, and that the State of Guatemala is responsible for violation of the rights to humane treatment (personal integrity), judicial guarantees and judicial protection recognized at Articles 5.1, 8.1, and 25.1 of the American Convention taken in conjunction with the obligations established in Article 1 (1) of that international instrument.

VIII. RECOMMENDATIONS

139. In light of the foregoing conclusions,

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

1. Provide full reparation for the human rights violations found in the instant report, including both material and moral dimensions.
2. Carry out and complete an independent, impartial, thorough, effective and expeditious investigation of the complaints lodged by Mrs. María Eugenia Villaseñor. That investigation must explore and exhaustively pursue the logical investigative threads derived from her work as a judge and identify and, where applicable, punish all those who participated in the facts.
3. Impose appropriate administrative, disciplinary or criminal penalties for the acts or omissions of state officials that contributed to the denial of justice and impunity regarding the facts in the case.
4. Implement measures to prevent repetition of the violations and ensure that investigations of complaints by judges and possible protective measures to be implemented on their behalf meet the standards established in this report.