

Inter-American Court of Human Rights
Case of Nogueira de Carvalho *et al.* v. Brazil
Judgment of November 28, 2006
(Preliminary Objections and Merits)

In the *Case of Nogueira de Carvalho et al.*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), comprising the following judges: *

Sergio García Ramírez, President;
Alirio Abreu Burelli, Vice President;
Antônio Augusto Cançado Trindade, Judge;
Cecilia Medina Quiroga, Judge;
Manuel E. Ventura Robles, Judge; and
Diego García-Sayán, Judge;

also present,

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

pursuant to Article 62(3) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 29, 56 and 58 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), hereby delivers this Judgment.

I
INTRODUCTION OF THE CASE

1. On January 13, 2005, in keeping with the provisions of articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the Court an application against the Federal Republic of Brazil (hereinafter “Brazil” or “the State”), originating from petition No. 12.058, received by the Secretariat of the Commission on December 11, 1997.

2. The Commission filed this application for the Court to determine whether the State was responsible for breaching the rights set forth in Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in reference to Article 1(1) (Obligation to Respect Rights) of the American Convention, in injury of Jauridice Nogueira de Carvalho and Geraldo Cruz de Carvalho (hereinafter “the alleged victims”), for alleged lack of due diligence in the process of investigating the facts and applying sanctions to those responsible for the death of Francisco Gilson Nogueira de Carvalho (hereinafter “Gilson Nogueira de Carvalho” or “the attorney”), and the failure to provide an effective remedy in the instant case. The Commission noted that the alleged victims are the parents of Gilson Nogueira de Carvalho,

* Judge Oliver Jackman did not take part in the deliberations or signing of this Judgment, having informed the Court that, owing to circumstances beyond his control, he was unable to attend the LXXIII Regular Session of the Court.

an attorney and human rights advocate who had engaged part of his professional life in reporting crimes committed by the “golden boys,”* an alleged death squad made up of civilian police and other government employees. He also devoted himself to furthering criminal cases filed against these agents of the State. The attorney was murdered on October 20, 1996 in the city of Macaíba, State of Rio Grande do Norte, Brazil. The application noted that the work of Gilson Nogueira de Carvalho “focused on trying to put a stop to the situation of total impunity in Rio Grande do Norte, [in which] agents of the State abducted, murdered and tortured persons and received no punishment whatsoever.” The Commission asked the Court for a ruling on alleged violations that took place after December 10, 1998, when the State recognized the contentious jurisdiction of the Court; and it stated that “the flawed actions of state authorities, seen in their entirety, resulted in a failure to investigate, pursue, apprehend, prosecute and convict those responsible for the murder [of Gilson Nogueira de Carvalho, and that] after more than [ten] years, the perpetrators have not been identified or punished, and therefore [his] parents have not been able to bring legal action for the purpose of obtaining a settlement for damages suffered.”

3. Accordingly, the Commission asked the Court to order the State to adopt certain measures of reparation as specified in the application, and to pay reimbursement for costs and expenses incurred in pursuing the case at the domestic level and before the bodies of the inter-American system for the protection of human rights.

II COMPETENCE

4. The Court has jurisdiction to hear the preliminary objections and merits, reparations and costs in this case, in keeping with Article 62(3) of the Convention, because Brazil has been a State Party to the American Convention since September 25, 1992, and accepted the contentious jurisdiction of the Court on December 10, 1998.

III PROCEEDING BEFORE THE COMMISSION

5. On December 11, 1997, the *Centro de Derechos Humanos y Memoria Popular* (Center for Human Rights and Popular Memory, CDHMP), the Holocaust Human Rights Project and the Group of International Human Rights Law Students (hereinafter “the petitioners”) filed a complaint against Brazil with the Inter-American Commission, alleging State responsibility in the death of Gilson Nogueira de Carvalho, murdered on October 20, 1996. The petitioners claimed that the State had shirked its obligation to guarantee the right to life of Gilson Nogueira de Carvalho and to conduct a conscientious investigation of his death, prosecute the perpetrators and invoke effective judicial remedies. On August 21, 2000, Global Justice joined the case as co-petitioner. The complaint was filed in English.

6. On January 21, 1998, the Commission forwarded the relevant sections of the complaint to the State, asking it to reply within 90 days. On January 26, 1998, the State requested a Portuguese version of the petition. On February 6, 1998, the Commission asked the petitioners for a translation, which was received on October 13, 1998. That same day, the applicable sections of the petition were transmitted to the State in Portuguese, with a request to supply any information that might help the Commission determine whether domestic remedies had been exhausted in this case; the Commission granted a new 90-day term for this purpose.

* In the Portuguese version of this Judgment, *meninos de ouro*.

7. On April 1, 1999, in view of the State's failure to reply, the Commission granted an additional 30-day term and warned that it might invoke Article 42 of its Rules of Procedure, presuming that the claims made in the petition were accurate. On May 1, 2000, the Commission granted the State 30 more days to submit requested information on the petition.

8. On June 29, 2000, the State reported that, according to the Attorney General of the State of Río Grande do Norte (*Procuraduría General de Justicia del State of Rio Grande do Norte*), the case of the death of Gilson Nogueira de Carvalho was currently at the stage of *pronúncia*, in which the presiding judge finds convincing evidence that a crime was committed, as well as evidence of who committed it. The presiding judge in the instant case confirmed that such evidence did exist and delivered a ruling of *pronúncia*, ordering a jury trial for the case. The State also noted that, because the Office of the Public Prosecutor differed with the presiding judge's opinion, it would be up to the Court of Justice of the State of Rio Grande do Norte to determine whether the ruling was in order.

9. On October 2, 2000, during its 108th Regular Session, the Commission adopted Admissibility Report No. 61/00, declaring that the petition was admissible as filed and stating, among other things, that, "the State's silence [on the exhaustion of domestic remedies] in this case constitutes a tacit waiver of the right to invoke this objection." The report was transmitted to the petitioners and to the State on November 15, 2000.

10. On August 29, 2003, the Commission placed itself at the disposal of the parties in keeping with the procedure for friendly settlement. On October 1, 2003, the petitioners stated their wish to continue addressing the merits of the case. The State made no comment.

11. On March 10, 2004, during its 119th Regular Session, the Inter-American Commission adopted Report on the Merits No. 22/04. In its report, the Inter-American Commission stated that "the petitioners allege a body of facts that were not contested by the State[, and if the State] does not contest the merits or produce evidence calling them into question, the Commission can presume these allegations to be true, so long as there is no convincing evidence that may lead it to conclude otherwise." The Commission concluded, *inter alia*, that the State was responsible for violating the rights embodied in Article 4 (Right to Life); Article 8 (Right to a Fair Trial); and Article 25 (Right to Judicial Protection) of the American Convention, all of them in reference to Article 1(1) of the pact, and recommended that the State adopt a number of measures to rectify these violations.

12. On April 13, 2004, the Inter-American Commission transmitted Report on the Merits No. 22/04 to the State and set a two-month deadline for the State to report back on measures it had adopted to comply with the recommendations. The State twice requested and received extensions to this term and accepted, expressly and irrevocably, that the granting of the extensions overrode the time period specified in Article 51(1) of the Convention for submitting the case to the Court. That same day, the Commission notified the petitioners that the Report had been adopted and transmitted to the State and asked them to express their position on submitting the case to the Inter-American Court. On May 18, 2004, the petitioners asked the Commission to submit the case to the Court.

13. On August 10 and October 13, 2004, the State submitted progress reports on its compliance with the recommendations made in Report on the Merits No. 22/04. Among other things, it noted that the Office of the Public Prosecutor, claiming absolute nullity, had appealed the decision of the jury trial to acquit the only suspect in the death of Gilson

Nogueira de Carvalho, and that the Federal Government would undertake negotiations with the Government of the State of Rio Grande do Norte to elicit recognition of its responsibility for the murder of Gilson Nogueira de Carvalho and agree with the next of kin on measures of reparation. It noted that the restoration of democracy in Brazil was inseparable from the battle of human rights defenders, and therefore, in addition to adopting other initiatives intended to protect them, it had finished drafting a national Program for the Protection of Human Rights Defenders, which would be officially released soon after the submission of the State's report.

14. On January 12, 2005, the State submitted its third report on measures adopted to comply with the three recommendations contained in Report on the Merits No. 22/04. The State reiterated the content of its previous reports and stated that the accused, Otávio Ernesto Moreira, had been acquitted by the jury trial and that the Office of the Public Prosecutor had filed an appeal, based on absolute nullity, with the Court of Justice of the State of Rio Grande do Norte. The State also reiterated that the Office of the Public Prosecutor had expressed its commitment to pursue every possible remedy before the High Court of Justice and the Federal Supreme Court. Therefore, it stated that the procedural stages of the case should not be considered concluded, as the accused could be convicted by the higher courts. The State asserted that the Special Human Rights Secretariat of the President of Brazil had repeatedly addressed the Government of the State of Rio Grande do Norte to initiate negotiations for redressing the moral and material damages suffered by the next of kin of Gilson Nogueira de Carvalho, but that it had encountered resistance by authorities of the State of Rio Grande do Norte.

15. On December 21, 2004, in consideration of the reports submitted by the State, the Commission again consulted the petitioners about remitting the case to the Court. On December 27, 2004, the petitioners stated that it was "extremely important to send the case to the Inter-American Court [... because] the State [had not complied] with the three recommendations [made by the] Commission."

IV PROCEEDING BEFORE THE COURT

16. On January 13, 2005, the Commission lodged the application with the Court, attaching documentary evidence thereto and proffering testimonial and expert evidence. The Commission designated José Zalaquett and Santiago A. Canton as delegates and Ariel Dulitzky, Ignacio Álvarez and Víctor Hugo Madrigal Borloz as legal advisors. On February 11, 2005, the Commission filed the application in Portuguese.

17. On February 21, 2005, the Secretariat of the Court (hereinafter "the Secretariat"), after the President of the Court (hereinafter "the President") had completed a preliminary examination of the application, notified the State concerning the application and its appendixes and informed it of the time limitations for it to respond and designate its agents for the case.

18. On February 21, 2005, in keeping with the provisions of Article 35(1) subparagraphs d and e of the Rules of Procedure, the Secretariat sent notice of the application to Global Justice and the *Centro de Derechos Humanos y Memoria Popular*, designated in the application as representatives of the alleged victims (hereinafter "the representatives") and

advised them of the time limitations for submitting their brief of pleadings, motions and evidence (hereinafter "brief of pleadings and motions").

19. On March 21, 2005, the State advised that it had designated Danielle Aleixo Reis do Valle Souza as Agent, and on March 29, 2005, it announced its designation of Murilo Vieira Komniski, Renata Lúcia de Toledo Pelizón, Carolina Campos de Melo and Cristina Timponi Cambiaghi as Alternate Agents. On both occasions, the State cautioned that it reserved the right to name other representatives to act in this case at a later date.

20. On April 18, 2005, the representatives filed their brief of pleadings and motions, attaching documentary evidence thereto and offering testimonial and expert evidence. The representatives claimed that the State had incurred international responsibility for its failure to investigate the death of Gilson Nogueira de Carvalho and for failing to punish the perpetrators, which entailed not only a breach of the rights established in Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection) of the Convention, but also violation of Article 4 (Right to Life), and that the Court had jurisdiction to rule on these three articles in reference to Article 1(1) of the Convention. They also asked the Court to order payment of compensation for pecuniary and non-pecuniary damages, adoption of guarantees of non-repetition and reimbursement of costs and expenses.

21. On June 21, 2005, the State filed its brief of preliminary objections, its response to the application and comments on the brief of pleadings and motions (hereinafter "brief of response to the application"), attaching documentary evidence thereto and offering testimonial evidence. The State began by pleading a preliminary objection of "lack of jurisdiction *ratione temporis* of [the] Court," based on its understanding that the Commission, although it claimed violation of Articles 8 and 25 of the Convention only, was in reality seeking a declaration of violation of the right to life; in the second place, the State claimed the objection of "non-exhaustion of domestic remedies." The State also rejected the allegations that it had violated Articles 4(1), 8(1) and 25 of the American Convention.

22. On August 15 and 18, 2005, the representatives and the Commission filed their respective comments on the preliminary objections lodged by the State and asked the Court to reject them as inadmissible.

23. On November 30, 2005, the Inter-American Court handed down an order for Percílio de Souza, named as a witness by the Commission, Plácido Medeiros de Souza, named as a witness by the representatives and Augusto César Oliveira Serra Pinto, Célio de Figueiredo Maia and Gerson de Souza Barbosa, proposed as witnesses by the State, to submit testimony by means of sworn statements made to an authorized public official (affidavit). It also summoned Belisário dos Santos Júnior, proposed as an expert witness by the Commission, and Luiz Flávio Gomes, proposed as an expert witness by the representatives, to render their expert testimony by means of sworn statements made to an authorized public official (affidavit). The Court granted the parties until January 11, 2006 to file all these statements. In its order, the court also convened the Commission, the representatives and the State to a public hearing to take place at the seat of the Inter-American Court on February 8, 2006, to hear closing oral pleadings on the preliminary objections and merits, reparations and costs, as well as the testimony of Fernando Batista de Vasconcelos, named by the Commission, and Gilson José Ribeiro Campos and Henrique César Cavalcanti, named by the State. Finally, the Court informed the parties that they had a non-extendible deadline of March 10, 2006 to submit their closing arguments in writing on the instant case.

24. On December 21, 2005, the State notified the Court that it was designating Milton Nunes Toledo Júnior to serve as Alternate Agent.

25. On January 11, 2006, the Commission reported that it would not submit a statement from Percílio de Souza or expert testimony from Belisário dos Santos Júnior.

26. On January 11, 2006, the representatives filed a sworn statement by Plácido Medeiros de Souza, rendered before the Human Rights Ombudsman of Natal and bearing a notarized signature. That same day, Luiz Flávio Gomes rendered expert witness, also signed by Alice Bianchini, and on January 24, 2006, he sent an explanation as to the participation of Alice Bianchini in the statement.

27. On January 11, 2006, the State submitted statements, with notarized signatures, by Augusto César Oliveira Serra Pinto and Gerson de Souza Barbosa, and reported that it would not submit testimony by Célio de Figueiredo Maia. The State also submitted a statement by Tálita de Borba Maranhão e Silva and asked that it be admitted as evidence in the instant case.

28. On January 27, 2006, the Commission submitted its comments on the statements of the witnesses and expert witness submitted by the representatives and the State. The Commission filed no objections to the opinion of expert witness Luiz Flávio Gomes, in view of his communication of January 24, 2006 (*supra* para. 26). The Commission felt that the statements by Augusto César Oliveira Serra Pinto and Gerson de Souza Barbosa did not conform to the proposed object, as the deponents had given their opinions on the domestic investigation but had not reported on facts of which they were aware as a result of their duties. The Commission claimed that the statement by Tálita de Borba Maranhão e Silva, even though it had been proffered by the State in the final listing of witnesses and expert witnesses, nonetheless had not been solicited by the Court. It gave no opinion on the statement by Plácido Medeiros de Souza.

29. On January 30, 2006, the representatives filed their comments on testimony submitted by the State. They claimed that the statement by Tálita de Borba Maranhão e Silva should not be considered, as it produced a procedural imbalance between the parties. Nevertheless, they submitted several collateral comments regarding the content of the statement. They also made observations on the statements rendered by Augusto César Oliveira Serra Pinto and Gerson de Souza Barbosa. In particular, they felt that the statement by Gerson de Souza Barbosa was patently biased, as the deponent claimed that for several years he had personally observed and participated in the search for the truth and in identifying the perpetrators of the murder of Gilson Nogueira de Carvalho; in his statement, he unconditionally defended the actions of the police in investigating the case.

30. On January 27, 2006, the State challenged the opinion signed by Luiz Flávio Gomes and Alice Bianchini, claiming that the expert witness failed to provide an objective, impartial evaluation of the facts surrounding the police and judicial investigation of the death of Gilson Nogueira de Carvalho. The State requested, if this opinion was not suppressed from the body of evidence, that it be disqualified as expert testimony and taken instead as a personal opinion. On January 31, 2006, in view of the clarification submitted by Luiz Flávio Gomes (*supra* para. 26), the State asked that this opinion be suppressed from the trial documents, because the submission by expert witness Gomes was time-barred; the opinion as given lacked technical content, and Alice Bianchini had not been proposed by the representatives to provide expert witness in the case of Gilson Nogueira de Carvalho.

31. On February 8, 2006, the Court held a public hearing. Appearing before the Court were: a) for the Inter-American Commission: Evelio Fernández, Ignacio J. Álvarez, Víctor H. Madrigal Borloz, Leonardo Jun Ferreira Hidaka and Lilly Ching; b) for the representatives:

James Louis Cavallaro, Fernando Delgado, Carlos Eduardo Gaio, Daniel Alves Pessoa, Roberto de Oliveira Monte, Jonathan Kaufman, Luciana Silva García and Deborah Popowski, and c) for the State: Danielle Aleixo Reis do Valle Souza, Maria Luiza Ribeiro Viotti, Renata Lúcia de Toledo Pelizón, Márcia Adorno Ramos, Milton Nunes Toledo Júnior, Francisco Soares Alvim Neto, Christiano Sávio Barros Figuerôa, Carlos Santa Rosa D'Álbuquerque Castim and Romeo Olmar Klich. Both the representatives and the State submitted several documents at the hearing.

32. On March 10, 2006, the representatives and the State submitted their final written arguments. The representatives attached several appendices, which were received in their entirety on March 17, 2006. On March 11, 2006, the Commission submitted its final written arguments.

33. On October 30, 2006, in accordance with Article 45 of the Rules of Procedure and on the instructions of the President, the Secretariat summoned the Commission, the representatives and the State to submit certain documents as evidence to facilitate resolution of the case.

34. On November 14, 2006, the State and the representatives submitted part of the requested evidence to facilitate resolution. On November 15, 2006, the Commission informed the Court that it was unable to submit the documents requested, as it did not have this information.

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35. On July 28, 2006, several organizations and individuals filed briefs in character of *amici curiae*.¹

V PRELIMINARY OBJECTIONS

¹ To wit: Center for Justice and International Law (CEJIL), Front line - The International Foundation for the Protection of Human Rights Defenders, World Organisation Against Torture (OMCT), Corporación Colectivo de Abogados "José Alvear Restrepo," Movimiento Nacional de Derechos Humanos, Asociación Fomento, "Miguel Agustín Pro Juárez" Human Rights Center, Una Ventana a la Libertad, Comité de Familiares de Detenidos - Desaparecidos, Robert F. Kennedy Memorial Center for Human Rights, Centro de Derechos Económicos y Sociales (CDES), Centro de Documentación en Derechos Humanos "Segundo Montes Mozo S.J." (CSMM), Casa Alianza Honduras, Centro para la Acción Legal en Derechos Humanos (CALDH), Programa Venezolano de Acción-Educación en Derechos Humanos (PROVEA), Comité Permanente de Defensa de los Derechos Humanos de Orellana, Grupo Interdisciplinario de Derechos Humanos de Medellín, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), Centro de Iniciativas Democráticas (CIDEM), Instituto de Defensa Legal (IDL), Asociación Pro Derechos Humanos (APRODEH), Coordinadora Nacional de Derechos de Perú, Movimiento Nacional de Direitos Humanos (MNDH), Fundação Interamericana de Defesa de Direitos Humanos (FIDDH), Terra de Direitos, Comisión Colombiana de Juristas (CCJ), Coordinadora de Derechos Humanos del Paraguay (CODEHUPY), Centro de Derechos Humanos y Ambiente, Abogados y Abogadas del Noroeste Argentino en Derechos Humanos y Estudios Sociales (ANDHES), Centro de Estudios Legales y Sociales (CELS), Movimiento de Mujeres Dominico-Haitianas (MUDHA), Human Rights Without Frontiers International (HRWF), University of Virginia School of Law International Human Rights Law Clinic, Human Rights Network International, Rights International - The Center for International Human Rights Law, International League for Human Rights, University of Minnesota Human Rights Center, International Human Rights Clinic of George Washington University, European Roma Rights Centre, Washington College of Law Center for Human Rights and Humanitarian Law, University of Essex Human Rights Centre, Union Internationale des Avocats, Benjamín Cuéllar Martínez and Matilde Guadalupe Hernández Espinoza and in their capacity as trial lawyers, Alejandro Ponce, Carlos Ayala and Pedro Nikken.

36. The State pled preliminary objections on the following grounds: the Court's lack of jurisdiction *ratione temporis* to hear the instant case, and failure to exhaust domestic remedies. The Court will proceed forthwith to examine these preliminary objections, taking into account the written and oral pleadings of the State, the Commission and the representatives.

FIRST PRELIMINARY OBJECTION
Lack of jurisdiction *ratione temporis*

Arguments of the State

37. The State claims that the Inter-American Court lacks jurisdiction to hear this application; although the Commission has limited its claim to violation of Articles 1(1), 8 and 25 of the American Convention, in fact it intends to obtain a veiled judgment against the State for breach of Article 4 of the Convention. This is apparent in the Commission's requests for reparation, which would apply for violation of the right to life, but not denial of justice, to wit: a) to adopt a comprehensive policy for protection of human rights defenders; b) to identify and punish the perpetrators of the death of Gilson Nogueira de Carvalho; and c) to redress pecuniary and nonpecuniary damages for suffering caused by the death of the attorney. Gilson Nogueira de Carvalho died prior to the State's acceptance of the contentious jurisdiction of the Court, which took place two years later, and therefore the Court cannot rule on it.

Arguments of the Commission

38. The Inter-American Commission is asking the Court to rule on violation of Articles 8(1) and 25 of the Convention and on the State's breach of obligations embodied in Article 1(1), due to lack of due diligence in investigating the facts and punishing the perpetrators, and because it failed to provide an effective remedy in the instant case. The application refers to a separate body of facts and omissions that took place following the date when the State recognized the jurisdiction of the Court and entailed its obligation to investigate the murder of Gilson Nogueira de Carvalho, effectively, adequately and in a reasonable time. Therefore, it is an error to assume that the Commission seeks to obtain a veiled judgment for violation of Article 4 of the Convention, which in fact would be a liberal interpretation of the express content of the application. The events that led to violation of the right to life of Gilson Nogueira de Carvalho are beyond the scope of violations claimed in the application.

Arguments of the representatives

39. The representatives argue that violation of the right to life applies not only to the death of Gilson Nogueira de Carvalho, but also to the State's failure to abide by its duty to investigate the death and punish those responsible. This obligation is on-going in nature and does fall within the time frame of the Court's jurisdiction. The Court has jurisdiction to rule on the violation not only of Articles 8 and 25 of the American Convention, but also of Article 4 of the Convention, to determine whether the denial of justice comprises a breach of the right to life in conjunction with Article 1(1) of the Convention, as such a violation remains in effect until the State effectively investigates the facts, punishes those responsible and adopts measures to prevent such violations from recurring. Recognition of on-going violations of Article 4 of the American Convention could be limited to cases in which agents of the State hold *prima facie* responsibility for the original act.

Conclusions of the Court

40. The State questions the Court's jurisdiction *ratione temporis* to hear the instant case. It claims that, while the application refers only to the alleged violation of Articles 1(1), 8(1) and 25 of the American Convention, the Commission is also seeking a judgment for breach of Article 4 of the Convention, which according to the State would not be possible given the time limitations of the Court's jurisdiction.

41. When it interprets the Convention in accordance with its purposes and ends, the Court must always preserve the integrity of the mechanism provided in Article 62(1). It would be inadmissible to subordinate the human rights protection system embodied in the Convention and, therefore, the jurisdictional function of the Court, to restrictions that render it inoperative.²

42. Moreover, the Court once again asserts the position it has taken in other cases, that the clause on recognition of the Court's jurisdiction is essential to guarantee the effectiveness of the mechanism for international protection, but it must be interpreted and applied with a view to the special character of human rights treaties and their collective implementation. In this regard, the Court has said that:

[t]he States Parties to the Convention must guarantee compliance with its provisions and its effects (*effet utile*) within their own domestic laws. This principle applies not only to the substantive provisions of human right treaties (in other words, the clauses on the protected rights), but also to the procedural provisions, such as the one concerning recognition of the Tribunal's contentious jurisdiction.³

43. In the case at hand, the State placed no time restrictions on the jurisdiction of the Court in the declaration recognizing contentious jurisdiction. Therefore, the Court, in defining the scope of its own jurisdiction (*compétence de la compétence*), must consider only the principle of non retroactivity established in Article 28 of the 1969 Vienna Convention on the Law of Treaties.⁴

44. The Court has already stated that it cannot exercise contentious jurisdiction to apply the Convention and declare a breach of its provisions if the alleged facts or conduct by the respondent State that could incur international responsibility take place prior to the State's recognition of the Court's jurisdiction.⁵ Therefore, the Court cannot hear the facts of the death of Gilson Nogueira de Carvalho.

45. Nevertheless, the Court is competent to examine actions and omissions associated with on-going or lasting violations if such actions begin prior to the date of recognition of

² Cf. *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, para. 107; *Case of the Serrano Cruz Sisters. Preliminary Objections*. Judgment of November 23, 2004. Series C No. 118, para. 67; and *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 128.

³ Cf. *Case of the Serrano Cruz Sisters. Preliminary Objections*, *supra* note 2, para. 69; *Case of Baena Ricardo et al. Competence*, *supra* note 2, para. 66; and *Case of Constantine et al. Preliminary Objections*. Judgment of September 1, 2001. Series C No. 82, para. 74.

⁴ This article states, "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with regard to that party." Likewise, Cf. *Case of the Girls Yean and Bosico*, *supra* note 2, para. 130; *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 38; and *Case of the Serrano Cruz Sisters. Preliminary Objections*, *supra* note 2, para. 64.

⁵ Cf. *Case of the Girls Yean and Bosico*, *supra* note 2, para. 105; *Case of Caesar*. Judgment of March 11, 2005. Series C No. 123, para. 10; and *Case of the Serrano Cruz Sisters. Preliminary Objections*, *supra* note 2, para. 66.

the jurisdiction of the Court and persist even after that date, without transgressing the principle of non-retroactivity,⁶ and also when the wrongful events occur subsequent to the date of recognition of jurisdiction.

46. Therefore, the Court is competent to hear the alleged violations of Articles 8 and 25 of the American Convention, as of the date the State recognized the contentious jurisdiction of the Court, and consequently it dismisses the first preliminary objection.

SECOND PRELIMINARY OBJECTION
Failure to exhaust domestic remedies provided by the State

Arguments of the State

47. The State argues that:

- a) when this complaint was considered for admissibility, the State informed the Commission that a process of criminal investigation into the facts was underway, and therefore the Commission should not hold the case admissible;
- b) rulings on two remedies are still pending in the domestic courts: a special motion and an extraordinary remedy lodged by the parents of Gilson Nogueira de Carvalho. If these remedies are sustained, a new trial could ensue, ultimately with a possible criminal conviction. Therefore, it is "imprudent and premature [for the Court] to consider the instant case;" and
- c) the representatives have come before this Court to request payment of indemnification on behalf of the parents and purported daughter of Gilson Nogueira de Carvalho; nevertheless, they never availed themselves of domestic proceedings to make such a request.

Arguments of the Commission

48. La Commission argues as follows:

- a) the State makes no claim that the Commission's decision is based on mistaken information or resulted from a process that compromised the parties' equality of arms or right to defense. The content of Commission decisions on admissibility, consistent with the provisions of its Rules of Procedure and the Convention, need not undergo a new examination of substance;
- b) nearly three years after it began processing this case, the Commission, in view of the State's silence, approved Admissibility Report No. 61/00. In its report, the Commission found that, as the State offered no argument of failure to exhaust domestic remedies in the only brief it filed during the admissibility stage, it could be assumed to have tacitly waived this defense; and
- c) there was unjustified delay in conducting the process, first in the absence of an effective investigation, so that ultimately the case was set aside, and

⁶ Cf. *Case of Vargas Areco*. Judgment of September 26, 2006. Series C No.155, para. 63; *Case of the Moiwana Community*, *supra* note 4, para. 39; and *Case of the Serrano Cruz Sisters. Preliminary Objections*, *supra* note 2, para. 65.

subsequently in the failure to investigate and prosecute most of the possible perpetrators. This is consistent with the exception outlined in Article 46(2)(a) of the Convention, according to which the requirement to exhaust is subordinate to the existence of effective domestic remedies, which is not seen in this case.

Arguments of the representatives

49. The representatives claim that the petition was lodged when all available domestic remedies for investigating the facts had been exhausted, as on June 19, 1997, the presiding judge set aside the police investigation at the request of the Office of the Public Prosecutor under the argument that there was insufficient evidence for a criminal indictment. At the time, this discontinuance of the investigation represented exhaustion of domestic remedies for ascertaining the circumstances under which the murder was committed, and six months later, on December 11, 1997, the representatives therefore lodged a petition against the State with the Commission.

Conclusions of the Court

50. Article 46(1)(a) of the Convention states that, in order for a petition or communication lodged with the Inter-American Commission in accordance with Articles 44 or 45 of the Convention to be judged admissible, the remedies under domestic law need to have been pursued and exhausted.⁷

51. The Court has already developed clear requirements for lodging the objection of failure to exhaust domestic remedies. The generally recognized principles of international law, to which the rule of exhaustion of domestic remedies refers, in the first place recognize that the respondent State may waive the application of this rule, whether expressly or tacitly. In the second place, the objection of failure to exhaust domestic remedies, in order to be timely, must be pled during the stage of admissibility of the procedure with the Commission, that is, prior to consideration of the merits; otherwise, it is presumed that the State has tacitly waived this argument. In the third place, the Court has asserted that the failure to exhaust remedies is strictly a matter of admissibility, and that a State lodging this objection must specify the domestic remedies that remain to be exhausted and demonstrate that these remedies are applicable and effective.⁸

52. On June 29, 2000, the State, in its only comment prior to publication of the Admissibility Report by the Inter-American Commission, held that "the process seeking to resolve the death of the attorney Gilson Nogueira de Carvalho [was] at the stage of *pronúncia*, meaning that the presiding judge finds convincing evidence that a crime was committed, as well as evidence of who committed it" (*supra* para. 8). In other words, in its only response to the petition, the State did not lodge the objection of failure to exhaust domestic remedies, as demonstrated by the Commission in its report, because its other three responses sought to demonstrate that it had complied with the recommendations

⁷ Cf. *Case of Acevedo Jaramillo et al.* Judgment of February 7, 2006. Series C No. 144, para. 122; *Case of Ximenes Lopes. Preliminary Objection.* Judgment of November 30, 2005. Series C No. 139, para. 4; and *Case of the Moiwana Community*, *supra* note 4, para. 48.

⁸ Cf. *Case of García Asto and Ramírez Rojas.* Judgment of November 25, 2005. Series C No. 137, para. 49; *Case of the Moiwana Community*, *supra* note 2, para. 61; and *Case of the Serrano Cruz Sisters. Preliminary Objections*, *supra* note 2, para. 135.

given in the Report on the Merits. In light of all this, the Commission interpreted the State's silence as a tacit waiver of the right to plead such a requirement; the Commission was thus exempted from pursuing other considerations on compliance and was able to declare the case admissible.

53. The Court notes that, in keeping with the standards described above, during the admissibility procedure with the Commission, when the State did not expressly outline the applicable, effective remedies that should have been exhausted, it implicitly waived a line of defense that the American Convention holds out in its favor and tacitly admitted that such remedies did not exist or that they had been exhausted in a timely fashion.⁹ Therefore, the State was unable to claim non-exhaustion of the special motion and extraordinary remedy in the procedure before the Court.

54. For these reasons, considering the arguments of the Inter-American Commission and taking into account the jurisprudence of the Court,¹⁰ the second preliminary objection pled by the State is dismissed.

VI EVIDENCE

55. Based on the provisions of Articles 44 and 45 of the Rules of Procedure and the jurisprudence of the Court on taking and evaluating evidence,¹¹ the Court will proceed to examine and assess testimony rendered before it, as well as documentary evidence filed by the Commission, the representatives and the State at various stages of this proceeding or as evidence to facilitate resolution of the case submitted at the behest of the President.¹²

A) DOCUMENTARY EVIDENCE

56. The representatives submitted a witness statement and an expert opinion, and the State, two witness statements; all were signed and officially notarized, in response to an

⁹ Cf. *Case of Almonacid Arellano et al.* Judgment of September 26, 2006. Series C No. 154, para. 64; *Case of Ximenes Lopes. Preliminary Objection*, *supra* note 7, para. 5; and *Case of García Asto and Ramírez Rojas*, *supra* note 8, para. 49.

¹⁰ Cf. *Case of Almonacid Arellano et al.*, *supra* note 9, para. 65; *Case of Sawhoyamaxa Indigenous Community*. Judgment of March 29, 2006. Series C No. 146, para. 100 and 101; *Case of Acevedo Jaramillo et al.*, *supra* note 7, para. 126; *Case of Ximenes Lopes. Preliminary Objection*, *supra* note 7, para. 9; *Case of García Asto and Ramírez Rojas*, *supra* note 8, para. 50; *Case of the Girls Yean and Bosico*, *supra* note 2, para. 64 and 65; *Case of the Indigenous Community Yakyé Axa*. Judgment of June 17, 2005. Series C No. 125, para. 91; *Case of the Moiwana Community*, *supra* note 4, para. 51; and *Case of the Serrano Cruz Sisters. Preliminary Objections*, *supra* note 2, para. 142; *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 52; *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107, para. 83; *Case of the Mayagna (Sumo) Awas Tingni Community. Preliminary Objections*. Judgment of February 1, 2000. Series C No. 66, para. 56 and 58; *Case of Durand and Ugarte. Preliminary Objections*. Judgment of May 28, 1999. Series C No. 50, para. 38 and 39; *Case of Castillo Petruzzi et al. Preliminary Objections*. Judgment of September 4, 1998. Series C No. 41, para. 56 and 57; *Case of Loayza Tamayo. Preliminary Objections*. Judgment of January 31, 1996. Series C No. 25, para. 43 and 45; and *Case of Castillo Páez. Preliminary Objections*. Judgment of January 30, 1996. Series C No. 24, para. 43 and 45.

¹¹ Cf. *Case of Almonacid Arellano et al.* *supra* note 9, para. 67; *Case of Servellón García et al.* Judgment of September 21, 2006. Series C No. 152, para. 33; and *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, para. 42.

¹² Cf. *Case of Almonacid Arellano et al.*, *supra* note 9, para. 68; *Case of Servellón García et al.*, *supra* note 11, para. 34; and *Case of Ximenes Lopes*, *supra* note 11, para. 43.

order by the Court on November 30, 2005 (*supra* para. 23). The statements and the Court's assessment thereof are summarized as follows:

1. *Statement submitted by the representatives:*

a) Plácido Medeiros de Souza, Chief of the Civil Police, State of Rio Grande do Norte

In 1993, Gilson Nogueira de Carvalho contacted the witness to request assistance for his investigation into homicides allegedly committed by a group of civil police; as police chief, the witness had access to files containing information on this group's victims. He looked into the matter and verified the claims of Gilson Nogueira de Carvalho, finding that police investigations had not been undertaken in most of the homicide cases he cited. The witness began immediately to cooperate with the work of Gilson Nogueira de Carvalho.

Through investigations conducted by Gilson Nogueira de Carvalho, the Office of the Public Prosecutor obtained enough information to file formal charges against certain civil police officers -- members of a group that killed people hailing from disadvantaged social classes - - who worked in the office of then chief of police and current Deputy Secretary of Public Security and Social Protection of the State of Rio Grande do Norte, Maurílio Pinto de Medeiros. This group of police officers, known as the "golden boys," was made up of Jorge Luiz Fernandes, known as "Jorge Abafador" (Jorge the smotherer), Admilson Fernandes, Ranulfo Alves and Maurílio Pinto de Medeiros Júnior, the latter being the son of Maurílio Pinto de Medeiros. Of these people, only "Jorge Abafador" is in custody.

The members of the group of "golden boys" were under suspicion for the murder of Gilson Nogueira de Carvalho. When investigations began, clues pointing to the perpetrators of the homicide were ignored.

Two or three weeks following the death of Gilson Nogueira de Carvalho, the witness, in the exercise of his duties as supervising police chief, visited the chief precinct office of the Fire Department of the State of Rio Grande do Norte (hereinafter, the "Fire Department" or "the Precinct Office"), where "Jorge Abafador" was in custody, but failed to find him. He was shown a logbook indicating that the prisoner had left the Precinct Office on October 18, 1996, two days prior to the death of Gilson Nogueira de Carvalho. Other leaves were also recorded, despite the absence of any judicial warrants in this regard. Six photographs were taken of the pages containing records of the departure and return of "Jorge Abafador" to the Precinct Office before and after the death of Gilson Nogueira de Carvalho, but they were never added to the case file of the police investigation. When he gave his statement at trial, it was found that the photographs were missing. The presiding judge in the criminal trial for the death of Gilson Nogueira de Carvalho requested that the logbook be sent for examination; at that time, according to the witness, a different book was submitted to the court, containing records other than those he had seen before. Nor did the case file of the police investigation opened on October 20, 1996 contain police sketches developed from descriptions by eyewitnesses to the murder.

Witnesses to the death of Antônio Lopes, known as Carla, who conducted private investigations to shed light on circumstances surrounding the death of Gilson Nogueira de Carvalho, received threats and declined to offer statements to the police. The perpetrators of the murder of Antônio Lopes, like those of Gilson Nogueira de Carvalho, are in impunity.

As a result of the witness's unremitting fight against crimes committed by the police, he has experienced professional harassment by Maurílio Pinto de Medeiros, who continues to hold

command positions in the structure of Public Security in the State of Rio Grande do Norte; this, despite having been charged in dozens of criminal trials, none of which has led to conviction. The witness continues to receive death threats.

2. *Statements submitted by the State:*

a) Augusto César Oliveira Serra Pinto, Federal Police Chief, Special Class, Regional Superintendent of the Federal Police Department in the State of Piauí

On October 20, 1996, the regional police chief of Macaíba opened a police investigation to discover the circumstances and perpetrators of the murder of Gilson Nogueira de Carvalho. This investigation was later taken over by the Federal Police. Following an exhaustive process and having taken more than 80 statements, the police chief in charge of the investigation submitted a report on June 9, 1997, concluding that the police investigation had not uncovered sufficient evidence to file charges against any alleged perpetrator of the death of Gilson Nogueira de Carvalho, and therefore the investigation was discontinued.

On August 31, 1998, the prosecuting attorney from the Office of the Public Prosecutor of Macaíba asked permission to reactivate the police investigation, which was subsequently reopened by judicial ruling. At that time, the Office of the Public Prosecutor received statements that had been taken by Antônio Lopes, known as Carla; but for the most part, the information given by the people he had interviewed remained unconfirmed.

A judicial process conducted at both the home and the farm of retired civil police officer Otávio Ernesto Moreira uncovered a *Remington* shotgun; it was examined and compared to the 12-gauge cartridge found at the site where Gilson Nogueira de Carvalho was killed. The evaluation confirmed that the used cartridge had come from the same shotgun. Accordingly, he requested a warrant for the preventive detention of Otávio Ernesto Moreira, who was questioned and charged with the murder of Gilson Nogueira de Carvalho.

b) Gerson de Souza Barbosa, attorney, representative of the Bar Association of Brazil, designated to monitor the police investigation for the murder of attorney Gilson Nogueira de Carvalho

During the years when the death of Gilson Nogueira de Carvalho was under investigation, the civil and military police of the State of Rio Grande do Norte and the Federal Police, as well as notaries and experts, engaged in a tireless search for the truth to identify the perpetrators and shed light on the circumstances of the death of Gilson Nogueira de Carvalho.

Nevertheless, members of local human rights organizations lent no cooperation and expressed no interest in the investigation. They wanted to further a line of inquiry that would finger the members of the "golden boys" death squad as perpetrators of the homicide to the impairment of truth and in exclusion of other investigative hypotheses concerning responsibility for the death. Nor did the population of the city of Macaíba cooperate with the investigation, failing to provide the police with accurate, impartial information.

3. *Evaluation by the representatives*

a) Luiz Flávio Gomes, specialist in criminal law and human rights

The State was negligent in investigating the death of Gilson Nogueira de Carvalho, conducting no conscientious, effective investigation of the facts. Procedural deficiencies include the fact that several civil police officers who may have been involved in the murder of Gilson Nogueira de Carvalho, because of his intense legal work to defend human rights, were not investigated with due diligence.

B) TESTIMONIAL EVIDENCE

57. On February 8, 2006, the Court received statements in public hearing from the witnesses proffered by the Inter-American Commission and the State (*supra* para. 23). This section contains the Court's summary of relevant portions of these witness statements.

1. *Witnesses brought by the Commission*

a) Fernando Batista de Vasconcelos, who at the time of the murder of Gilson Nogueira de Carvalho served as Judicial Prosecutor in the District of Macaíba. He is now Prosecutor for the Protection of Public Property in the city of Natal

In the year 1993, Gilson Nogueira de Carvalho signed a complaint charging an alleged death squad active in the State of Rio Grande do Norte for having committed approximately 30 homicides. The General Judicial Prosecutor therefore set up a Special Commission of Prosecuting Attorneys to investigate the homicides. As a consequence of his work on the Special Commission, the witness developed a close relationship with Gilson Nogueira de Carvalho.

When he learned that the attorney had died, he went to Macaíba, where he took part in the very early stages of the investigation. Several days after the murder, however, he asked the General Judicial Prosecutor to remove him from the case because he feared for his safety. Members of the Special Commission had received threats, and he was one of the prosecutors who had signed complaints against the alleged death squad. Moreover, he understood that the murder had involved people associated with the police and, possibly, political groups in the city of Macaíba.

The Special Commission of Prosecuting Attorneys succeeded in unmasking and prosecuting several people for crimes involving this group, including Jorge Luiz Fernandes, known as "Jorge Abafador," who was convicted in two trials and given a combined sentence of approximately 60 years.

Gilson Nogueira de Carvalho had participated in the elections in Macaíba, which also could have been related to his death, as the murder took place 15 to 20 days after municipal elections. Investigators considered other possible motives for his death as well, including drug trafficking and animals smuggling, but these were not incorporated into the process as concrete facts.

In 1998, when the witness was working in the Office of the Human Rights Ombudsman in Natal, he was sought out by Antônio Lopes, known as Carla, who told him that he had conducted his own investigation into the death of Gilson Nogueira de Carvalho, and gave him a set of cassettes containing statements taken from several people. The witness delivered these cassettes to the Prosecutor of Macaíba, Henrique César Cavalcanti, who requested that the case be reopened in view of the new information. Antônio Lopes was subsequently murdered, and the witness believes his death stemmed from his attempt to clear up the murder of Gilson Nogueira de Carvalho.

The Civil Police of the State of Rio Grande do Norte initiated the investigation, and after the fifth or sixth day, the Federal Police took up the case. The police held command and control of the investigation, but the Office of the Public Prosecutor took part in investigations throughout the process, and monitors from the Bar Association of Brazil observed the proceedings.

The case file of the investigation contains a report from the intelligence section of the Federal Police of the State of Pernambuco claiming that the homicide was committed by police, but presenting no evidence.

According to the witness, the death squads are a constant presence in his country and conduct so-called "social cleansing," acting as judges and prosecutors and investigating, executing and trying people who have a criminal background.

2. *Witnesses brought by the State*

a) Gilson José Ribeiro Campos, who at the time of the murder of Gilson Nogueira de Carvalho was Director of the Human Rights Division of the Federal Police. Currently Special Chief of the Federal Police.

The Governor of the State of Rio Grande do Norte asked the Secretary of Justice to assign a federal authority to investigate the case. The investigation began on October 20, 1996 with a large number of officers who worked extensively on the case; but they turned up insufficient evidence to identify the perpetrator of the homicide, and the investigation was dropped. Other State institutions also joined the investigation, either as observers or as active participants. A request to reopen the investigation can be filed by the police, the Office of the Public Prosecutor or the judicial authority if new, compelling information comes to light that may further clarify the facts.

b) Henrique César Cavalcanti, who at the time of the murder of Gilson Nogueira de Carvalho was a prosecuting attorney in the Office of the Public Prosecutor

He requested permission to reopen the investigation into the murder of Gilson Nogueira de Carvalho, as he understood that the case should be further examined based on information provided by Antônio Lopes, known as Carla, and forwarded to him by Fernando Batista Vasconcelos, then Human Rights Ombudsman in Natal. The information that Antônio Lopes claimed to have, however, had not been confirmed after the people he named gave their statements.

Subsequently, on November 15, 1998, as part of another investigation, the Federal Police carried out an operation on the farm of Otávio Ernesto Moreira, a retired civil police officer, and seized several firearms, including a *Remington* 12-gauge shotgun. A ballistics test performed in the laboratory found that a cartridge collected on the day of the death of Gilson Nogueira de Carvalho matched the shotgun, thus providing concrete evidence as grounds to indict Otávio Ernesto Moreira.

The police investigation was directed by the Federal Police and monitored by a commission of three judicial prosecutors. Representatives of the Brazilian Bar Association also took part as observers. All decisions in the judicial process were duly grounded and had the backing of the Office of the Public Prosecutor; no procedures were voided or nullified, nor was due

process of law violated at any time. The jury trial of Otávio Ernesto Moreira was transferred from the city of Macaíba to the city of Natal in view of strong, well-founded concerns about the impartiality of the jury. This was owing to the fact that in the same year when the Gilson Nogueira de Carvalho case would be taken to trial with Otávio Ernesto Moreira as the defendant, Francisco Gilberto Nogueira de Carvalho, the brother of Gilson Nogueira de Carvalho, became deputy mayor of Macaíba. There was a possibility that the constitutional guarantee of a fair trial for Otávio Ernesto Moreira could be compromised. In addition, Gilson Nogueira de Carvalho and his family were well known in the city, whereas Otávio Ernesto Moreira was a stranger in Macaíba. Three different situations can lead to a transfer of venue for a jury trial: when such a transfer would be in the public interest, when there are concerns about the impartiality of the jury or when the personal safety of the defendant may be in jeopardy.

The Office of the Public Prosecutor defended the thesis that there were grounds to convict Otávio Ernesto Moreira, but there was also a possibility that the defendant was innocent.

The witness explained that the jury hearing the case against defendant Otávio Ernesto Moreira was asked, first of all, whether Moreira may have fired the shots that produced the lesions described in the autopsy report on Gilson Nogueira de Carvalho. He noted that this question could not have been worded any other way, because it was impossible to disassociate the shots allegedly fired by the accused from the death of the victim; in other words, the question could not accommodate the possibility that the perpetrator had shot and missed the target. The question as asked was consistent with the hypothesis as to the perpetrator of the crime. The jury, by a majority of five votes to two, decided that responsibility for committing the crime could not be demonstrated clearly enough to produce a conviction. The appeal lodged by the Office of the Public Prosecutor with the Court of Justice of the State of Rio Grande do Norte against the decision of the jury did not seek to rectify problems of invalidity, but rather addressed the merits of the judgment.

The witness also brought up a statement that Angélica da Silva Campelino had rendered during a judicial process separate from the trials for the deaths of Antônio Lopes and Gilson Nogueira de Carvalho, in which she named a third person who had heard information on the death of the latter. Therefore the witness concluded that this third person should have been called to provide more concrete evidence. The witness also said that James Cavallaro and John Maier had delivered a cassette tape to the Federal Police and that the tape had been added to the case file of the investigation. This tape made reference to three police officers who may have acted with Otávio Ernesto Moreira in the alleged death squad; the three were also questioned and investigated.

The witness pointed out that further evidence would be needed to attach Lumar Pinto, Palmério and Gilson Ramos, the police officers named by Otávio Ernesto Moreira in his statement, to whom the latter had lent his shotgun, to the case of Gilson Nogueira de Carvalho. Otávio Ernesto Moreira denied that his weapon was used in the crime and that it was unavailable to him that day. Furthermore, the names of these officers did not correspond to those who had been fingered as members of the "golden boys" death squad, and therefore the statement by Otávio Ernesto Moreira had no value as evidence. The witness clarified that the police investigation had examined only the death of Gilson Nogueira de Carvalho, and therefore the investigations involving deaths possibly committed by the "golden boys" lay outside its scope.

C) EVALUATION OF THE EVIDENCE

Evaluation of Documentary Evidence

58. In this case, as in others,¹³ the Court accepts the evidentiary value of documents submitted by the parties at earlier stages of the process or as evidence to facilitate resolution of the case, when such documents were not subject to challenge or objection, and whose authenticity has not come into question.

59. To this body of evidence the Court adds, according to Article 45(1) of the Rules of Procedure, documents submitted by the representatives and the State during the public hearing held on February 8, 2006, which were seen by all parties present in the hearing, because it considers them useful for resolving the case; it also adds documents submitted by the representatives as appendixes to their final written arguments (*supra* paras. 31 and 32).

60. Applying the provisions of Article 45(1) of its Rules of Procedure, the Court incorporates into the body of evidence the documents filed by the representatives and the State to facilitate settlement of the case (*supra* paras. 33 and 34).

61. The Court is adding other documents to the body of evidence as well, in keeping with Article 45(1) of the Rules of Procedure, as it considers them useful for ruling on this case.¹⁴

62. This Court also admits testimony given by Plácido Medeiros de Souza before the Human Rights Ombudsman of Natal, bearing a signature authenticated by a notary public (*supra* para. 56(1)(a)), and the testimony, also bearing signatures authenticated by a notary public, given by Augusto César Oliveira Serra and Gerson de Souza Barbosa (*supra* para. 56(2)(a) and 56(2)(b)); it finds that they are consistent with its purposes as stated in the Ruling of November 30, 2005 (*supra* para. 23) and considers them a valuable part of the overall corpus of evidence, applying the rules of sound judicial discretion. The Court has taken account of the comments of the Commission and the representatives regarding statements rendered by Augusto César Oliveira Serra and Gerson de Souza Barbosa (*supra* para. 28 and 29).

¹³ Cf. *Case of Almonacid Arellano et al.*, *supra* note 9, para. 74; *Case of Goiburú et al.* Judgment of September 22, 2006. Series C No. 153, para. 57; and *Case of Servellón García et al.*, *supra* nota 11, para. 38.

¹⁴ To wit: United Nations, *Basic Principles on the Role of Lawyers*, approved in the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF.144/28/Rev.1, September 7, 1990; Organization of American States, Inter-American Commission on Human Rights, *Report on the situation of human rights defenders in the Americas*, OEA/Ser.L/V/II.124, March 7, 2006; Organization of American States, *Human Rights Defenders: Support for the Individuals, Groups, and Civil Society Organizations Working to Promote and Protect Human Rights in the Americas*, AG/RES.1920, (XXXIII-O/03), June 10, 2003; Organization of American States, *Human Rights Defenders in the Americas: Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas*, AG/RES.1842, (XXXII-O/02), June 4, 2002; Organization of American States, *Human Rights Defenders in the Americas: Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas*, AG/RES.1711, (XXX-O/00), June 5, 2000; Param Kumaraswamy, Report of the Special Rapporteur on the Independence of Judges, *Question of the Human Rights of all Persons Subjected to any Form of Detention or Imprisonment*, UN Doc.No.E/CN.4/1997/32, February 18, 1997; United Nations, High Commissioner for Human Rights, *Human Rights Defenders*, Resolution of the Commission on Human Rights 2003/64, April 24, 2003; United Nations, High Commissioner for Human Rights, *Human Rights Defenders*, Resolution of the Commission on Human Rights 2002/70, April 25, 2002; United Nations, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, Declaration of the General Assembly, UN Doc.No.A/RES/53/144, March 8, 1999; and Council of the European Union, *Draft conclusions of the Council on the EU guidelines on human rights defenders*, 100056/1/04 REV 1, June 9, 2004.

63. The Court does not admit the statement made by Tálita de Borba Maranhão e Silva, submitted by the State for this purpose as part of the body of evidence, in view of the position expressed by the Commission and the representatives, and the Court Ruling of November 30, 2005 (*supra* paras. 23, 27, 28 and 29).

64. The Court notes that although the opinion given by Luiz Flávio Gomes (*supra* para. 56(3)(a)) was also signed Alice Bianchini, the expert had clarified that she did no more than to “help with the investigation and the gathering of information for the expert opinion,” whereas he “was responsible for weighing the facts and, accordingly, for the brief and all the ideas contained therein.” Therefore, the Court admits the statement as an opinion rendered by Luiz Flávio Gomes, finding it consistent with the object cited in the Ruling of November 30, 2005 (*supra* para. 23), and will deem it part of the overall body of evidence, applying the rules of sound judicial discretion.

65. As for press documents submitted by the Commission, the representatives and the State, this Court feels that they can be weighed as evidence if they reflect facts commonly known by the public or statements by Government employees, or if they corroborate aspects of this case.¹⁵

Evaluation of Testimony

66. This Court admits the testimonies of Fernando Batista de Vasconcelos (*supra* para. 57(1)(a)), Gilson José Ribeiro Campos (*supra* para. 57(2)(a)) and Henrique César Cavalcanti (*supra* para. 57(2)(b)), noting that they are useful for resolving the case at hand, and incorporates them into the body of evidence applying the rules of sound judicial discretion.

VII PROVEN FACTS

67. Based on evidence submitted and in consideration of statements by the parties, the Court takes the facts outlined below as well-founded. They are divided into two parts. The first section lists facts that occurred prior to the State's recognition of the contentious jurisdiction of the Court. The Court will consider these only as background information but will refrain from establishing any juridical consequences based upon them. The second part contains facts that took place after the Court's jurisdiction had been recognized (*supra* para. 4).

Background

A) *The work of Gilson Nogueira de Carvalho as a human rights defender, his death, the 1996 commencement and 1997 discontinuance of the police investigation into his death, and the resumption of the police investigation in 1998*

¹⁵ Cf. *Case of Almonacid Arellano et al.*, *supra* note 9, para. 81; *Case of Servellón García et al.*, *supra* note 11, para. 50; and *Case of Ximenes Lopes*, *supra* note 11, para. 55.

67.1 Gilson Nogueira de Carvalho was born on June 27, 1964 in the city of Macaíba in the State of Rio Grande do Norte. His parents are Jaurídice Nogueira de Carvalho and Geraldo Cruz de Carvalho. His daughter is Luana Gabriela Albuquerque Nogueira de Carvalho.¹⁶

67.2. Gilson Nogueira de Carvalho was an activist human rights lawyer who worked for the nongovernmental organization Centro de Derechos Humanos y Memoria Popular, an organization affiliated with the National Human Rights Movement. Part of his professional practice involved reporting on the actions of an alleged death squad active in the State Rio Grande do Norte, the “golden boys.”¹⁷ Following complaints aired by Gilson Nogueira de Carvalho and others, investigations were undertaken against several members of the civil police force in the State of Rio Grande do Norte for crimes including homicide, kidnapping and torture.¹⁸ As a consequence of his professional activities and the reports he filed, Gilson Nogueira de Carvalho received numerous death threats. In 1995 the Ministry of Justice of Brazil provided him with police protection, which was later suspended on June 4, 1996.¹⁹

67.3. On October 19, 1996, Gilson Nogueira de Carvalho attended a public festival known as the “Festa do Boi,” and while in the company of friends and a young woman by the name of MdS,* received a threatening telephone call.²⁰

¹⁶ Cf. autopsy report on Gilson Nogueira de Carvalho issued by the police lab, Instituto Técnico-Científico, on October 20, 1996 (case file of appendixes to the response to the application, Appendix 1, volume 1, folio 2925 to 2927); and birth certificate of Luana Gabriela Albuquerque Nogueira de Carvalho issued by the bureau of vital statistics, Registro Civil de las Personas Naturales, of the State of Rio Grande do Norte on December 21, 1992 (case file of evidence to facilitate resolution, submitted by the representatives, folio 7743).

¹⁷ In the State of Rio Grande do Norte, numerous complaints have been filed against police employees and officers working under Maurílio Pinto de Medeiros, Deputy Secretary of Public Security of the State of Rio Grande do Norte. These employees include Jorge Luiz Fernandes, known as “Jorge Abafador,” Ranulfo Alves de Melo Filho, Admilson Fernandes de Melo, Lumar Pinto, José Nunes da Silva, Luiz Pedro de Souza, Francisco Gomes de Souza, Gilvan and Maurílio Pinto de Medeiros Júnior. The complaints link some of these people to crimes of murder, torture and kidnapping, as well as criminal attempts against people who have reported their practices. The civil police and members of the Secretariat of Public Security working as direct subordinates of Maurílio Pinto de Medeiros allegedly belonged to a death squad known as the “golden boys.” Cf. Report of the Parliamentary Investigation Commission (CPI) on Extermination in the Nordeste, November 22, 2005 (file of evidence to facilitate resolution, folios 6832 through 6851 and 7267 through 7301); testimony given by Fernando Batista de Vasconcelos before the Court in a public hearing on February 8, 2006; report of the Special Commission of Prosecuting Attorneys created by the Office of the Public Prosecutor to investigate complaints against civil police and employees of the Secretariat of Public Security of the State of Rio Grande do Norte, October 26, 1995 (file of appendixes to the application, Appendix 7, folios 16 through 21); note from Alternate Member of the Council for the Rights of Persons, Percílio de Souza Lima Neto, October 21, 1996 (brief of preliminary objections and possible merits, reparations and legal costs, folios 780 and 781); report of the Regional Department of the Federal Police of the State of Pernambuco (file of appendixes to the response to the application, Appendix 1, volume 3, folios 3610 through 3612); and *Report of the Special Rapporteur on the Independence of Judges*, February 18, 1997, *supra* note 14, paras. 88 and 89.

¹⁸ Cf. Report of the Special Commission of Prosecuting Attorneys, *supra* note 17; brief submitted by Gilson Nogueira de Carvalho to the Judge of the First Criminal Court of Natal in a criminal case against Jorge Luiz Fernandes, known as “Jorge Abafador,” March 20, 1996 (file of appendixes to the application, Appendix 8, folios 22 and 23); note No. 091 by a member of the Council for the Protection of the Rights of Persons, Álvaro Augusto Ribeiro Costa, addressed to the Secretary of Justice, Nelson Jobim, on August 16, 1995 (file of appendixes to the application, Appendix 11, folio 29); National Human Rights Movement, Nordeste Region, *Coleção Oxente* (file of appendixes to the application, Appendix 9, folio 24); and testimony by Fernando Batista de Vasconcelos, February 8, 2006, *supra* note 17.

¹⁹ Cf. note No. 091 from a member of the Council for the Protection of the Rights of Persons, August 16, 2005, *supra* note 18; and note No.811/96-CRP/SR/DPF/RN by Federal Police Chief Hider Antunes Silva, of June 3, 1996 (file of appendixes to the application, Appendix 10, folio 28).

* At the request of the Inter-American Commission, the young woman will be identified here by her initials only because she was underage at the time of the events.

67.4. On October 20, 1996, at approximately 12:00 a.m., as he was traveling to his farm in the company of the young woman MdS, he was followed by a red Gol automobile bearing no license plates, occupied by three men whose faces were uncovered. When Gilson Nogueira de Carvalho reached the front gate of his farm, the Gol vehicle placed itself in front, so as to block his automobile. The occupants of the two cars eyed each other for a few moments. Thereupon, the man occupying the passenger seat of the Gol vehicle pointed a shotgun-type weapon out the window and shot once; in response, Gilson Nogueira de Carvalho backed up in his automobile in a futile attempt to flee. The next shot hit Gilson Nogueira de Carvalho in the head. Several more shots were fired, after which the Gol vehicle returned in the direction from which it had come.²¹

67.5. Gilson Nogueira de Carvalho died of intracranial hemorrhage caused by puncture wounds from weapons fire. The vehicle driven by Gilson Nogueira de Carvalho was hit by at least 18 shots. Gilson Nogueira de Carvalho was killed by at least three physical perpetrators, and it is likely that others were involved as masterminds.²²

67.6. The vehicle used by the assailants in the ambush and murder was subsequently burned. It had been pierced by weapons fire directed from inside the vehicle toward the outside, hitting the right side of the car roof above the passenger seat.²³

67.7. On October 20, 1996, the Civil Police of the State of Rio Grande do Norte decided to commence a police investigation to shed light on the death of Gilson Nogueira de Carvalho. On October 25, 1996, the investigation was transferred to the Federal Police because on October 21, 1996, the Governor of the State of Rio Grande do Norte had asked the Secretary of Justice to place the investigation into the death of Gilson Nogueira de Carvalho in the hands of a police authority external to the government of Rio Grande do Norte. This

²⁰ Cf. statement by MdS given to the Federal Police on October 26, 1996 (file of appendixes to the response to the application, Appendix 1, Volume 1, folios 2813 through 2818); and statement by Juney Pinheiro Lucas given to the Federal Police on October 31, 1996 (file of appendixes to the response to the application, Appendix 1, Volume 1, folios 2855 through 2860).

²¹ Cf. statement by MdS on October 26, 1996, *supra* note 20; statement by Mauricio Pereira de Medeiros to the Federal Police on October 23, 1996 (file of appendixes to the response to the application, Appendix 1, Volume 1, folios 2786 and 2787); Police Investigation Report No. 296/96-SR/DPF/RN issued by Federal Police Chief Gilson José Ribeiro Campos, of June 9, 1997 (file of appendixes to the response to the application, Appendix 1, Volume 4, folios 3734 through 3770); and statement by Juney Pinheiro Lucas, October 31, 1996, *supra* note 20.

²² Cf. autopsy report on Gilson Nogueira de Carvalho, *supra* note 16; report from a police examination at the site of the violent death, conducted by the police lab, Instituto Técnico-Científico de Polícia, October 20, 1996 (file of appendixes to the response to the application, Appendix 1, Volume 1, folios 2894 through 2915); statement by MdS, October 26, 1996, *supra* note 20; report of the study of weapons fire conducted by the police lab, Instituto Técnico-Científico de Polícia, October 30, 1996 (file of appendixes to the response to the application, Appendix 1, folios 2928 through 2952); police investigation report No.296/96-SR/DPF/RN, June 9, 1997, *supra* note 21; statement by Maurílio Pinto de Medeiros given to the Federal Police on May 20, 1997 (file of appendixes to the response to the application, Appendix 1, Volume 3, folios 3587 through 3591); testimony given by Fernando Batista de Vasconcelos, *supra* note 17; expert opinion by Luiz Flávio Gomes submitted under notarized signature on January 11, 2006 (brief of preliminary exceptions and possible merits, reparations and legal costs, folios 489 through 538); and criminal charges filed by the Office of the Public Prosecutor against Otávio Ernesto Moreira on January 25, 1999 (file of appendixes to the response to the application, Appendix 1, Volume 1, folios 2741 through 2746).

²³ Cf. report of the examination of the motor vehicle conducted by the police lab, Instituto Técnico-Científico de Polícia, October 20, 1996 (file of appendixes to the response to the application, Appendix 1, Volume 1, folios 2916 through 2917).

request was made for several reasons, including the fact that Gilson Nogueira de Carvalho had publicly claimed that a death squad was operating inside the Civil Police Department of the State of Rio Grande do Norte, and that high-level members of the institution may be involved.²⁴

67.8. On October 25, 1996, the Federal Police commenced police investigation No. 296/96-SR/DPF/RN “for the purpose of investigating the circumstances and perpetrators of the homicide against attorney [...] Gilson Nogueira de Carvalho.” In one of the first statements it took, on October 26, 1996, the Federal Police showed MdS a photograph of civil police officer Ranulfo, Maurílio Pinto de Medeiros and the civil police officer known as “Jorge Abafador.” She claimed not to recognize any of these persons as the ones who had fired at Gilson Nogueira de Carvalho. On October 28, 1996, the Federal Police requested a copy of the logbook kept at the fire station where “Jorge Abafador” was being held, covering the period October 18-21, 1996, as well as information from the trial judge as to whether he had authorized this person to leave the station.²⁵

67.9. The Federal Police took statements from the following members of the Secretariat of Public Security: November 8, 1996, Maurílio Pinto de Medeiros Júnior; April 29, 1997, “Jorge Abafador;” May 15, 1997, Admilson Fernandes de Melo; and May 20, 1997, Maurilio Pinto de Medeiros.²⁶

67.10. Overall, the investigation produced six different hypotheses on the alleged perpetrators of the death of Gilson Nogueira de Carvalho:

- a) civil police officers from the Secretariat of Public Security of the State of Rio Grande do Norte; because of his work as a human rights defender, Gilson Nogueira de Carvalho had fingered several members of the civil police force and had defended the next of kin of alleged victims of crimes committed by the police;
- b) next of kin or associates of deceased military police officer Júlio Lima, because of the link between the brother of Gilson Nogueira de Carvalho and the death of this military police officer.
- c) Gilmar Francisco Nogueira de Carvalho, the attorney's brother, was acquitted of the charge of homicide in the death of Júlio Lima;

²⁴ Cf. writ by State Civil Police Chief Luciano Queiroz de Araújo, October 20, 1996 (file of appendixes to the response to the application, Appendix 1, Volume 1, folio 2763); order by Federal Police Chief Gilson José Ribeiro Campos, October 28, 1996 (file of appendixes to the response to the application, Appendix 1, Volume 1, folios 2819 through 2821); and note No.480/96-GAB from the Governor of the State of Rio Grande del Norte addressed to the Secretary of Justice, October 21, 1996 (file of appendixes to the response to the application, Appendix 1, Volume 1, folios 2750 and 2751).

²⁵ Cf. writ by Federal Police Chief Gilson José Ribeiro Campos, October 25, 1996 (file of appendixes to the response to the application, Appendix 1, Volume 1, folio 2748); statement by MdS on October 26, 1996, *supra* note 20; and writ by the Federal Police Chief on October 28, 1996, *supra* note 24.

²⁶ Cf. statement by Maurílio Pinto de Medeiros Júnior to the Federal Police on November 8, 1996 (file of appendixes to the response to the application, Appendix 1, Volume 2, folios 3093 through 3096); statement by Admilson Fernandes de Melo to the Federal Police on May 15, 1997 (file of appendixes to the response to the application, Appendix 1, Volume 3, folios 3578 through 3582); statement by Maurílio Pinto de Medeiros on May 20, 1997, *supra* note 22; and statement by Jorge Luiz Fernandes, known as “Jorge Abafador,” to the Federal Police on April 29, 1997 (file of appendixes to the response to the application, Appendix 1, Volume 3, folios 3550 through 3555).

- d) political authorities in the city of Macaíba, as the murder took place around the time of municipal elections, and Gilson Nogueira de Carvalho had objected to the candidacy of several individuals and had been involved in the campaign;
- e) cattle buyers, whose interests may have been undermined in court trials defended by Gilson Nogueira de Carvalho;
- f) thieves attacking the company Empresa Nordeste; and
- g) car thieves, because a stolen automobile was used in the murder.²⁷

67.11. On November 22, 1996, the police chief responsible for the investigation requested more time to complete the work, based on “the difficulty of the case.” The request was granted by the judge of the first Chamber of the Court of Macaíba, who granted a 30-day extension to conduct the final proceedings. On January 14 and March 25, 1997, additional 60-day extensions were granted.²⁸

67.12. On June 9, 1997, the Federal Police Chief submitted his report on the investigation into the death of Gilson Nogueira de Carvalho, stating that “the case file lacks sufficient means to identify the perpetrator,” and therefore he considered the work to be finished and suggested that the investigation be dropped. That same day, based on this report, the Office of the Public Prosecutor concluded that, even though dozens of proceedings had been conducted as part of the investigation and extensive effort and dedication had been invested in finding the perpetrators of the death of Gilson Nogueira de Carvalho, insufficient grounds had been turned up to charge anyone for having committed the crime. On June 19, 1997, in view of the position taken by the Office of the Public Prosecutor and in the understanding that “all legal and other potential formulas for solving the crime [had been exhausted] without producing a logical conclusion concerning the identity of the perpetrator or possible perpetrators,” the Judge of the First Chamber of the Courts of Macaíba granted the request to drop the investigation, emphasizing that it might be reopened if new, well-founded information were to appear.²⁹

67.13. After the investigation had been dropped, Antônio Lopes, known as Carla, a friend of Gilson Nogueira de Carvalho, conducted private investigations of the homicide and sent his conclusions to the Human Rights Ombudsman of the Natal Courts. On August 3, 1998, the Ombudsman informed the representative of the Office of the Public Prosecutor of Macaíba that, in his understanding, the Ombudsman and Antônio Lopes had collected information demonstrating certain contradictions between various testimonies, as well as clues that had

²⁷ Cf. trial documents by Federal Police Chief Gilson José Ribeiro Campos, December 20, 1996 (file of appendixes to the response to the application, Appendix 1, Volume 3, folios 3404 through 3408); police investigation report No.296/96-SR/DPF/RN, June 9, 1997, *supra* note 21; Movimiento Nacional de Derechos Humanos, Regional Nordeste, *Coleção Oxente*, *supra* note 18; judgment by the Presiding Judge of the jury trial to acquit Tálita de Borba Maranhão e Silva, June 17, 1997 (file of appendixes to the response to the application, Appendix 13, folio 5961); and testimony of Gilson José Ribeiro Campos and Fernando Batista de Vasconcelos given before the Court in the public hearing on February 8, 2006.

²⁸ Cf. writ of Federal Police Chief Gilson José Ribeiro Campos, November 22, 1996 (file of appendixes to the response to the application, Appendix 1, Volume 2, folio 3161); and judicial decrees by the Judge of the First Chamber of the Macaíba Court, Tálita de Borba Maranhão e Silva, November 26, 1996, January 14 and March 25, 1997 (file of appendixes to the response to the application, Appendix 1, Volume 2, folios 3163, 3412 and 3517, respectively).

²⁹ Cf. report of police investigation No.296/96-SR/DPF/RN, June 9, 1997, *supra* note 21; brief by the prosecuting attorney of the Office of the Public Prosecutor, José Augusto Perez Filho, June 9, 1997 (file of appendixes to the response to the application, Appendix 1, Volume 4, folios 3773 and 3774); and decree by of the Judge of the First Chamber of the Courts of Macaíba, June 19, 1997 (file of appendixes to the response to the application, Appendix 1, Volume 4, folios 3775 and 3776).

not been sufficiently explored, and as a result, further investigation into the case was in order.³⁰

67.14. On August 31, 1998, the prosecuting attorney of the Office of the Public Prosecutor of Macaíba requested that the police investigation into the death of Gilson Nogueira de Carvalho be reopened in view of the fact that “the information [that had been] conveyed to the [Office of the Public Prosecutor was] truly important” and that “it merit[ed a] thorough investigation and [suggested] that the responsibility for masterminding the crime [lay] with the politicians of Macaíba.”³¹

67.15. On September 24, 1998, the Judge of the First Chamber of the Courts of Macaíba granted the request of the Office of the Public Prosecutor and decided that police investigation No. 296/96 on the death of Gilson Nogueira de Carvalho would be reopened and resumed.³²

67.16. On November 15, 1998, a delegation of federal police officers, in another investigation separate from that of the death of Gilson Nogueira de Carvalho, executed a search and arrest warrant issued by a federal judge for the purpose of verifying the existence of a clandestine gravesite on the farm of former police officer Otávio Ernesto Moreira. During this proceeding, the Federal Police seized two 9-mm M953 sub-machine guns and a .38 caliber shotgun in the house of the former police officer, that were the property of and were intended for use by the Secretariat of Public Security and that, according to Otávio Ernesto Moreira, as a result of his own negligence had not been returned to that public institution when he retired. On the same farm, investigators also found a *Glock* .380-caliber pistol and a *Remington* 12-gauge shotgun. At that time, Otávio Ernesto Moreira was being held in preventive custody.³³

67.17. Otávio Ernesto Moreira is a retired civil police officer; for many years, including at the time of the death of Gilson Nogueira de Carvalho, he worked in the Secretariat of Public Security of the State of Rio Grande do Norte, directly under the orders of Deputy Secretary of Public Security Maurílio Pinto de Medeiros. In the setting of that institution, he would lend his shotgun to fellow officers.³⁴

B) Facts subsequent to the recognition by Brazil of the contentious jurisdiction of the Court

³⁰ Cf. note No.121/97 – PJDDH by the Human Rights Ombudsman of the Court of Natal, Fernando Batista de Vasconcelos, addressed to the Prosecutor of the Courts of Macaíba, Henrique César Cavalcanti, August 3, 1998 (file of appendixes to the response to the application, Appendix 1, Volume 4, folios 3816 through 3821); and testimony given by Fernando Batista de Vasconcelos on February 8, 2006, *supra* note 17.

³¹ Cf. brief by the prosecuting attorney of the Court of Macaíba, August 31, 1998 (file of appendixes to the response to the application, Appendix 1, Volume 4, folios 3781 and 3787).

³² Cf. order by the Judge of the First Chamber of the Courts of Macaíba, September 24, 1998 (file of appendixes to the response to the application, Appendix 1, Volume 4, folio 3830).

³³ Cf. warrant for the arrest *en flagrante delicto* of Otávio Ernesto Moreira, November 15, 1998 (file of appendixes to the response to the application, Appendix 1, Volume 4, folios 4154 through 4159).

³⁴ Cf. statement given by Otávio Ernesto Moreira to the Federal Police on January 14, 1999 (file of appendixes to the response to the application, Appendix 1, Volume 4, folios 4203 through 4205).

67.18. On December 10, 1998, in response to a request by the Federal Police Chief in charge of the investigation, the National Bureau of Criminology of the Federal Police concluded that a used cartridge found on the site where Gilson Nogueira de Carvalho died had been fired from the *Remington* 12-gauge shotgun seized from the possession of Otávio Ernesto Moreira.³⁵

67.19. On January 14, 1999, Otávio Ernesto Moreira stated in a declaration to the Federal Police, "...before I retired, whenever some other officer was going out on a big operation, I usually [lent] the [...] [*Remington* 12-gauge] shotgun;" he did not recall whether the weapon was in his possession or in the possession of third parties on the day of the death of Gilson Nogueira de Carvalho. He explained that he had already lent the shotgun to various civil police officers, including Palmério and Lumar Pinto, who worked in the Secretariat of Public Security of the State of Rio Grande do Norte, and Gilson Ramos. Later, speaking before the Court of Macaíba, he said that the shotgun was in his house on the day of the death of Gilson Nogueira de Carvalho.³⁶

67.20. On January 25, 1999, 11 days after former officer Otávio Ernesto Moreira made his statement to the Federal Police, the Office of the Public Prosecutor filed charges against him, based on police investigation No. 296/96. The Office of the Public Prosecutor claimed that Otávio Ernesto Moreira, "together with two other unidentified subjects, also armed, fired shots at Attorney [...] Gilson Nogueira de Carvalho, and one of the [shots penetrated] his cranial region, producing the injuries described in the [autopsy report]." The charge added that "the accused [...] pointed his weapon out the window of the vehicle, aiming at the attorney-victim, and fired but missed his target." The Office of the Public Prosecutor concluded saying there was no question that former police officer Otávio Ernesto Moreira was one of the principals in the murder of Attorney Gilson Nogueira de Carvalho and that "[it was] certain, therefore, that the accused [committed] the crime defined in Brazilian Criminal Code Article 121, § 2º, subparagraphs I and IV (homicide aggravated by motive -- vengeance -- by ambush and using means that rendered the victim defenseless)."³⁷

67.21. On March 3, 1999, Antônio Lopes, known as Carla, was murdered; he had carried out private investigations into the circumstances of the death of Gilson Nogueira de Carvalho.³⁸

67.22. On June 16, 1999, the Inferior Court of Macaíba handed down a ruling of pronúncia, an indictment by which the court acknowledges the existence of circumstances that render charges admissible, and ordered the accused to come before a jury trial. On July 19, 1999,

³⁵ Cf. statement by Federal Police Chief Augusto César Serra Pinto, December 10, 1998 (file of appendixes to the response to the application, Appendix 1, Volume 4, folios 4137 through 4140); and opinion No.41.684 of the National Bureau of Criminology of the Federal Police, December 10, 1998 (file of appendixes to the response to the application, Appendix 1, Volume 4, folios 4144 through 4146).

³⁶ Cf. statement by Otávio Ernesto Moreira on January 14, 1999, *supra* note 34; and by Otávio Ernesto Moreira to the Second Chamber of the Court of Macaíba on February 10, 1999 (file of appendixes to the response to the application, Appendix 1, Volume 5, folios 4241 through 4244).

³⁷ Cf. criminal charges, January 25, 1999, *supra* note 22.

³⁸ Cf. note from Secretary of Justice Renan Calheiros, addressed to the Governor of the State of Rio Grande do Norte, Garibaldi Alves Filho, March 5, 1999 (brief of preliminary exceptions and possible merits, reparations and legal costs, Volume IV, folio 783); and note from the Governor of the State of Rio Grande do Norte, Garibaldi Alves Filho, addressed to Secretary of Justice Renan Calheiros, March 10, 1999 (file of appendixes to the response to the application, Appendix 16, Volume 1, folios 6223 and 6224).

Otávio Ernesto Moreira's defense team appealed this decision. On October 27, 2000, the Court rejected the appeal, stating that the judge needed “[to be convinced] that a crime had occurred and [...] that evidence of the perpetrators was available” before ordering a jury trial, that this was indeed true in the instant case, and therefore a jury trial should be convened.³⁹

67.23. On March 30, 2001, the Office of the Public Prosecutor filed charges, and on April 18, 2001, the defense filed its rebuttal.⁴⁰

67.24 On June 25, 2001, Otávio Ernesto Moreira approached the Court of Macaíba to request a change of venue for the jury trial that he had been ordered to undergo. On October 24, 2001, the Court decided to admit his petition and ordered that the venue of the jury trial be changed from the city of Macaíba to the city of Natal, capital of the State of Rio Grande do Norte, because “several local organizations [were] making public statements [in favor of] conviction; that the trial [had] [broad] repercussions [and that] the victim's brother [was at that time] deputy mayor of the city of Macaíba.”⁴¹

67.25. On December 4, 2001, the parents of Gilson Nogueira de Carvalho, in their capacity as third-party plaintiffs in the charges, lodged a “motion of interpretation*” of the ruling of October 24, 2001. They claimed in this motion that the decision contained omissions that should be clarified, and they requested a stay on all procedures done subsequent to the publication of the decision being appealed. On December 19, 2001, the State Court of Rio Grande do Norte decided not to admit the motion, contending that the third-party plaintiffs to the charges lacked procedural standing to appeal the request for change of venue of the jury trial from the city of Macaíba to the city of Natal.⁴²

67.26. On March 11, 2002, the parents of Gilson Nogueira de Carvalho, in their capacity as third-party plaintiffs in the charge, lodged a special motion and an extraordinary remedy requesting that they be granted standing to appeal; they also asked that the ruling to change the venue for the jury trial be declared null because it was not based on concrete, objective grounds and because neither they nor the Office of the Public Prosecutor in the

³⁹ Cf. ruling of *pronúncia* handed down by Judge Patrícia Godim Moreira Pereira of the Court of Macaíba on June 16, 1999 (file of appendixes to the response to the application, Appendix 1, Volume 5, folios 4516 through 4530); appeal lodged by Otávio Ernesto Moreira's defense team on July 19, 1999 (file of appendixes to the response to the application, Appendix 1, Volume 5, folios 4539 through 4544); and ruling of the Criminal Chamber of the State Court of Rio Grande do Norte on October 27, 2000 (file of appendixes to the response to the application, Appendix 1, Volume 5, folios 4590 through 4597).

⁴⁰ Cf. indictment by the Office of the Public Prosecutor (*Libelo-crime acusatório*), March 30, 2001 (file of appendixes to the response to the application, Appendix 1, Volume 5, folios 4635 and 4636); and rebuttal by the defense of Otávio Ernesto Moreira, April 18, 2001 (file of appendixes to the response to the application, Appendix 1, Volume 5, folios 4642 and 4643).

⁴¹ Cf. brief submitted by Otávio Ernesto Moreira's defense team, June 25, 2001 (file of appendixes to the response to the application, Appendix 1, Volume 5, folios 4745 through 4757); and ruling by the full State Court of Rio Grande do Norte on October 24, 2000 (file of appendixes to the response to the application, Appendix 1, Volume 5, folios 4769 through 4773).

* In the Portuguese version of this Judgment, *embargos de declaração*.

⁴² Cf. “motion of interpretation” lodged by Jaurídice Nogueira de Carvalho and Geraldo Cruz de Carvalho on December 4, 2001 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 4969 through 4976); and ruling by the full State Court of Rio Grande do Norte, December 19, 2001 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 4980 through 4985).

jurisdiction of origin had been notified or given the opportunity to state their position on the request for transfer. On April 30, 2002, the State Court of Rio Grande do Norte refused to grant these motions, confirming that the appellants had no procedural standing.⁴³

67.27. On May 2, 2002, the Office of the Public Prosecutor of the State of Rio Grande do Norte asked that a statement made by Angélica da Silva Campelino be added to the court files of the criminal procedure; in this statement, she had claimed to know a person who knew that Otávio Ernesto Moreira and “Jorge Abafador” had taken part on the murder of Gilson Nogueira de Carvalho. On May 20 and 23, 2002, the parents of Gilson Nogueira de Carvalho, in their capacity as third-party plaintiffs to the charges, reiterated the request of the Office of the Public Prosecutor and asked that copies of the investigation files on the death of Antônio Lopes, known as Carla, be added to the court files.⁴⁴

67.28. On May 10 and 31, 2002, the parents of Gilson Nogueira de Carvalho, in their capacity as third-party plaintiffs in the charges, filed appeals* to challenge the decision by which the court had refused to admit either the special motion or the extraordinary remedy because of lack of procedural standing (*supra* paras. 67.26), and a collateral motion on the merits, in which they claimed absolute nullification of the transfer of venue for the jury trial and stressed the need for the trial to take place in the city where the events had occurred, where the population was familiar with the grave nature of the homicide.⁴⁵

67.29. On June 3, 2002, the parents of Gilson Nogueira de Carvalho filed a motion asking for postponement of Otávio Ernesto Moreira's jury trial, as the motions on the transfer of venue for holding the trial were pending analysis.⁴⁶

67.30. On June 4, 2002, the Office of the Public Prosecutor ruled on a request by the defense team of the accused to add a note to the court files of the procedure challenging an analysis conducted by the Federal Police crime laboratory and finding that Otávio Ernesto Moreira's shotgun had been one of the weapons used in the homicide; and on a request by the third-party plaintiffs in the charges to suspend the jury trial and, if not, to hear the witness Angélica da Silva Campelino during the jury trial. The Office of the Public Prosecutor did not object to attaching the note on the shotgun submitted by the defense; however, it

⁴³ Cf. special motion and extraordinary remedy lodged by Jaurídice Nogueira de Carvalho and Geraldo Cruz de Carvalho on March 11, 2002 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 4990 through 5015 and 5051 through 5076); and ruling on admissibility by the President of the State Court of Rio Grande do Norte on April 30, 2002 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 5102 and 5103).

⁴⁴ Cf. writ of the Office of the Public Prosecutor, April 26, 2002 (file of appendixes to the response to the application, Appendix 1, Volume 6, folio 4819); testimony given by Angélica da Silva Campelino (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 4820 through 4824); and writs submitted by Jaurídice Nogueira de Carvalho and Geraldo Cruz de Carvalho on May 20 and 23, 2002 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 4841 and 4855).

* In the Portuguese version of this Judgment, *agravos de instrumento*.

⁴⁵ Cf. motions filed by Jaurídice Nogueira de Carvalho and Geraldo Cruz de Carvalho, May 10, 2002 (file of appendixes to the response to the application, Appendix 1, Volume 6, folio 4873 through 4894 and 4895 through 4915); and motion filed by Jaurídice Nogueira de Carvalho and Geraldo Cruz de Carvalho, May 31, 2002 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 4865 through 4868).

⁴⁶ Cf. motion lodged by Jaurídice Nogueira de Carvalho and Geraldo Cruz de Carvalho, June 3, 2002 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 4869 and 4870).

ruled that the requests by the third-party plaintiffs in the charges were out of order, as they did not have the procedural standing to present such a motion, and it denied the request to hear from Angélica da Silva Campelino as the stipulated period had passed.⁴⁷

67.31. The jury trial took place on June 6 and 7, 2002 to determine whether the charge of homicide against Otávio Ernesto Moreira was legally sound. To begin with, the President of the Jury ruled on motions filed prior to the sitting of the jury (*supra* paras. 67(27), 67(28) and 67(29)). He explained that the declaration by Angélica da Silva Campelino was already present in the court files for the trial, but the motion for her to be heard was out of order because the deadline had passed; that the motion lodged by the parents of Gilson Nogueira de Carvalho had no staying effect and therefore gave no legal grounds to delay the sitting of the jury, and that the third-party plaintiffs in the charges did not have standing to lodge such a motion; and he accepted the technical note submitted by the defense, adding it to the case files as an opinion. Subsequently, having heard statements from the witnesses and arguments by the plaintiffs and the defense, the judge presiding over the jury trial posed the questions that the jury must answer in order to find its verdict. The first question, using the same wording as the criminal charge leveled by the Office of the Public Prosecutor, was: "On October 20, 1996, in the pre-dawn hours, in the street called Projetada[, bearing no house number], did the accused Otávio Ernesto Moreira, using an American-made *Remington* 12-gauge shotgun, model *Wingmaster* 870, [...] fire shots at [...] Gilson Nogueira de Carvalho, producing the injuries described in the [applicable autopsy report]?" The jury, by a vote of five to two, answered "no" to this question, thus returning a verdict of acquittal.⁴⁸

67.32. On June 28, 2002, the Office of the Public Prosecutor lodged an appeal against the decision of the jury, asking for a new trial with a different jury and claiming that the ruling in question contradicted evidence contained in the case files. The parents of Gilson Nogueira de Carvalho also appealed the ruling in their capacity as third-party plaintiffs in the charges, on July 16, 2002. On March 6, 2004, the Second Criminal Chamber of the State Court of Rio Grande do Norte denied the preliminary objections filed by the third-party plaintiffs in the charges and dismissed the appeal filed by the Office of the Public Prosecutor on the grounds that the decision of the jury cannot be considered to contradict evidence contained in the case files of the procedure when there is other evidence consistent with their decision, in this case, the arguments of the defense. On March 9, 2004, the parents of Gilson Nogueira de Carvalho, in their capacity as third-party plaintiffs in the charges, filed a "motion of interpretation" against the ruling of March 6, 2004; it was denied by the same court on December 16, 2004, because "no procedures [had] taken place that might invalidate the [appealed ruling]."⁴⁹

⁴⁷ Cf. opinion of the Office of the Public Prosecutor of the State of Rio Grande do Norte, June 4, 2002 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 5120 through 5123).

⁴⁸ Cf. record of the first sitting of the Second Jury of the Court of Natal, June 7, 2002 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 5163 and 5167); voting record of the sentencing council, June 7, 2002 (file of appendixes to the response to the application, Appendix 1, Volume 6, folio 5144); acquittal issued by the presiding judge of the jury trial, Célio de Figueiredo Maia, June 7, 2002 (file of appendixes to the response to the application, Appendix 1, Volume 6, folio 5146); and the criminal complaint of January 25, 1999, *supra* note 22.

⁴⁹ Cf. appeal lodged by the Office of the Public Prosecutor on June 28, 2002 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 5169 through 5176); appeal lodged by Jaurídice Nogueira de Carvalho and Geraldo Cruz de Carvalho on July 16, 2002 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 5180 through 5202); ruling of the Criminal Chamber of the State Court of Rio Grande do Norte, February 6, 2004 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 5348 through 5365); "motion of interpretation" lodged by Jaurídice Nogueira de Carvalho and Geraldo Cruz de

67.33. On January 20, 2005, the parents of Gilson Nogueira de Carvalho, in their capacity as third-party plaintiffs in the charges, filed a special motion and an extraordinary remedy requesting that the jury's verdict be reversed. On February 16, 2005, Otávio Ernesto Moreira submitted his pleadings and asked the Court not to refer these motions to the higher courts. On the same date, the President of the State Court of Rio Grande do Norte received the "closed court records" to pass on the admissibility of the appeals. On May 11, 2005, the State Court of Rio Grande do Norte referred the appeals to the Higher Court and to the Federal Supreme Court.⁵⁰

VIII
ARTICLES 8(1) AND 25(1) OF THE AMERICAN CONVENTION
(RIGHT TO A FAIR TRIAL AND RIGHT TO JUDICIAL PROTECTION)
IN RELATION TO ARTICLE 1(1)
(OBLIGATION TO RESPECT RIGHTS)

Arguments of the Commission

68. The Commission argues, *inter alia*, that:

- a) it takes no position on the alleged violation of Article 4 of the Convention.
- b) concerning the right to a fair trial and the right to judicial protection, it states that:

- i. The conduct of authorities in investigating the death of Gilson Nogueira de Carvalho was faulty, taking into account the previously existing evidence of possible involvement by members of the civil police force of the State of Rio Grande do Norte in the murder of Gilson Nogueira de Carvalho, the later discovery of one of the weapons used for the crime in the possession of Otávio Ernesto Moreira, who at the time of the homicide was an active member of this police force, and his statement to the effect that his shotgun was used by himself and by other officers. All this should have led investigators to take certain measures at the very least: find out to whom Otávio Ernesto Moreira lent his weapon and question them; find out whether his weapon had been used in other crimes attributed to the "golden boys;" investigate any specific motives Otávio Ernesto Moreira may have had to murder Gilson Nogueira de Carvalho and look into his friendship and employment relationship with other members of the civil police who may have had cause to order the homicide; add to the case file on the death of Gilson Nogueira de Carvalho a copy of the investigation into the death of Antônio Lopes, and study any linkage between the two

Carvalho on March 9, 2004 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 5366 through 5369); and ruling by the Criminal Chamber of the State Court of Rio Grande do Norte, December 16, 2004 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 5380 through 5383).

⁵⁰ Cf. special motion and extraordinary remedy lodged by Jaurídice Nogueira de Carvalho and Geraldo Cruz de Carvalho on January 20, 2005 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 5387 through 5467 and 5486 through 5539); rebuttal filed by Otávio Ernesto Moreira on February 16, 2005 (file of appendixes to the response to the application, Appendix 1, Volume 6, folios 5544 through 5548 and 5549 through 5553); and order by the Judicial Secretariat of the State of Rio Grande do Norte, February 16, 2005 (file of appendixes to the response to the application, Appendix 1, Volume 6, folio 5554).

crimes; and repeat the questioning of all witnesses, taking into account new investigative possibilities suggested by the ballistics tests on December 10, 1998;

ii. both the police investigation and the judicial process carried out against the only person charged with the crime evidenced clear errors that hindered clarification of the circumstances of death, and will continue to do so. Examples of these errors include: both the court that was the venue of the jury trial, and the State Court of Rio Grande do Norte refrained from commenting on the request to add to the court records a copy of the judicial file on the investigation into the death of Antônio Lopes; the president of the jury denied a request by the parents of Gilson Nogueira de Carvalho to allow the witness Angélica da Silva Campelino to take the stand, but did allow the defense team of the accused to add to the case file a technical note of doubtful provenance that challenged the findings of the report produced by the Federal Police National Bureau of Criminology; and clear contradictions between testimonies submitted in the trial were not reconciled. Since the time Otávio Ernesto Moreira was acquitted, the State has not undertaken a new investigation to determine the perpetrators of the death of Gilson Nogueira de Carvalho;

iii. the parents of Gilson Nogueira de Carvalho seized all the remedies that, in theory, were available, but they were systematically denied; and

iv. the lack of due diligence in the process of investigation and collection of essential evidence, without which judicial processes cannot be conducted, constituted a breach of Articles 8 and 25 of the Convention. The mechanical application of procedural formalities, condemned in advance to be fruitless, does not qualify as an effective search for justice.

Arguments of the representatives

69. The representatives claim, *inter alia*, that:

a) the Court is competent to judge violations of Article 4 of the Convention in the instant case because of the State's failure to investigate the facts surrounding the murder of Gilson Nogueira de Carvalho, even though his death preceded the State's recognition of the jurisdiction of the Court. The guarantee of the right to life includes the duty to investigate, which is conceptually distinct from the substantive duty to protect persons from being illegally deprived of life. The failure of the State to investigate effectively the death of Gilson Nogueira de Carvalho constitutes a breach of Article 4 of the American Convention, regardless of any violations the Court may declare to Articles 8 and 25 thereof;

b) concerning the right to a fair trial and the right to judicial protection:

i. State authorities failed to conduct a conscientious, effective investigation in this case. Despite evidence obtained in the police investigation and contradictory statements made to the police, the Office of the Public Prosecutor filed charges only against former police officer Otávio Ernesto Moreira for the death of Gilson Nogueira de Carvalho, ignoring the fact that the homicide was committed by three principals. Competent authorities ignored evidence and testimony upholding the thesis that the death was a homicide planned by the death squad known as the "golden boys." Charges were filed only 46 days after the ballistics report was released on December 10, 1998, even though this ballistics test could have provided clues as to the participation of other police officers. Following the arrest of Otávio Ernesto Moreira and identification of the murder weapon by means of ballistics analysis, the State

failed to conduct the necessary procedures to identify other participants in the homicide. For example, the Federal Police did not question members of the Civil Police of the State of Rio Grande do Norte to whom Otávio Ernesto Moreira customarily lent his weapon or police officers who allegedly took part in the death squad, nor were these procedures requested by the prosecuting attorney or the presiding judge. When investigations resumed on September 24, 1998, the errors could have been corrected, but they were not. The hundreds of procedures performed by the Federal Police and by the judicial branch were the result of simple mechanical application of procedural formalities. The way investigations were conducted, as well as the production of evidence, made it very difficult to pin the blame on the people involved in the death of Gilson Nogueira de Carvalho;

ii. the Office of the Public Prosecutor and judicial authorities who conducted the case were not diligent; among other things, they did not order the case file on the death of Antônio Lopes to be added to the file for the criminal process against Otávio Ernesto Moreira so that the appropriate connection could be made between the two deaths; they did not diligently conduct investigations into the death of Antônio Lopes; they did not summon the witness Angélica da Silva Campelino to give testimony before the jury trial; they concurred with the content of the question posed to the jury, to the effect that Otávio Ernesto Moreira had fired the shots and produced the injuries described in the autopsy report, even though they knew that the accused had not been physically perpetrated the homicide; and

iii. there has been undue delay in the criminal process, as more than nine years after the murder of Gilson Nogueira de Carvalho, the process has not been completed, and no one has been held responsible. The State's pleadings on the complexity of the case cannot be held as a pretext for lack of concrete results in the investigation. The prevailing impunity in the instant case is the result of inefficient performance by authorities responsible for conducting investigative procedures.

Arguments of the State

70. The State claims, *inter alia*, that:

a) the Court does not hold jurisdiction to rule on the alleged violation of the right to life for reasons of time, because the homicide of Gilson Nogueira de Carvalho took place two years before the State had recognized the contentious jurisdiction of the Court, and the effects of that recognition are not retroactive;

b) concerning the right to a fair trial and the right to judicial protection:

i. the State conducted a conscientious investigation consistent with the rules of due process of law. Both the police investigation and the criminal process unfolded over a reasonable amount of time. The investigation was supervised by multiple public bodies and was performed by the Federal Police rather than the Civil Police of the State of Rio Grande do Norte, in view of the possibility that members of the latter civil police force could have been involved in the death of Gilson Nogueira de Carvalho;

ii. there was no omission or negligence in conducting the investigation or in the judicial process: over 100 witnesses were questioned, and investigators prepared numerous expert opinions and police sketches, apprehended vehicles, analyzed telephone calls made and received by Gilson Nogueira de Carvalho, and transcribed

the cassettes supplied by Antônio Lopes. The investigation also extended into other States of Brazil: Tocantins, Goiás and Maranhão;

iii. the request for Mrs. Angélica da Silva Campelino to be heard in the jury trial was time-barred. The President of the Jury agreed to allow the technical note concerning the ballistics analysis of the weapon as an opinion given by the defense team of the accused, and not as an official opinion. It would have been outside the scope of the investigation into the homicide of Gilson Nogueira de Carvalho to investigate whether the shotgun belonging to Otávio Ernesto Moreira had been used in other crimes attributed to the "golden boys." A copy of the police investigation into the death of Antônio Lopes was not added to the court records of the criminal action against Otávio Ernesto Moreira because this investigation contributed no conclusive findings or new evidence concerning the death of Gilson Nogueira de Carvalho. The question posed to the jury to deliberate on the guilt of the accused could not have been worded any other way, as the Office of the Public Prosecutor was defending the thesis that Otávio Ernesto Moreira was the perpetrator of the homicide of Gilson Nogueira de Carvalho. The question as asked was consistent with domestic criminal law and was not challenged by the Office of the Public Prosecutor during the trial. There is no concrete evidence to associate the death of Gilson Nogueira de Carvalho with his work as a human rights defender; instead, the representatives are seeking a ruling by the Inter-American Court on matters that lie outside its jurisdiction; and

iv. the homicide of Gilson Nogueira de Carvalho is a case of great complexity, entailing numerous suspects and many contradictory views on who was responsible. These are the reasons why the judicial process did not lead to a conviction, rather than alleged slowness or omission by the State. Moreover, the fact that no conviction was handed down in this case does not mean that the rules of due process of law have been violated. Finally, the possibility continues to exist that new facts will come to light and that the investigation on Gilson Nogueira de Carvalho could be reopened.

Conclusions of the Court

71. Article 1(1) of the American Convention says:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

72. Article 8(1) of the American Convention says:

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.

[...]

73. Article 25(1) of the American Convention says:

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.

[...]

74. Gilson Nogueira de Carvalho was an attorney and a human rights defender who was subject to death threats and fell victim to homicide in an ambush on October 20, 1996. Taking into account that Gilson Nogueira de Carvalho worked as a human rights defender, the Court finds it relevant to reiterate the duty of the States to create conditions necessary for true enjoyment of the rights embodied in the Convention.⁵¹ The Court believes that, in a democratic society, discharge of the States' obligation to create the conditions necessary for the human rights of all persons under their jurisdiction to be effectively respected and guaranteed is intrinsically linked to the protection and recognition of the important role played by human rights defenders, as has been established in the continuous jurisprudence of the Court.⁵²

75. The Organization of American States has recognized, among other things, the need to "support [...] the work carried out, at both the national and the regional level, by human rights defenders; [...] to recognize their valuable contribution to the promotion, observance, and protection of human rights and fundamental freedoms in the Hemisphere[and to] condemn actions that directly or indirectly prevent or hamper [their] work [...] in the Americas."⁵³ The commitment to protect human rights defenders has been emphasized in other international instruments as well.⁵⁴

76. The Court feels that the threats and attempts on the safety and life of human rights defenders and the impunity of those responsible for such actions are particularly grave because they have an impact that is not only individual, but also collective. When such things happen, society is prevented from learning the truth about whether the rights of persons are being respected or violated under the jurisdiction of a given State.

⁵¹ Cf. *Case of Servellón García et al.*, supra note 11, para. 108; *Case of Ximenes Lopes*, supra note 11, para. 85; *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, para. 113; *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, para. 111; and *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 140.

⁵² Cf. *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 30, 2006, Considering clause 24; *Matter of Gloria Giralte de García Prieto et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 26, 2006, Considering clause 8; *Matter of Mery Naranjo et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering clause 8; *Matter of Mery Naranjo et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of July 5, 2006, Considering clause 8; *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No.1 48, para. 400; *Case of the Pueblo Bello Massacre*, supra note 51, para. 268; and *Case of the "Mapiripán Massacre,"* supra note 51, para. 299.

⁵³ Organization of American States, *Human Rights Defenders: Support for the Individuals, Groups, and Civil Society Organizations Working to Promote and Protect Human Rights in the Americas*, Resolutions of June 10, 2003; June 4, 2002; June 5, 2000; supra note 14. Cf. also Organization of American States, Inter-American Commission on Human Rights, *Report on the situation of human rights defenders in the Americas*, March 7, 2006, supra note 14.

⁵⁴ Likewise, cf. *Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms*, Resolution of the General Assembly, March 8, 1999, supra note 14, article 12; *Human Rights Defenders*, Resolution of the Human Rights Commission, April 24, 2003, supra note 14; *Human Rights Defenders*, Resolution of the Human Rights Commission, April 25, 2002, supra note 14; and United Nations, *Basic Principles on the Role of Lawyers*, September 7, 1990, supra note 14, articles 16 through 22. Cf. also see Council of the European Union, Draft conclusions of the Council on the EU guidelines on human rights defenders, June 9, 2004, supra note 14.

77. The States have the duty to provide the resources necessary for human rights defenders to conduct their activities freely;⁵⁵ to protect them when they are subject to threats and thus ward off any attempt against their life and safety; to refrain from setting up hindrances that might make their work more difficult, and to conduct conscientious, effective investigations of violations against them, thus preventing impunity.

78. In response to the death of Gilson Nogueira de Carvalho, the State undertook a police investigation on October 20, 1996, and considered several hypotheses as to the perpetrators of the homicide. One of these theories associated his death with the public claims Gilson Nogueira de Carvalho had made as a human rights defender, concerning the conduct of a death squad known as the "golden boys." This gang was alleged to be made up of officers and agents of the police force working in the department of Maurílio Pinto de Medeiros, who at the time of the death of Gilson Nogueira de Carvalho was serving as Deputy Secretary of Public Security for the State of Rio Grande do Norte. These claims publicized by the attorney triggered investigations of several members of the police force of the State of Rio Grande do Norte for the alleged commission of homicides, kidnappings and torture (*supra* paras. 67(2), 67(7), 67(8) and 67(10)).

79. In the instant case, the Court took into account the body of evidence and the arguments presented by the parties and conducted a thorough study of the entire series of police and judicial procedures conducted as of December 10, 1998, that is, since the date when the State recognized the contentious jurisdiction of this Court.

80. The Court emphasizes that courts of the State are expected to examine the facts and evidence submitted in particular cases. It is not the responsibility of this Court to replace the domestic jurisdiction by ordering concrete methods or forms for investigating and judging a specific case in order to obtain a better or more effective outcome; instead, its role is to find whether or not, in the steps actually taken domestically, the State's international obligations embodied in Articles 8 and 25 of the American Convention have been violated.

81. For these reasons, the Court limited its analysis to facts that actually took place during the period when it had jurisdiction and conducted its review under the terms of paragraph 79 of this Judgment. The Court finds that it has not been demonstrated that the State violated the right to a fair trial or the right to judicial protection given in Articles 8 and 25 of the American Convention in the case of Jaurídice Nogueira de Carvalho and Geraldo Cruz de Carvalho.

IX OPERATIVE PARAGRAPHS

82. Therefore,

THE COURT

⁵⁵ Cf. *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo*. Provisional Measures, *supra* note 52, Considering clause 24; *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 9, 2006, Considering clause 14; *Matter of Mery Naranjo et al.* Provisional Measures, *supra* note 52, Considering clause 8; and *Matter of the Forensic Anthropology Foundation*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 9, 2006, Considering clause 12.

DECLARES,

Unanimously, that

1. It dismisses the two preliminary objections lodged by the State, as stated in paragraphs 40 through 46 and 50 through 54 of this Judgment.
2. In view of the limited factual support available to the Court, it has not been demonstrated that the State in the instant case violated the Right to a Fair Trial and the Right to Judicial Protection guaranteed in Articles 8 and 25 of the American Convention on Human Rights, for the reasons expressed in paragraphs 74 through 81 of this Judgment.

AND DECIDES,

Unanimously,

3. To close the file.

Done in San Jose, Costa Rica on November 28, 2006 in Spanish and Portuguese, the Spanish text being authentic.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary