

**JOINT PARTIALLY DISSENTING OPINION OF JUDGES ROBERTO F. CALDAS AND  
EDUARDO FERRER MAC-GREGOR POISOT**

**CASE OF HUMAN RIGHTS DEFENDER et al. v. GUATEMALA**

**JUDGMENT OF AUGUST 28, 2014  
(PRELIMINARY OBJECTIONS, MERITS, REPARATIONS AND COSTS)**

1. We issue this partially dissenting opinion to explain the reasons for which we disagree with the provisions of Operative Paragraphs 7 and 8 of the Judgment delivered on August 28, 2014, in the *Case of Human Rights Defender et al. v. Guatemala* (hereinafter "the Judgment"), by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"). In these paragraphs, the Court states that there are not sufficient elements to declare the State's failure to fulfill its obligation to protect the life of A.A., or to declare the violation of the political rights of A.A., recognized in Articles 4(1) and 23.1, respectively, of the American Convention on Human Rights (hereinafter "the American Convention" or "the Pact of San José of Costa Rica"). In this opinion, we will set forth the reasons why we consider that the Court should have ruled that Guatemala committed a violation of Articles 4(1) and 23(1) of the American Convention, to the detriment of the Human Rights Defender A.A.

2. On several occasions, the Court has referred to the violation of rights recognized in the American Convention to the detriment of human rights defenders<sup>1</sup>, and has considered that said status is defined by the work carried out, regardless of whether that person is a private citizen or a public servant.<sup>2</sup> However, this is the first time that the Court has developed the concept of a human rights "defender", in light of various international sources.<sup>3</sup> Indeed, as argued in the Judgment to which this opinion refers, human rights defenders are all those who promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. These activities must be carried out peacefully, and may be exercised intermittently or occasionally, since the condition or status of human rights defender is not necessarily permanent.<sup>4</sup>

3. In this specific case, the Court considered that, in 2004, Mr. A.A., together with his daughter B.A., carried out activities that defined them as human rights defenders.<sup>5</sup> However, the majority of the Inter-American Court considered that it "d [id] not have

---

<sup>1</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, of 2008. Series C No. 192; *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, and *Case Luna López v. Honduras. Merits, Reparations and Costs*. Judgment of October 10, 2013. Series C No. 269.

<sup>2</sup> Cf. *Case Luna López v. Honduras. Merits, Reparations and Costs*. Judgment of October 10, 2013. Series C No. 269, para. 122.

<sup>3</sup> Cf. para. 129 of the Judgment.

<sup>4</sup> Cf. para. 129 of the Judgment.

<sup>5</sup> Cf. paras. 130 to 132 of the Judgment.

sufficient elements to prove that the State knew, or should have known, of a situation of real and immediate danger to Mr. A.A.'s life prior to his death."<sup>6</sup> We disagree with that reasoning, because we consider that the State of Guatemala did know, or should have known, about the situation of danger in which A.A. found himself and, therefore, should have protected his life, thereby guaranteeing his political rights.

4. For the sake of greater clarity, we will divide this opinion as follows: (1) the violation of Article 4(1) of the American Convention to the detriment of A.A. (paras. 5 to 15); (2) the violation of Article 23(1) of the American Convention to the detriment of A.A. (paras. 16 to 20); and (3) Conclusion (paras. 21-25).

### **1. Violation of Article 4(1) of the American Convention to the detriment of A.A.**

5. In the Judgment, the Inter-American Court makes it explicit that "the State's obligation to guarantee the rights to life and personal integrity of an individual is increased in the case of a human rights defender."<sup>7</sup> Furthermore, the Court considered that, in order to determine whether that increased obligation existed in this specific case, it was necessary to establish that the authorities knew, or should have known, of the danger, and that they failed to take the necessary measures, within the scope of their respective powers which, judged reasonably, might have been expected to prevent or avoid that risk.<sup>8</sup> Mindful of this increased obligation, we the undersigned consider that there were indeed sufficient elements to conclude that the State knew, or at least should have known, about the situation of real and immediate danger to the life of A.A., which we will set forth below.

6. In the first place, as acknowledged in the Judgment, at the time of the events of this case, human rights defenders in Guatemala faced a situation of vulnerability. This was especially true for those working to protect or promote economic, cultural and social rights, and those seeking truth and justice for human rights violations committed during the internal armed conflict, which took place between 1962 and 1996.<sup>9</sup> The Court should have considered this context when assessing the evidence and the arguments, and in the subsequent determination of the State's international responsibility.<sup>10</sup> In our view, Mr. A.A. formed part of this vulnerable group, and there is sufficient evidence to determine that the State knew, or should have known, of the dangerous situation facing this human rights defender, who required special attention on the part of the State for the protection of his rights.

7. Secondly, the security forces and state authorities considered the family of A.A. to be "subversive." For this reason, after the enforced disappearance of A.A.'s son, the members of that family were displaced both within Guatemala and abroad, between 1983 and 1987,<sup>11</sup> and only decided to return to the country after the signing of the Peace Accords.<sup>12</sup> As a result, the international responsibility of Guatemala was declared in the case of *Gudiel Álvarez ("Diario Militar") v. Guatemala* to the detriment of the

---

<sup>6</sup> Para. 149 of the Judgment.

<sup>7</sup> Para. 142 of the Judgment.

<sup>8</sup> Cf. para. 143 of the Judgment.

<sup>9</sup> Cf. para. 78 of the Judgment.

<sup>10</sup> Cf. para. 73 of the Judgment.

<sup>11</sup> Cf. para. 83 of the Judgment, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits Reparations and Costs*. Judgment of November 20, 2012. Series C No. 253, para. 308.

<sup>12</sup> Cf. *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits Reparations and Costs*, *supra*, para. 308.

members of that family, and in particular of Mr. A.A. In our view, this also constitutes evidence showing that the State, at the very least, should have known about the situation of special vulnerability facing this human rights defender; about the fact that he had been declared a victim in another proceeding before this Court; and that he was trying to ensure compliance with the Judgment.

8. Thirdly, on November 26, 2003, a little more than a year prior to the date of A.A.'s death, his daughter B.A. filed a complaint before the Prosecutor's Office of Santa Lucía Cotzumalguapa. In the complaint she stated that a former *kaibil* who had ideological differences with her family had called her and threatened that he was going to harm her and her son. She added that this person had threatened her sister on a previous occasion.<sup>13</sup> The majority of the Inter-American Court considered that the absence of an express reference to the father in the complaint implied that there was not sufficient evidence to assert that the State should have known of the danger to his life. It reinforced its position by noting that B.A. had signed, and therefore had endorsed, the content of that complaint.<sup>14</sup>

9. We consider that this interpretation by the Court is excessively formalistic. As this Court has pointed out, in an international tribunal whose purpose is the protection of human rights, the proceedings are endowed with special characteristics that distinguish it from proceedings of domestic law. Although it is less formal and more flexible than the latter, it must still ensure legal certainty and the procedural balance of the parties.<sup>15</sup> Thus, in this specific case, all the evidence should have been assessed as a whole, in light of the context of vulnerability that affected human rights defenders at the time of the events.

10. With respect to the aforementioned complaint of November 2003, the Court notes that: (i) both the plaintiff B.A. and her father A.A. were involved in defending economic, social and cultural rights in their community at the time of the events, and were also seeking justice for the forced disappearance of a family member; (ii) both were identified as members of a "subversive" family; (iii) both held positions of public influence at the time of Mr. A.A.'s death (Secretary and Mayor of the Community Development Council of the village of Cruce de la Esperanza, respectively); and (iv) the threat made in November 2003 referred precisely to the election of the Education Committee (COEDUCA) of the "Republic of Mexico" Community Self-Management School, where B.A. worked alongside her father and of which Mr. A.A. had previously been President.<sup>16</sup> Indeed, given the context of the case, it seems reasonable to conclude that the threat, made by a former *kaibil*, was not only directed against her and her son, but also against her father.

11. In the fourth place, we should not overlook the fact that the former Municipal Mayor of Santa Lucía Cotzumalguapa was aware of the threats made against A.A. In a statement made on December 5, 2010, the Mayor expressly recognized that "[A.A.] was one of the community leaders threatened,"<sup>17</sup> since "his knowledge of human development and his work methodology, characterized by promoting community unity and seeking advice from professionals in various disciplines of science, was accepted and produced satisfaction in the community, because of the works achieved under his leadership, but it caused a lot of discontent and anger among leadership figures whose

---

<sup>13</sup> Cf. para. 91 of the Judgment.

<sup>14</sup> Cf. para. 146 of the Judgment.

<sup>15</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 42, and *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194, para. 95.

<sup>16</sup> Cf. paras. 84 and 91 of the Judgment.

<sup>17</sup> Para. 147 of the Judgment.

leadership was strongly associated with the *caudillismo* (war-lordism) and corruption of the past, especially those linked to the repressive apparatus of the period of armed conflict.”<sup>18</sup> Moreover, two days after the death of A.A., the Municipal Mayor acknowledged that he had been aware of “problems” between the deceased and M.M., a supporter of the *Frente Revolucionario Guatemalteco*, because the latter had proclaimed himself Deputy Mayor of three communities, including the village of Cruce de la Esperanza, where Mr. A.A. legitimately held that position.<sup>19</sup> In addition, during the public hearing before the Court, B.A. confirmed that she had approached the Municipal Mayor to make her complaints prior to the death of her father.<sup>20</sup>

12. Despite the Municipal Mayor’s admission that he was aware of that situation, the majority of the Inter-American Court considered that this was insufficient to conclude that the State knew about the situation of real danger to Mr. A.A.’s life. However, we consider that the State was clearly aware of that danger, and that it was negligent in offering him the necessary protection, especially taking into account the specific context of danger facing human rights defenders, a group that included Mr. A.A.

13. Finally, in fifth place, the Court considered that “Mrs. B.A. has been consistent in her statements made after Mr. A.A.’s death”, in affirming that the threat was made against her, her son and her father.<sup>21</sup> Nevertheless, the Judgment completely dismisses the value of that consistency because of the fact that she had signed the complaint. It does not consider the possibility that there might have been a transcription error by State officials,<sup>22</sup> as alleged by the representatives of the victims, and does not assess this point together with other elements in the records, and in light of the context of vulnerability that affected human rights defenders in Guatemala at the time of the facts.

14. In fact, it is pertinent to emphasize that these evidentiary elements should not be interpreted in isolation, but instead assessed as a whole and always in light of the context in which they occurred. Therefore, we who sign this minority opinion consider that, based on a comprehensive interpretation of those elements, and always conscious of the pattern of vulnerability affecting human rights defenders in Guatemala, it is not conceivable to affirm that State officials did not have sufficient elements to believe that there was a real and imminent danger to the life of A.A.

15. Based on the foregoing arguments, and considering that it was reasonable to conclude that the State knew, or at least should have known, about the situation of real and immediate danger, and that it had reasonable opportunities to prevent or avoid that danger, the requirements were indeed met to declare the State responsible for failing to fulfill its positive obligation to guarantee human rights by taking the necessary measures to prevent the violations, as it has done in other cases.<sup>23</sup> Indeed, the State

---

<sup>18</sup> Statement of the former Municipal Mayor, December 5, 2010 (File of attachments to the submission brief, pages 794 and 795).

<sup>19</sup> Cf. para. 148 of the Judgment.

<sup>20</sup> Cf. Statement rendered by B.A. before the Inter-American Court at the public hearing held on February 5, 2014.

<sup>21</sup> Cf. para. 146 of the Judgment; Interview with B.A. conducted on December 23, 2004 by the investigator of the Human Rights Ombudsman (File of attachments to the submission brief, page 902); Interview with B. A. conducted on January 25, 2005, by the criminal investigations specialists of the Public Prosecution Service (File of attachments to the submission brief, page 1063); Statement rendered by B. A. on February 10, 2005 at before the Prosecutor of Santa Lucía Cotzumalguapa (File of attachments to the submission brief, page 823); Private statement of December of 2010 (Attachments to the submission brief, disk 2, minute 59:23 to 1:00), and Statement rendered by B.A. before the Inter-American Court at the public hearing held on February 5, 2014.

<sup>22</sup> Cf. para. 146 of the Judgment.

<sup>23</sup> *Mutatis mutandis*, *Case of Luna López v. Honduras*, paras. 124 and 138.

failed in its obligation to protect the human rights defender A.A., and therefore this constitutes a violation of the guarantee of his right to life by the State of Guatemala.

## **2. Violation of Article 23(1) of the American Convention to the detriment of A.A.**

16. Continuing with its premise that there was no violation of the right to the life to the detriment of A.A., the majority of the Inter-American Court subsequently concluded that there was no violation of his political rights, recognized in Article 23 of the American Convention, "given that there is not sufficient evidence in this case to declare the State's failure in its obligation to protect the right to life of Mr. A.A. in the exercise of his work as a human rights defender [...], likewise, there are not sufficient grounds to establish that the State failed in its obligation to guarantee the exercise of his political rights."<sup>24</sup>

17. However, following the thread of the argument of this dissenting minority, and considering that in our opinion there was indeed a violation of A.A.'s right to life, the obstacle envisaged in the Court's reasoning is removed; therefore, it would certainly be appropriate to consider whether there was a violation of the rights recognized in Article 23 of the American Convention to his detriment.

18. Indeed, as stated in the Judgment, the States must provide positive measures to guarantee that everyone who is a formal holder of political rights has the real opportunity to exercise them, addressing any situations of particular vulnerability affecting the holders of this right. Therefore, it is imperative that the State create optimum conditions and mechanisms to ensure the full exercise of political rights.<sup>25</sup> In this case, the Court established that, at the time of this death, Mr. A.A. held a political position as Community Mayor of the Community Development Council (COCODE) of Cruce de la Esperanza, part of Guatemala's system of Development Councils created through the Law on Urban and Rural Development Councils, as the main vehicle for citizen participation in public affairs.<sup>26</sup>

19. Moreover, it should be noted that at the time of the events, the Municipal Mayor acknowledged that Mr. A.A.'s death "was not something isolated, since other leaders with leadership qualities similar to Mr. [A.A.] have also been murdered or intimidated into leaving their homes for promoting informed participation."<sup>27</sup> He also mentioned other cases of violence and threats against community leaders that occurred during the 2004-2007 period. In addition, one of the individuals indicated by family A as a suspect in his death was considered thus because of conflicts related to the positions held by Mr. A.A. Indeed, one of the suspects had problems with Mr. A.A., because he proclaimed himself Deputy Mayor of the community in which Mr. A.A. actually held this position.<sup>28</sup>

20. Thus, in this particular context, Mr. A.A.'s death implied the definitive interruption of his work in his position as Community Mayor of the COCODE of Cruce de la Esperanza. Consequently, this dissenting minority considers that, by not protecting

---

<sup>24</sup> Para. 189 of the Judgment.

<sup>25</sup> Cf. para. 186 of the Judgment.

<sup>26</sup> Cf. para. 187 of the Judgment.

<sup>27</sup> Statement of the then Municipal Mayor of December 5, 2010 (File of attachments to the submission brief, page 796).

<sup>28</sup> Cf. para. 148 of the Judgment.

A.A. against the real and imminent danger to his life, the State did not guarantee the necessary conditions so that A.A. could continue to exercise his political rights in the political position he held. Consequently, the State failed to fulfill its obligation under Article 23(1) of the American Convention, in relation to Article 1(1) thereof.<sup>29</sup>

### 3. Conclusion

21. As the signatories of this opinion, we believe that the State failed in its obligation to protect the life of A.A.. Based on an overall assessment of the foregoing evidence, and in light of the context of vulnerability for human rights defenders in Guatemala at the time of the events, particularly for those specializing in economic, social and cultural rights, and those seeking justice for violations committed in the past, we consider that the State, at the very least, should have known that Mr. A.A. faced real danger.

22. Even if it were true that the threat made against B.A. only referred to herself and her son, it was reasonable to conclude that this danger also extended to her father, particularly bearing in mind that A.A. also worked for the defense of economic, social and cultural rights, sought justice for the enforced disappearance of his son and held an important position of political leadership with influence in his community.

23. Similarly, it is reasonable to conclude that, in the context of vulnerability facing human rights defenders at the time of the events,<sup>30</sup> the "increased protection" which is explicitly established in the Judgment for this vulnerable group, should have operated for the benefit of Mr. A.A. This is especially true, bearing in mind that various Guatemalan authorities had knowledge of the threats made against family A and considering, moreover, that the Inter-American Court had declared Mr. A.A. a victim in a previous case for acts attributable to the State itself.<sup>31</sup> Therefore, all these elements taken together warranted special protection of his life by the State.

24. In this case, the lack of protection on the part of the State not only resulted in Mr. A.A. being deprived of his life, but also of the opportunity to continue exercising his leadership in his community from a political position.

25. Consequently, we consider that the Inter-American Court should have declared the international responsibility of the Guatemalan State for the violation of the guarantee of the right to life and the exercise of political rights, recognized in Articles 4(1) and 23(1), respectively, of the American Convention, in relation to Article 1(1) thereof, to the detriment of A.A.

---

<sup>29</sup> In another Guatemalan case, the Court did recognize the violation of political rights in connection with the right to life, among other rights. In the case of the indigenous leader Florencio Chitay Nech, who held municipal posts during the period of the internal armed conflict and who was a victim of enforced disappearance, the Court declared that the State had violated Article 23 of the American Convention. *Cf. Case of Chitay Nech et al. Vs. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 25 of mayo of 2010. Series C No. 212, paras. 104 to 117.

<sup>30</sup> *Cf.* para. 78 of the Judgment.

<sup>31</sup> *Cf. Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits Reparations and Costs*.

Roberto F. Caldas  
Judge

Eduardo Ferrer Mac-Gregor Poisot  
Judge

Pablo Saavedra Alessandri  
Secretary