

Inter-American Court of Human Rights
Case of Kawas-Fernández v. Honduras
Judgment of April 3, 2009
(Merits, Reparations and Costs)

In the case of *Kawas-Fernández*,

the Inter-American Court (hereinafter, "the Inter-American Court" or "the Court"), composed of the following judges:

Cecilia Medina-Quiroga, President
Diego García-Sayán, Vice President
Sergio García-Ramírez, Judge
Manuel E. Ventura-Robles, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge, and
Leo Valladares-Lanza, Judge *ad hoc*;

also present,

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention") and Articles 29, 31, 53(2), 55, 56 and 58 of the Court's Rules of Procedure (hereinafter, "the Rules of Procedure"), delivers this Judgment.

I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. On February 4, 2008, in accordance with the provisions of Articles 51 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") lodged before the Court an application against the Republic of Honduras (hereinafter, "the State" or "Honduras"), which originated from the petition submitted on January 13, 2003, by the Center for Justice and International Law (hereinafter, "CEJIL") and the *Equipo de Reflexión, Investigación and Comunicación de la Compañía de Jesús* in Honduras (hereinafter, "ERIC"). On October 13, 2005, the Commission adopted Report No. 67/05¹ declaring the petition admissible. Subsequently, on

¹ In Report on admissibility No. 67/05, the Commission decided to declare admissible petition No. 61/03 concerning the presumed violation of Articles 4, 8 and 25, in relation to Article 1(1), of the American Convention (file of attachments to the application, appendix 2, fs. 683, para. 45).

July 20, 2006, the Commission adopted Report on Merits No. 63/06,² pursuant to Article 50 of the Convention, which made certain recommendations to the State. This report was notified to the State on August 4, 2006. After considering the information provided by the parties following the adoption of the Report on Merits, and based on “the lack of substantive progress in complying effectively with [its recommendations],” the Commission decided to submit the instant case to the jurisdiction of the Court. The Commission appointed Florentín Meléndez, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates, and the lawyers, Elizabeth Abi-Mershed, Deputy Executive Secretary, Juan Pablo Albán-Alencastro and Alejandro Aristizábal, experts attached to the Commission’s Executive Secretariat, as legal advisers.

2. According to the Commission’s application, on February 6, 1995, at approximately 7:30 p.m., Blanca Jeannette Kawas-Fernández was shot and murdered while she was inside her home. The Commission indicated that, at the time of her death, Mrs. Kawas-Fernández was President of the *Fundación para la Protección de Lancetilla, Punta Sal, Punta Izopo y Texiguat* [Foundation for the Protection of Lancetilla, Punta Sal, Punta Izopo and Texiguat] (hereinafter, “PROLANSATE”), an organization created in order “to improve the quality of life of the people who live within the watersheds of the Bahía de Tela [Department of Atlántida, Honduras],” and that, in this capacity, “she had denounced, among other matters, the attempts by private individuals and entities to illegally appropriate Punta Sal, as well as the contamination of the lakes and the depredation of the forests of the region.” According to the Inter-American Commission, “the material contained in the record effectively shows solid indications to reach the conclusion that the state has direct responsibility in the deprivation of the life of the alleged victim”. Moreover, it stated that following her death “serious omissions revealed that the State authorities did not adopt with due diligence all the necessary measures to conduct an investigation that would achieve a concrete outcome. As a result of the State’s failure to comply with its obligation, the right of ‘the next of kin’ of the [alleged] victim to know the truth about what happened and to reparation for the losses they suffered has been denied.”

3. The Commission alleged that “the effects of the impunity in this case, and the failure to adopt measures that would avoid a repetition of the facts, has contributed to a context of impunity for the acts of violence committed against defenders of human rights and of the environment and natural resources in Honduras.” In this regard, it indicated that “the case reflects the situation of defenders of the environment and natural resources in Honduras, the attacks against these individuals, and the obstacles to the investigation of acts of harassment and aggression.”

4. Based on the above, the Commission asked that the Court declare the international responsibility of the State for the violation of Article 4 (Right to Life) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Blanca Jeannette Kawas-Fernández; and of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) also of the American Convention, in relation to Article 1(1)

² In Report on Merits No. 63/06, the Commission concluded that the State was responsible for the violation of Article 4 of the American Convention (Right to Life) in relation to the obligations established in Article 1(1) thereof, to the detriment of Blanca Jeannette Kawas-Fernández; and of the rights recognized in Articles 8 (Right to Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in conjunction with Articles 1(1) and 2 thereof, to the detriment of the next of kin of Mrs. Kawas-Fernández. The Commission also considered that “there were no independent grounds for declaring the State responsible for the alleged violations of the [right to personal integrity] Article 5 of the American Convention” (file of attachments to the application, appendix 1, fs. 672, para. 118).

(Obligation to Respect Rights) and Article 2 (Domestic Legal Effects) thereof, to the detriment of the "next of kin" of Blanca Jeannette Kawas-Fernández. Lastly, the Commission asked the Court to order the State to adopt specific measures of pecuniary and non-pecuniary reparation.

5. On May 7, 2008, Viviana Krsticevic, Executive Director of CEJIL, and Luis Diego Obando, Ramiro Barriga, Soraya Long and Gisela de León, all of CEJIL, together with Father Ismael Moreno, Director of ERIC, representatives of the alleged victims (hereinafter "the representatives"), presented their brief with pleas, motions and evidence (hereinafter the "pleas and motions brief"), pursuant to Article 23 of the Rules of Procedure. In this brief, they alleged that "Blanca Jeannette Kawas was a well-known Honduran defender of the environment who promoted the protection of her country's natural resources, principally in Tela, an area located on the Atlantic coast of Honduras" and that, in this capacity, she was murdered on February 6, 1995. The representatives reiterated that the death of Mrs. Kawas-Fernández "was particularly symbolic, because she was the first person murdered in Honduras for defending natural resources and the environment. After her murder, and owing to the impunity that characterized it, a series of murders of other defenders of the environment in Honduras occurred."

6. Consequently, the representatives asked that the Court declare the State responsible for the violation of Article 4 (Right to Life) of the Convention, in relation to Article 1(1) thereof, to the detriment of Blanca Jeannette Kawas-Fernández, "based on the [alleged] participation of State agents in ordering, planning and executing her murder and on the lack of an effective investigation into her death"; of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Blanca Jeannette Kawas-Fernández and of "her next of kin," "for failing to conduct a serious and effective investigation in order to prosecute and punish those responsible for the violation of the right to life of Jeannette Kawas"; of Article 16 (Freedom of Association) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Blanca Jeannette Kawas-Fernández, "because Mrs. Kawas was murdered because she exercised her right to freedom of association," and of Article 5 (Right to Humane Treatment) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the "next of kin" of Blanca Jeannette Kawas-Fernández, "owing to the suffering caused by her murder and the lack of an effective investigation."

7. On July 3, 2008, the State presented its brief answering the application and with observations on the pleas and motions brief (hereinafter "answer to the application"), in which, on the one hand, "it partially acquiesced to [the Commission's application and the pleas and motions brief] and accept[ed] its international responsibility" for the violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, "to the detriment of the next of kin of Blanca Jeannette Kawas-Fernández"; and, on the other hand, it "denied the alleged violation" of Article 4 (Right to Life) of the Convention, "to the detriment of Blanca Jeannette Kawas-Fernández"; of Article 16 (Freedom of Association) of the Convention, "to the detriment of Blanca Jeannette Kawas-Fernández," and of Article 5 (Right to Humane Treatment) of the Convention, "to the detriment of the next of kin of the [alleged] victim," all in relation to Article 1(1) (Obligation to Respect Rights) of the Convention.

8. In addition, the State rejected "the Commission's argument [...] that [this] case reflects the situation of defenders of the environment and natural resources in Honduras, as well as the attacks against the said individuals and the obstacles to the investigation of the

acts of harassment and aggression against them." Similarly, it rejected "the argument used by the representatives that the impunity of the Kawas case generated a context of violence against environmentalists, and that the State did not take effective measures of prevention and investigation, aggravated by the lack of due diligence of the agents of justice, which contributed to a climate of impunity." The State appointed Ángel David Reyes-Paz, Deputy Prosecutor General of the Republic of Honduras, as Agent, and Ambassador Roberto Ramos-Bustos, Director General of Special Affairs of the Secretariat of State of the Republic of Honduras as Deputy Agent.

II PROCEEDING BEFORE THE COURT

9. The Commission's application was notified to the State and the representatives on March 7, 2008. During the proceedings before the Court, in addition to the presentation of the principal briefs forwarded by the parties (*supra* paras. 1 to 8), the President of the Court (hereinafter, "the President") ordered that the testimony of seven witnesses and two expert witnesses offered, at the opportune time, by the Commission, the representatives and the State, should be received by means of statements made before notary public (affidavits); the parties were given the opportunity to submit their observations on these statements.³ In addition, the President convened the Commission, the representatives and the State to a public hearing to receive the testimony of two witnesses and an expert witness, as well as the final oral arguments of the parties on the Merits, reparations, and costs.

10. The public hearing was held on December 2, 2008, during the XXXVII Special Period of Sessions of the Court, held in Mexico City, United Mexican States.⁴ At the conclusion of this hearing the judges asked the State and the representatives to submit complementary information with their final written arguments.

11. On January 13, 2009, on the instructions of the President of the Court, the representatives were asked to submit specific helpful evidence,⁵ which was received on January 29 and 30, 2009.

12. On January 20, 2009, the Commission, the representatives and the State forwarded their respective final written arguments. Both the representatives and the State attached some documentary evidence to their briefs (*infra*, para. 41).

13. On March 25, 2009, the Environmental Defense Law Center filed an *amicus curiae* brief.

III JURISDICTION

³ Cf. Order of the President of the Court of October 7, 2008.

⁴ There appeared at this hearing: (a) for the Inter-American Commission: Juan Pablo Albán, Isabel Madariaga and Lilly Ching; (b) for the representatives of the alleged victims: Viviana Krsticevic, Soraya Long, Gisela de León, Marcia Aguiluz, Vanessa Coria, Blanca Araceli and Lucy Mendoza-Díaz; and (c) for the State: Ángel David Reyes (Agent), Roberto Ramos-Bustos (Deputy Agent), Rosalinda Bueno-Fura (Honduran Ambassador to Mexico), Hugo Alberto Soaso, María Luisa Ramos-Matute, Mariela Castañeda, Fernando Griffin, Carolina Pineda and Germán Silvestrucci-Santos, all lawyers.

⁵ The evidence requested consisted of the birth and death certificates of Mrs. Blanca Jeannette Kawas-Fernández.

14. The Inter-American Court is competent to hear this case, pursuant to Articles 62(3) and 63(1) of the American Convention, because Honduras has been a State Party to the Convention since September 8, 1977, and accepted the compulsory jurisdiction of the Court on September 9, 1981.

IV PROVISIONAL MEASURES

15. On November 28, 2008, the representatives requested the Court to order the State to adopt provisional measures for the benefit of one of the eyewitnesses of the murder of Mrs. Kawas-Fernández. On November 29, 2008, the Court issued a Resolution ordering the State to take the measures required to protect the life and personal integrity of Mr. Dencen Andino-Alvarado, a witness in the investigation carried out in Honduras concerning the murder of Mrs. Kawas-Fernández.⁶

16. Said provisional measures are in full force and effect as of the date of this Judgment.

V ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY

17. In its answer to the application, the State partially acknowledged its international responsibility (*supra* paras. 7 and 8). The State repeated this acquiescence during the public hearing and in its final written arguments (*supra* paras. 10 and 12).

18. The State limited its acquiescence to the claims of the Inter-American Commission and of the representatives concerning the alleged violations of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in conjunction with Articles 1(1) and 2 thereof, to the detriment of “the next of kin of Blanca Jeannette Kawas-Fernández” (*supra* para. 7). The State accepted “the arguments used by the parties concerning the violation of [the said] rights.” Nevertheless, Honduras rejected and contested the allegations concerning its international responsibility for the supposed violation of Articles 4 (Right to Life) and 16 (Freedom of Association) of the Convention, to the detriment of Blanca Jeannette Kawas-Fernández, and of Article 5 (Right to Humane Treatment) thereof, to the detriment of her “next of kin,” all in relation to Article 1(1) thereof (*supra* para. 7).

19. With regard to the facts, the State acknowledged the results achieved owing to the work of Blanca Jeannette Kawas-Fernández as a “defender of human rights and the conservation of the environment and natural resources,” and affirmed that it “regretted the events that caused her irreparable loss [...]”. However, it indicated that “the investigations into the case under domestic law had not found that State agents had taken part in the crime perpetrated against Mrs. Kawas-Fernández.” It also denied that “[this] case reflects the situation of defenders of the environment and natural resources in Honduras, as well as the attacks against the said individuals and the obstacles to the investigation of the acts of harassment and aggression against them,” and that “the impunity in the Kawas case generated a context of violence against environmentalists” (*supra* para. 8).

⁶ Cf. Order of the Inter-American Court of Human Rights of November 29, 2008.

20. Regarding the reparations requested, the State indicated that “it is a principle of international law that any violation of an international obligation that has caused damage, gives rise to an obligation to repair this damage satisfactorily”; accordingly, it agreed “to make pecuniary and non-pecuniary reparations to the individuals who, based on the corresponding judgment, are declared to have a right to them.” The State made some observations on establishing pecuniary damages for loss of income, but added that it “would submit to whatever the Court orders in the corresponding judgment.”

21. The Inter-American Commission and the representatives assessed the State’s acknowledgement of responsibility positively. The Commission, in particular, indicated that the State’s acknowledgement was “an act that paved the way towards reparation and implementation of the efforts that must be made to ensure justice in this case, and to guarantee that this type of violation is never repeated.”

22. The representatives indicated that the immediate consequence of the State’s partial acquiescence was that the Court “should consider that the facts that gave rise to the said [...] violations have been accepted [...] and that [it should declare] that the dispute has ceased in relation to the violation of these rights.” They stated that “the dispute persists concerning the facts on which the violations of the rights to life, personal integrity and freedom of association are based, as well as on the existence of a context of violence and impunity that affects, in particular, defenders of the environment” in Honduras.

23. Under Articles 53(2) and 55 of the Rules of Procedure,⁷ and in function of its authority to exercise the international judicial protection of human rights, the Court may determine whether an acknowledgement of international responsibility made by a defendant State offers sufficient grounds, in the terms of the American Convention, to continue examining the Merits and determining reparations and costs.⁸

24. Since the proceedings before this Court relate to the protection of human rights, a matter of international public order that goes beyond the intent of the parties, the Court must ensure that acts of acquiescence are acceptable for the purposes of the Inter-American system. To this end, the Court does not limit itself to merely verifying the formal conditions of the said acts, but relates them to the nature and gravity of the alleged violations, the requirements and interests of justice, the particular circumstances of each case, and the attitude and position of the parties.⁹

⁷ Article 53. Discontinuance of a Case

[...]

2. If the respondent informs the Court of its acquiescence to the claims of the party that has brought the case as well as to the claims of the representatives of the alleged victims, his next of kin or representatives, the Court, after hearing the opinions of the other parties to the case, shall decide whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

Article 55. Continuation of a Case

The Court, may notwithstanding the existence of the conditions indicated in the preceding paragraphs, and bearing in mind its responsibility to protect human rights, decide to continue the consideration of a case.

⁸ Cf. *Case of Myrna Chang V. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 105; *Case of Ticona-Estrada et al. V. Bolivia. Merits Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 20; and *Case of Valle-Jaramillo et al. V. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, para. 28.

⁹ Cf. *Case of Myrna Mack-Chang. Merits, Reparations and Costs*, *supra* note 8, 106 to 108; *Case of Kimel V. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008, Series C No. 177, para. 24, and *Case of Ticona-Estrada et al. Merits, Reparations and Costs*, *supra* note 8, para. 21.

25. Regarding the facts of the instant case, the Court observes that the State has not made any specific acknowledgement of the facts on which its acquiescence is founded. However, by having acquiesced to the alleged violations of Articles 8 and 25 of the American Convention, in relation to the obligations established in Articles 1(1) and 2 thereof, the Court understands that the State has implicitly acknowledged the facts, which, according to the application – the factual framework for the proceedings – constitute these violations; in other words, the facts relating to “the murder of Blanca Jeannette Kawas-Fernández and the related investigation,” described in paragraphs 49 to 71 of the application, so that no dispute subsists in this regard.

26. Regarding the alleged victims, the State, in its brief answering the application, accepted the violation of the rights established in Articles 8 and 25 of the Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of “the next of kin of Blanca Jeannette Kawas-Fernández,” identified generically. In the application’s chapter corresponding to the alleged violation of these rights, both the Commission and the representatives refer generically to “the next of kin” of Mrs. Kawas-Fernández as alleged victims, without clarifying who they consider to be next of kin.

27. The Court has established that the alleged victims must be indicated in the application and in the report of the Commission under Article 50 of the Convention. Also, in accordance with Article 33(1) of the Rules of Procedure, it is the Commission, and not the Court, that must identify the alleged victims precisely in a case before the Court and at the due procedural opportunity.¹⁰

28. The Court observes that in Chapter VIII “Reparations and Costs” of the application, the Commission presented a list of the “beneficiaries of the reparations” with the names of eight next of kin of Mrs. Kawas-Fernández.¹¹ The representatives did the same.¹² In this regard, the State affirmed that it did not contest the list of “beneficiaries” that was presented; this implies that it made its acquiescence with full knowledge of those who had been defined as next of kin by the representatives and the Inter-American Commission. Nevertheless, the State “consider[ed] it necessary to authenticate the said relationship, by means of the respective documents.”

29. Furthermore, the Court observes that the representatives included Blanca Jeannette Kawas-Fernández as a victim of the alleged violations of Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, and that this inclusion does not

¹⁰ Cf. *Case of Goiburú et al. V. Paraguay. Merits, Reparations and Costs*. Judgment of September 22, 2006. Series C No. 153, para. 29; *Case of Perozo et al. V. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195, para. 50; *Case of Ríos et al. V. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194, para. 43.

¹¹ In its application, the Commission indicated that “[o]wing to the nature of this case, the beneficiaries of any reparations Ordered by the Court as a result of the human rights violations perpetrated by the Honduran State are the victim already mentioned in this application and her next of kin who have suffered pecuniary and/or non-pecuniary damage as a result of the alleged human rights violations. According to the information in the case file, the direct next of kin include: Blanca Fernández (mother); Jacobo Kawas-Cury (father); James Gordon Watt (husband); Jaime; Alejandro Watt-Kawas (son); Selsa Damaris Watt-Kawas (daughter); Carmen Marielena Kawas-Fernández (sister); Jacobo Roberto Kawas-Fernández (brother); Jorge Jesús Kawas-Fernández (brother).”

¹² In their pleas and motions brief, the representatives indicated that “the closest next of kin should be considered victims and beneficiaries of the reparations, owing to the violations they have suffered over the years,” stating that the reparations should be granted to the following individuals: Blanca Fernández (mother), Jacobo Kawas-Cury (father – deceased in November 2005), Jaime Alejandro Watt-Kawas (son), Selsa Damaris Watt-Kawas (daughter), Carmen Marianela Kawas-Fernández (sister), Jacobo Roberto Kawas-Fernández (brother) and Jorge Jesús Kawas-Fernández (brother).

form part of the State's acquiescence.

30. Based on the foregoing, the Court will proceed to determine who should be considered victims of the violation of the rights embodied in Articles 8 and 25 of the Convention, in conjunction with Articles 1(1) and 2 thereof, and, to this end, will examine the evidence presented in relation to the alleged relationships (*infra* para. 119).

31. The above notwithstanding, the Court notes that the acknowledgement of State responsibility (*supra* paras. 17 to 20) is based on facts established in the application, is consequent with the preservation of the right embodied in Articles 8(1) (Right to a Fair Trial) and 25(1) (Right to Judicial Protection) of the American Convention, as well as the general obligation to respect and guarantee rights established therein, and does not restrict the fair reparations to which the alleged victims would have a right, but rather defers to the decision that the Court will make. Consequently, the Court decides to accept the acknowledgement made by the State and classify it as an admission of the facts and a partial acquiescence to the legal claims contained in the Commission's application, and an admission of the arguments made by the representatives.

32. The Court considers that the attitude of the State makes a positive contribution to the development of these proceedings, to the exercise of the inter-American jurisdiction on human rights, to the implementation of the principles that inspire the American Convention, and to the conduct that States are obliged to adopt in this regard,¹³ owing to the commitments they assume as parties to international human rights instruments.

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* *

33. Moreover, the Court notes that, with regard to the facts, the dispute subsists concerning whether this case reflects the situation of those who work for the defense of the environment in Honduras (*supra* para. 19). The Court also considers that the dispute subsists concerning the facts described in the application concerning the supposed participation of State agents in planning and covering-up the murder of Mrs. Kawas-Fernández.

34. Regarding the legal claims, the Court finds that the dispute between the parties subsists concerning the alleged violation of Articles 4 (Right to Life) and 16 (Freedom of Association) of the Convention, in relation to Article 1(1) thereof, to the detriment of Mrs. Kawas-Fernández; the alleged violation of Article 5 (Right to Humane Treatment) of the Convention to the detriment of "the next of kin" of Mrs. Kawas-Fernández, and determination of reparations.

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* *

35. In consideration of the above, the Court finds that, notwithstanding the partial admission of facts and the acknowledgement regarding the various claims by the State, there is still the need to determine the nature and scope of the violations alleged in the instant case. Therefore, in view of the powers entrusted upon it to protect human rights,

¹³ Cf. *Case of Benavides-Cevallos V. Ecuador. Merits, Reparations and Costs*. Judgment of June 19, 1998. Series C No. 38, para. 57; *Case of Ticona-Estrada et al. Merits, Reparations and Costs*, *supra* note 8, para. 26; and *Case of Valle-Jaramillo et al. Merits, Reparations and Costs*, *supra* note 8, para. 46.

and as a method of reparation, the Court finds it necessary to pass a Judgment to establish the facts and all the elements on the Merits of the instant case, as well as the related consequences regarding reparations.

VI EVIDENCE

36. Based on Articles 44 and 45 of the Rules of Procedure, as well as on the case law of the Court concerning evidence and its assessment,¹⁴ the Court will proceed to examine and assess the documentary probative elements forwarded by the parties at different procedural opportunities, the statements provided by affidavit and the testimony received at the public hearing (*supra* para. 10), as well as the helpful evidence requested by the President (*supra* para. 11). In this regard, the Court will abide by the principles of sound judicial discretion, within the corresponding legal framework.¹⁵

A) *Documentary, Testimonial and Expert Evidence*

37. The statements made before notary public (affidavits) by the following alleged victims, witnesses and expert witnesses were accepted:¹⁶

a) *Trinidad Marcial Bueno-Romero*, former personal assistant to Blanca Jeannette Kawas-Fernández and witness proposed by the Commission. Her testimony referred to: (a) the work of Blanca Jeannette Kawas in her capacity as a defender of the environment and natural resources; (b) the alleged conflicts with peasants of the *Unión Nacional Campesina* (UNC) and with industrialists from the Hondupalma company in the agricultural sector; and (c) what she knew about the facts that occurred on February 6, 1995.

b) *Danelia Ferrera-Turcios*, Director General of the Prosecutor's Office and witness proposed by the State. She testified about the lawsuits filed in the cases of the death of Carlos Escalera-Mejía, Carlos Antonio Luna-López, Hernaldo Zúñiga and other environmentalists named by the Commission and the representatives in their applications, as well as the results of those actions, the individuals convicted, the arrest warrants issued, and the status of the said cases.

c) *Selsa Damaris Watt-Kawas*, alleged victim in the instant case proposed by the representatives. She testified about: (a) the work performed by her mother, Blanca

¹⁴ Cf. *Case of the "White Van" (Paniagua-Morales et al.) V. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 76; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 101; and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 112.

¹⁵ Cf. *Case of Nogueira de Carvalho et al. V. Brazil. Preliminary Objections and Merits*. Judgment of November 28, 2006. Series C No. 161, para. 55; *Case of La Cantuta V. Perú. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 59; and *Case of Kimel. Merits, Reparations and Costs*, *supra* note 9, para. 29.

¹⁶ In relation to testimony given by Blanca Fernández and Carmen Marianela Kawas-Fernández, offered by the representatives and required by the Order of the President, on November 7, 2008, the representatives presented a communication affirming that "with regard to the testimony of Blanca Fernández, mother of the [alleged] victim in the case, we desist from presenting this because [...] she is currently 82 years of age and her physical and mental condition has deteriorated so that it is not possible to provide the requested statement. We also desist from the testimony of Carmen Marianela Kawas-Fernández, the [alleged] victim's sister, because she was unable to make the required statement and carry out the corresponding authentication procedure, since she is currently responsible for the care of her mother, Blanca Kawas, whose health [...] has deteriorated."

Jeannette Kawas-Fernández, and what she presumably earned; (b) the supposed emotional effects that the next of kin of Blanca Jeanette Kawas, in general, and she, in particular, had suffered owing to the alleged execution of Mrs. Kawas-Fernández; and (c) the presumed impact of the impunity of the death of Blanca Jeannette Kawas on the alleged victim's next of kin.

d) *Jaime Alejandro Watt-Kawas*, alleged victim in the instant case proposed by the representatives. He testified about: (a) the work performed by his mother, Blanca Jeannette Kawas-Fernández, and what she presumably earned; (b) the supposed emotional effects that the next of kin of Blanca Jeanette Kawas, in general, and he, in particular, had suffered owing to the alleged extrajudicial execution of Mrs. Kawas-Fernández and the fact that they do not know who was responsible; (c) the supposed facts that have obstructed the investigation in the instant case, and (d) the alleged financial difficulties that he experienced following his mother's death.

f) *Jorge Jesús Kawas-Fernández*, alleged victim in the instant case proposed by the representatives. He testified about: (a) the presumed emotional effects that the next of kin of Blanca Jeanette Kawas, in general, and he, in particular, had suffered following the alleged extrajudicial execution of his sister; (b) the alleged impact of the impunity of the death of Blanca Jeannette Kawas on her next of kin, and (c) the alleged financial expenses that the family incurred following her execution.

h) *Rigoberto Ochoa*, Human Rights specialist and expert witness proposed by the Commission. He provided information on the situation of defenders of the environment and natural resources and, in general, the situation of human rights defenders in Honduras.

i) *Juan Almendares*, environmentalist and social leader, and expert witness proposed by the representatives. He provided his expert opinion on the alleged relationship between the supposed impunity of the alleged violations of which human rights defenders in Honduras (principally those dedicated to the defense of the environment) are victims, and the alleged impunity that reigns with regard to the grave human rights violations that characterized Honduras during the 1980s.

38. Regarding evidence provided during the public hearing, the Court heard the testimony of the following persons:

a) *Jacobo Kawas-Fernández*, alleged victim proposed by the Commission and the representatives. He testified about: (i) the work performed by Blanca Jeannette Kawas and her presumed earnings; (ii) what he knew about the execution of his sister, Blanca Jeannette Kawas; (iii) the alleged measures taken by the next of kin of Blanca Jeannette Kawas in the period immediately following her murder, the alleged expenses they incurred, and their contributions to the investigation; (iv) what he knew about the attitude of the authorities and how the latter responded to these measures; (v) what he knew about the problems in conducting the investigations in the domestic sphere; (vi) the supposed obstacles confronted by the alleged victim's next of kin in their search for justice in this case, and (vii) the alleged consequences on his personal life and on the members of his family of the alleged human rights violations presumably suffered by Blanca Jeannette Kawas-Fernández.

b) *Rafael Sambulá*, former director of PROLANSATE and witness proposed by the representatives. He testified about: (i) the work of Blanca Jeannette Kawas as an

ecologist and the presumed contributions of the alleged victim to the fight to protect the environment in Honduras; (ii) what he knew of the facts that occurred on February 6, 1995, and the investigation opened into them; (iii) the effects of the death of Blanca Jeannette Kawas on PROLANSATE; and (iv) what he knew about the situation of those who work to defend the environment in Honduras after the death of Blanca Jeannette Kawas.

c) *Clarisa Vega Molina*, former special prosecutor for the environment in Honduras, and expert witness proposed by the representatives. She provided her expert opinion on: (i) environmental conditions in Honduras; (ii) the situation of defenders of the environment in this country; (iii) the alleged general impunity with regard to violations perpetrated against environmentalists in Honduras, and (iv) the difficulties in investigating this type of facts.

B) Assessment of the Evidence

39. In this case, as in others,¹⁷ the Court accepts the probative value of those documents presented opportunely by the parties, which were not contested or opposed, and whose authenticity was not challenged. In relation to the documents forwarded as helpful evidence (*supra* para. 11), the Court incorporates them into the body of evidence, in application of the provisions of Article 45(2) of the Rules of Procedure.

40. Regarding the statements and expert opinions, the Court finds them pertinent to the extent that they are in keeping with the purpose defined by the President in the Order requiring them (*supra* para. 9), and they will be examined in the corresponding chapter. The Court finds that the testimonial statements made by the alleged victims cannot be assessed alone, since they have a direct interest in the case; consequently they will be assessed together with all the evidence in the proceedings.¹⁸

41. With regard to the documents referring to procedural costs and expenses forwarded by the representatives together with their final written arguments, the Court notes that the State did not oppose the incorporation of this evidence, so that, pursuant to Article 45(2) of the Rules of Procedure, it incorporates them into the body of evidence because it considers them useful. In addition, it accepts as helpful evidence, those documents forwarded by the representatives and the State with their respective final written arguments, which respond to requests made by the Court during the public hearing held in this case (*supra* para. 10). The Court will assess all this information applying the rules of sound judicial discretion, within the corresponding factual framework.

42. The Court accepts the documents provided by the expert witness during the public hearing, because it finds them useful for this case and, also, they were not opposed and their authenticity and veracity were not challenged.

43. In relation to the newspaper articles forwarded by the parties at the due procedural opportunity, the Court finds that they can be assessed when they refer to well-known public

¹⁷ Cf. *Case of Velásquez-Rodríguez V. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 81; and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 94.

¹⁸ Cf. *Case of Loayza-Tamayo V. Perú. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 89; and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 103.

facts or declarations of State officials that were not rectified, or when they corroborate aspects related to the case.¹⁹ The newspaper articles which the representatives submitted as “supervening evidence” on March 17, 2009 must be disallowed, as they are unrelated to the factual framework of the instant case, as per the application filed by the Inter-American Commission.

44. Having examined the probative elements that appear in the case file, the Court will now examine the alleged violations taking into account the claims made by the parties and the partial acknowledgment of international responsibility made by the State (*supra* paras. 17 to 35).

VII
ARTICLES 4(1) (RIGHT TO LIFE),²⁰ 8(1) (JUDICIAL GUARANTEES)²¹ AND 25(1)
(JUDICIAL PROTECTION)²² OF THE AMERICAN CONVENTION, IN RELATION TO
ARTICLES 1(1) (OBLIGATION TO RESPECT RIGHTS)²³ AND 2 (DOMESTIC LEGAL
EFFECTS)²⁴ THEREOF

45. The Commission and the representatives alleged that there are “clear indications” as to the participation of members of the State security forces in the planning and concealing of the execution of Mrs. Blanca Jeannette Kawas-Fernández, which, in their opinion, evidences the international responsibility of the State, in accordance with Article 4(1) of the American Convention. Furthermore, they alleged that the overall lack of an efficient investigation of the events, punishment of those responsible and reparation to the alleged victims purports a violation of Article 4(1) of the American Convention, as regards the duty to provide judicial protection set forth in Article 1(1) of the treaty, and Articles 8(1) and

¹⁹ Cf. *Case of Velásquez-Rodríguez V. Honduras*, *supra* note 17, para. 146, quoting *Military and Paramilitary Activities in and against Nicaragua (Nicaragua V. USA)*, 1986 ICJ, paras. 62-64; *Case of the “White Van” (Paniagua-Morales et al). Merits*, *supra* note 14, para. 75; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 87; and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 101.

²⁰ In this regard, Article 4(1) sets forth that “[e]very person has the right to have his personal life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life”.

²¹ Article 8(1) of the American Convention establishes that “[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature”.

²² Article 25(1) of the Convention states that “[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties”.

²³ Article 1(1) of the Convention sets forth that “[t]he 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”.

²⁴ Article 2 of the Convention provides that “[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms”.

25(1) thereof. They noted that, in accordance with such rules, in the event of extra-judicial execution, the State has the "duty to initiate *ex officio* an investigation, promote and further criminal proceedings to the last stage".

46. In Chapter V of this Judgment, it was established that the State recognized its international responsibility for the violation of Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 thereof (*supra* paras. 17 to 35), to the detriment of "the relatives" of Mrs. Blanca Jeannette Kawas-Fernández. The dispute remained open, among other issues, (*supra* paras. 33 to 34), regarding the responsibility of the State for the alleged violation of Article 4(1) of the American Convention, in relation to Article 1(1) of such treaty, to the detriment of Mrs. Blanca Jeannette Kawas-Fernández.

47. In this regard, the State alleged that; 1) it was not in a position of guarantor in accordance with the case law criteria established by this Court in the judgment rendered in the case of *the Pueblo Bello Massacre v. Colombia*, since "Mrs. Kawas had not reported any threats to her life, and was not under the custody and protection of the State, and she was not the beneficiary of any precautionary measure. [The State was not] informed [either] of any actual or immediate risk that could endanger her life or integrity"; 2) "the investigations of the case in [d]omestic [l]egislation did not result in any determination as to the participation of State agents in the crime committed against Mrs. Kawas-Fernández", and 3) the arguments indicated by the Commission and the representatives "regarding the violation of the right to life due to an inefficient investigation [...] purport a violation of the rights enshrined in Articles 8 and 25 of the Convention [...] for which the State filed an acknowledgment and not a violation of the right to life."

48. The dispute brought before the Court calls for an analysis of the circumstances under which the events of the instant case may be attributed to the State and, consequently, compromise its international responsibility for the alleged violation of Article 4(1) of the American Convention, in relation to Article 1(1) thereof. Furthermore, despite the acquiescence made by the State, there is still the need to identify the nature and scope of the violations committed in relation to Articles 8(1) and 25(1) of the American Convention, in connection with Articles 1(1) and 2 of that treaty (*supra* para. 35).

49. To that effect, the Court will: a) establish the facts that have been proven; and, b) analyze any appropriate issues of law.

A) Facts

The activity carried out by Mrs. Blanca Jeannette Kawas-Fernández

50. Blanca Jeannette Kawas-Fernández was the President of PROLANSATE foundation, organized in 1990, to promote the protection and preservation of the areas surrounding Tela bay, in the Department of Atlántida, Honduras, and to improve the quality of life of the residents of the area.²⁵ In accordance with the statement rendered before this court by Mr. Rafael Sambulá, former director of the foundation, the work of Mrs. Kawas-Fernández consisted in "providing the political guidelines that [...] were drafted by the board of

²⁵ Cf. statement of Rafael Sambulá rendered before the Inter-American Court at a public hearing held on December 2, 2008; statement of Jacobo Kawas-Fernández rendered before the Inter-American Court at a public hearing held on December 2, 2008, and statement of Trinidad Marcial Bueno rendered before a notary public (affidavit) on November 18, 2008 (record on the Merits, volume II, folios 466 to 468).

directors, as well as receiving the claims related to environmental damage suffered in the region and the Municipality of Tela".²⁶

51. Under the charge of Mrs. Kawas-Fernández, the foundation obtained, among other things,²⁷ the approval by National Congress of Decree Law No. 154–94, whereby the Punta Sal area in the Department of Atlántida was formally recognized as National Park.²⁸ Pursuant to the testimony of her brother, Mr. Jacobo Kawas, "[Blanca Jeannette] was tireless in performing her duties[...], always fulfilling her obligations and trying to have these lands recognized as [...] protected areas; something she achieved after significant efforts and hard work".²⁹ The result of her efforts became evident weeks after her death (*infra* para. 53), when on March 17, 1995, National Congress named the Punta Sal National Park "Blanca Jeannette Kawas-Fernández National Park," considering that she had "devot[ed] entirely to the defense of the ecosystem".³⁰

52. Through the foundation, Mrs. Kawas-Fernández reported cases of illegal wood exploitation, damage to Punta Sal National Park and other protected areas; she also opposed openly to diverse economic development projects in the area.³¹ A few days before her death (*infra* para. 53), Mrs. Kawas-Fernández organized a demonstration in the city of

²⁶ Cf. statement rendered by Rafael Sambulá before the Inter-American Court, *supra* note 25.

²⁷ In the brief of requests and arguments, the representatives alleged that during Blanca Jeannette Kawas-Fernández's term in office as President, the foundation obtained the approval by the Secretary of Education for the Environment and Ecology undergraduate course (*Bachillerato en Ecología y Medio Ambiente*), that today offers Instituto Triunfo de la Cruz, in Tela, and "through the Secretary of Environment, the cancellation of the permits for building a channel parallel to Martínez dam, located to the southeast of Parque Punta Sal."

²⁸ Cf. decree No. 154-94 "whereby Punta Sal is formally recognized as National Park" Official Gazette No. 27.538 of December 28, 1994 (record of appendixes to the application, appendix 8, folios 301 to 306), and statement of Rafael Sambulá rendered before the Inter-American Court at the public hearing held on December 2, 2008.

²⁹ Cf. statement rendered by Jacobo Kawas-Fernández before the Inter-American Court, *supra* note 25.

³⁰ Cf. decree No. 43-95 whereby it is Ordered to "Designate Punta Sal National Park as Blanca Janeth Kawas-Fernández National Park", Official Gazette No. 27.636 of April 25, 1995 (record of appendixes to the application, appendix 9, folio 308).

³¹ Cf. statement of Rafael Sambulá rendered on March 1, 1995, before the *Juzgado de Paz de los Criminal* (Criminal Magistrate's Court) in and for Tela, (record of appendixes to the answer to the application, appendix 8, folio 2551); statement of Ismael Edgardo Lozano rendered on February 21, 1995, before *Juzgado de Paz de los Criminal* (Criminal Magistrate's Court) in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2142); testimony of Saúl Benjamín Zapata-Mejía rendered on January 20, 2004 (record of appendixes to the answer to the application, appendix 8, folios 2320 and 2321); Technical Legal Report No. DCAT-SATJ- AFS 022/20003 "Determination of the investigation procedures to be carried out in a criminal proceeding initiated under the former Code of Criminal Procedure". Attorney General's Office Technical Legal Training Department, November 18, 2003 (record of appendixes to the answer to the application, appendix 8, folios 2371 to 2392); investigation report of the *Dirección General de Investigación Criminal* (General Bureau of Criminal Investigations) of October 30, 2003, signed by Daniel Barahona, Non-commissioned Officer III of Investigations (record of appendixes to the answer to the application, appendix 8, folios 2341 to 2343); official letter of December 7, 2006, sent by the *Dirección General de Investigación Criminal* (General Bureau of Criminal Investigations) to the Court of First Instance in and for Tela (*Juzgado de Letras Seccional, Tela*), Atlántida (record of appendixes to the answer to the application, appendix 8, folios 2431 and 2432); and report of November 27, 2006, addressed to the General Director of Criminal Investigations (record of appendixes to the brief of requests and arguments, appendix L.17, folios 1747).

Tela to express opposition to the initiative of the State related to the granting of legal title certificates to lands within Punta Sal National Park.³²

Deprivation of life to Mrs. Blanca Jeannette Kawas-Fernández

53. The facts described by the Commission and the representatives, as accepted by the State and proven in the instant case, reflect that on February 6, 1995, at approximately 7:45 p.m., Mrs. Blanca Jeannette Kawas-Fernández died instantly after receiving “a 9 mm. gunshot in the back of her neck with an exit orifice in the left cheekbone”, while she was working with her assistant, Trinidad Marcial Bueno-Romero, at her place, located in *El Centro* neighborhood in the city of Tela, Honduras.³³ Some witnesses declared they had seen two young men holding arms, traveling in a white pick-up van, burst in the nearby of the residence of Mrs. Kawas-Fernández, and later heard two gunshots.³⁴

54. Soon after that, a squad of the Public Security Forces (hereinafter, the “FUSEP”) appeared at the place of the events and removed the body.³⁵ The authorities, under the direction of police sergeant Ismael Perdomo, did not implement any measures aimed at arresting the potential perpetrators and no police detention was made effective.³⁶

Investigation of the events

55. On February 7, 1995, the Criminal Magistrate’s Court (*Juzgado de Paz de lo Criminal*) of the city of Tela initiated the investigations for the alleged commission of the crime of “consummated murder” to the detriment of Mrs. Kawas-Fernández.³⁷ As instructed by the

³² Cf. statement rendered by Trinidad Marcial Bueno before a notary public (affidavit), *supra* note 25, and communication of February 28, 1996 from the executive director and coordinator of the “*Vida y Naturaleza*” (Life and Nature) radio show, broadcast on *Radio América*, sponsored by the *Asociación Hondureña de Periodistas Ambientalistas y Agro Forestales* (A.H.P.A.A.F.) (Honduran Association of Environmental and Agroforestry Journalists) (record of appendixes to the application, appendix 3, folios 723 and 724).

³³ Cf. statement of Trinidad Marcial Bueno of February 9, 1995 (record of appendixes to the answer to the application, appendix 8, folio 2110); procedure for removal of the body performed on February 7, 1995 (record of appendixes to the answer to the application, appendix 8, folio 2106), and report of expert witness Alfredo Girón-Montoya, MD, before the Criminal Magistrates’ Court in and for Tela of February 9, 1995 (record of appendixes to the application, appendix 16, folio 368). Pursuant to the statement rendered by the medical expert attached to the judicial record, “the cause of death was probably a spinal cord section with skull base fracture and hypovolemia as a result of bleeding”.

³⁴ Cf. statement by Dencen Alex Andino of February 9, 1995 (record of appendixes to the answer to the application, appendix 8, folio 2113), and statement of Xiomara Cambsell Andino of February 10, 1995 (record of appendixes to the answer to the application, appendix 8, folio 2114-2115).

³⁵ Cf. procedure for removal of the body carried out on February 7, 1995, *supra* note 33; statement of Carlos Antonio Quintana rendered on February 10, 1995, before the Criminal Magistrate’s Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2127); statement of Roberto Bendeck rendered on February 14, 1995, before the Criminal Magistrate’s Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2129); statement of Dagoberto Alcides Varela rendered on February 9, 1995, before the Criminal Magistrate’s Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2123), and statement of Jacobo Kawas-Fernández rendered before the Inter-American Court, *supra* note 25.

³⁶ Cf. Technical Legal Report No. DCAT-SATJ- AFS 022/2003, *supra* note 31.

³⁷ Cf. Order to commence investigation proceedings passed by the *Criminal* Magistrate’s Court in and for Tela on February 7, 1995 (record of appendixes to the answer to the application, appendix 8, folio 2096).

Court,³⁸ a judicial inspection of the place where the events occurred³⁹ and a medical identification of the corpse were performed.⁴⁰ Furthermore, the testimony of 27 individuals was received during the first six weeks following the events.⁴¹

³⁸ Cf. Order to commence investigation proceedings passed by the Criminal Magistrate's Court in and for Tela, *supra* note 37.

³⁹ Cf. minutes of the judicial inspection carried out by the Criminal Magistrate's Court in and for Tela on February 7, 1995 (record of appendixes to the answer to the application, appendix 8, folio 2097).

⁴⁰ Cf. opinion of expert witness Alfredo Girón-Montoya, MD, *supra* note 33.

⁴¹ Cf. statement by Xiomara Campsbell Andino rendered on February 9, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2114); statement by Marco Antonio Urraca-Zaldivar rendered on February 9, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2111); statement by Marcial Bueno-Romero rendered on February 9, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2110); statement by Dencen Alex Andino-Alvarado rendered on February 9, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2113); statement by Mirian Janneth Alvarado rendered on February 9, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2124); statement by Patricia Padilla rendered on February 9, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2122); statement by Liliana Jasmin Padilla rendered on February 9, 1995 before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2122); statement by Dagoberto Alcides Varela rendered on February 9, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2123); statement by Carlos Antonio Quintana rendered on February 10, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2127); statement by José Israel Amaya-Orellana rendered on February 10, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2128); statement by Roberto Bendeck rendered on February 14, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2129); statement by Ramón Israel Castillo-Flores rendered on February 14, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2130); statement by José Antonio Banegas-García rendered on February 14, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2131); statement by Dinora Paz Hernández rendered on February 14, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2132); statement by Juan Díaz-Martínez rendered on February 15, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2134); statement by José Luis Ramos-Gómez rendered on February 15, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2135); statement by Julio Armando Mier-Callejas rendered on February 16, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2136); statement by Elías Álvarez rendered on February 21, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2138); statement by Aurelio Martínez-Flores rendered on February 21, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2140); statement by Ismael Edgardo Lozano rendered on February 21, 1995, *supra* note 31; statement by Rafael Sambulá rendered on March 1, 1995, *supra* note 31; statement by Juan Alberto Hernández-Sánchez rendered on March 1, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2153); statement by Luis Ramón Maloff rendered on March 2, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2155); statement by Nicolás Maloff rendered on March 2, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2158); statement by Juan Francisco López rendered on March 6, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folios 2275 to 2280); statement by Eulogio García-Sandoval rendered on March 8, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2163); statement by Mario Amaya rendered on March 23, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2164).

56. On February 9, 1995, a representative of the Attorney General's Office filed a request for "appearance" in the instant case.⁴² During the processing of such investigation, eight prosecutors "were designated" as representatives of the Attorney General's Office.⁴³

57. On March 6, 1995, police sergeant Ismael Perdomo took Juan Francisco López-Mejía, a 16-year old boy, who was allegedly responsible for the events, before the authorities of the Bureau of Criminal Investigations (*Dirección de Investigación Criminal*).⁴⁴ In his statement, the young boy admitted his responsibility for the events and accused two of his relatives.⁴⁵ On that same day, the Criminal Magistrate's Court of the city of Tela ordered the arrest of Mr. Juan Mejía-Ramírez and Mr. Sabas Mejía-Ramírez, identified as alleged suspects for the murder of Mrs. Blanca Jeannette Kawas-Fernández.⁴⁶ On March 8, 1995, the Court "annulled the warrant of arrest issued".⁴⁷ Even though this decision was groundless, the prosecutor in charge of the investigation at that time stated in a subsequent statement (*infra* para. 63) that Juan Francisco López-Mejía confessed to have been coerced into rendering an incriminating statement; therefore, the arrest was declared without Merits.

58. On March 23, 1995, the last of the 27 witness testimonies mentioned above was received from an Army Coronel, Mr. Amaya.⁴⁸ One year later, on March 10, 1996, the Tela

⁴² Cf. request for "appearance" of the Attorney General's Office filed by José Francisco Pineda-Ayala with the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2108).

⁴³ Cf. request for "appearance" by the Attorney General's Office (record of appendixes to the answer to the application, appendix 8, folio 2108); official letter of April 17, 1995, sent by José Mario Salgado-Montalbán, for "appearance" by a member of the Attorney General's Office, Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2168); official letter of June 8, 2001, sent by prosecutor Luis Javier Santos-Cruz, for "appearance" by a member of the Attorney General's Office, Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2177); official letter of August 14, 2003, sent by prosecutor Jacobo Jesús Erazo-Osorto, for "appearance" by a member of the Attorney General's Office, Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2182); official letter of September 19, 2003, sent by prosecutor Luis Javier Santos-Cruz, for "appearance" by a member of the Attorney General's Office, Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2192), brief of December 1, 2006, sent by prosecutor María de los Ángeles Barahona-Díaz, for "appearance" by a member of the Attorney General's Office, Court of First Instance in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2429), and brief of June 12, 2008, sent by prosecutor Eduardo Antonio Lagos-Galindo, for "appearance" by a member of the Attorney General's Office, Court of First Instance in and for Tela, Atlántida (record of appendixes to the answer to the application, appendix 8, folio 2546).

⁴⁴ Cf. witness testimony of Saúl Benjamín Zapata-Mejía of January 20, 2004, *supra* note 31; Technical and Legal Opinion No. DCAT-SATJ- AFS 022/2003, *supra* note 31; and memorandum addressed to Bureau of Criminal Investigations director Wilfredo Alvarado by Carlos Cruz-Pérez, coordinator of the Bureau of Criminal Investigations of Tela, on May 10, 1996 (record of appendixes to the brief of requests and arguments, appendix L.11, folios 1714 to 1716).

⁴⁵ Cf. statement of Juan Francisco López-Mejía rendered on March 6, 1995, before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2276).

⁴⁶ Cf. official letter March 6, 1995, of the Criminal Magistrate's Court in and for Tela whereby it Ordered the arrest of Mr. Sabas Mejía-Ramírez and Mr. Juan Mejía-Ramírez (record of appendixes to the answer to the application, appendix 8, folio 2174 and 2176).

⁴⁷ Cf. official letter of March 8, 1995, of the Criminal Magistrate's Court in and for Tela, whereby the warrant of arrests for Mr. Sabas Mejía-Ramírez and Mr. Juan Mejía-Ramírez were annulled (record of appendixes to the answer to the application, appendix 8, folio 2175).

⁴⁸ Cf. statement of Mario Amaya rendered on March 23, 1995, *supra* note 41.

Bureau of Criminal Investigations filed a report on the case whereby it stated that “in the investigations of the instant case, various important interests will be affected and, in any case, the investigation officers assigned to the case are in serious danger.”⁴⁹

59. After that report, there is no proof of new evidentiary practices but until mid 2003, once proceedings in the instant case commenced before the Inter-American Commission (*supra* para. 1). Hence, on August 29, 2003, upon request by the prosecutor in charge, the Criminal Magistrate’s Court of the city of Tela received an extension of the statement rendered by one of the witnesses to the events,⁵⁰ who indicated that he had been threatened by police “sergeant Perdomo”, as a consequence of his testimony⁵¹ (*supra* para. 55). Furthermore, on October 30, 2003, the General Bureau of Criminal Investigations, formerly the Bureau of Criminal Investigations (hereinafter, the “DGIC”), received the statements of eight individuals, some of whom had rendered testimony in 1995.⁵²

60. During proceedings, the coordinators of the DGIC filed various reports on the investigation activities carried out in the instant case.⁵³ In general, these reports explain various hypotheses as regards the responsibility for the murder of Mrs. Blanca Jeannette Kawas-Fernández, mentioning as a motive the possible conflicts with the environmental activity carried out by the alleged victim. These reports highlight indications as to the participation of public officers in the planning of the events and obstructing of the investigation.⁵⁴ Furthermore, it is restated that certain witnesses to the case “could be in

⁴⁹ Cf. memorandum addressed to Bureau of Criminal Investigations director Wilfredo Alvarado, *supra* note 44.

⁵⁰ Cf. official letter of the Attorney General’s Office of August 26, 2003 before the Criminal Magistrate’s Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2189).

⁵¹ Cf. statement by Dencen Alex Andino-Alvarado rendered on August 29, 2003 (record of appendixes to the answer to the application, appendix 8, folio 2191), and statement by Dencen Alex Andino-Alvarado rendered on December 9, 2003 (record of appendixes to the brief of requests and arguments, appendix L.9, folio 1706).

⁵² Cf. statement by Isdenia Enid Ramírez rendered on October 29, 2003, before the General Bureau of Criminal Investigations (record of appendixes to the answer to the application, appendix 8, folios 2346); statement by Rosendo Aguilar rendered on October 29, 2003, before the General Bureau of Criminal Investigations (record of appendixes to the answer to the application, appendix 8, folios 2348); statement by Trinidad Marcial Bueno-Romero rendered on October 30, 2003, before the General Bureau of Criminal Investigations (record of appendixes to the answer to the application, appendix 8, folios 2349); statement by Juan Mejía-Gómez rendered on October 30, 2003, before the General Bureau of Criminal Investigations (record of appendixes to the answer to the application, appendix 8, folios 2351); statement by Sabas Gómez rendered on October 30, 2003, before the General Bureau of Criminal Investigations (record of appendixes to the answer to the application, appendix 8, folios 2355 to 2357); statement by Carlos Antonio Quintana rendered on October 30, 2003, before the General Bureau of Criminal Investigations (record of appendixes to the answer to the application, appendix 8, folio 2358), and statement by Dencen Alex Andino-Alvarado rendered on October 30, 2003, before the General Bureau of Criminal Investigations (record of appendixes to the answer to the application, appendix 8, folios 2360 to 2363).

⁵³ Cf. investigation report of the General Bureau of Criminal Investigations of October 30, 2003, signed by Daniel Barahona, *supra* note 31; official letter of December 7, 2006, sent by the General Bureau of Criminal Investigations to the Court of First Instance in and for Tela, Atlántida (record of appendixes to the answer to the application, appendix 8, folios 2431 and 2432); report of November 27, 2006, addressed to the General Director of Criminal Investigations (record of appendixes to the brief of requests and arguments, appendix L.17, folios 1747 to 1750); briefs of February 19, 2008, sent by inspector Evin Salinas, “Head of the Environmental Death Investigation Unit” to prosecutor Sandra Ponce of the General Bureau of Criminal Investigations (record of appendixes to the answer to the application, appendix 8, folios 2537 to 2544).

⁵⁴ Cf. expert opinion by Clarisa Vega-Molina at the public hearing held before the Inter-American Court on December 2, 2008.

danger of death" and that, therefore "some individuals may agree to give testimony [...] only if the record of the case is moved to another city or if such testimony is taken at a court in a city other than Tela".⁵⁵ It also mentions that, "to judicially process any new elements related to the death of Mrs. Kawas, a prosecutor from the Attorney General's Office not commissioned to Tela should be designated".⁵⁶

61. As a result of the request made by the Supreme Court of Justice of Honduras, on November 18, 2003, the Advisory and Training Department of the Attorney General's Office issued a "Technical Legal Report" on the case, whereby it stated that the testimonies received reflect that the death of Mrs. Kawas was associated with her work as environmental activist in the PROLANSTATE foundation.⁵⁷ Furthermore, the report highlighted the alleged participation of State agents in these events.⁵⁸

62. In such report, the Attorney General's Office suggested, among other things, to practice the following judicial procedures: 1) extension of the testimonies relevant for the clarification of the events; 2) request for a warrant of arrest against Police Sergeant Ismael Perdomo for the crime of coercion, and 3) extension of the accusation against such sergeant for the crime of concealment. Furthermore, the Attorney General's Office recommended the practice, among other things, of the following investigation procedures: 1) organizing a special investigation team to sort out and gather all evidence necessary to clarify the crime, and 2) designing a strategy for protecting witnesses.⁵⁹

63. In view of the recommendations contained in the "Technical Legal Report", the prosecutor who "appeared" in the case received new testimonies,⁶⁰ including the January

⁵⁵ Cf. report of November 27, 2006, addressed to the General Director Criminal Investigations, *supra* note 53.

⁵⁶ Cf. report of November 27, 2006, addressed to the General Director Criminal Investigations, *supra* note 53.

⁵⁷ Cf. Technical Legal Report No. DCAT-SATJ- AFS 022/2003, *supra* note 31. See also the internal record on the following statements: statement rendered on February 21, 1995, before the Criminal Magistrate's Court in and for Tela by Elías Álvarez, Secretary of Projects of *Unión Nacional Campesina* (National Rural Union) who stated that "her death probably resulted from her work", *supra* note 41; statement rendered on February 21, 1995, before the Criminal Magistrate's Court in and for Tela by Ismael Edgardo Lozano from *Corporación Hondureña de Desarrollo Forestal* (Honduras Forestry Development Corporation - CODEFORH), who indicated that, even though the alleged victim did not claim to have been threatened, he is "aware that the activity for protection of natural resources is highly risky, due to the nature of the activity itself, and that he thinks that "the death of Mrs. Kawas was the result of the activity she carried out as environmentalist and her capacity as activist for the protection of the ecosystem," *supra* note 31; statement rendered on February 14, 1995, before the Criminal Magistrate's Court in and for Tela by Dinora Paz Hernández, who stated that when working with the alleged victim "she received disgusting calls, [...] to take care of herself, that old woman [...]" *supra* note 41; and statement rendered on March 1, 1995, before the Criminal Magistrate's Court in and for Tela by Juan Alberto Hernández-Sánchez who stated that he remembers that in a given occasion Mrs. Kawas and that companies and individuals having economic interests in the protected areas could be involved in the murder, *supra* note 41.

⁵⁸ Cf. Technical Legal Report No. DCAT-SATJ- AFS 022/2003, *supra* note 31.

⁵⁹ Cf. Technical Legal Report No. DCAT-SATJ- AFS 022/2003, *supra* note 31.

⁶⁰ Cf. request from prosecutor Luis Javier Santos-Cruz of December 9, 2003 (record of appendixes to the answer to the application, appendix 8, folios 2299 and 2300), witness statement rendered on February 2, 2004, by Juan Mejía-Gómez before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folios 2329 and 2330), witness statement rendered on February 2, 2004 by Sabas Gomez before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folios 2331 and 2332), and witness statement rendered on February 2, 2004 by Isdenia Enid Ramírez-Díaz before the Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folios 2333 and 2334).

30, 2004 testimony of Mr. Saúl Benjamín Zapata, former Coordinating Prosecutor in the city of La Ceiba (Department of Atlántida), who mentioned the investigations made in the case of the murder of Mrs. Blanca Jeannette Kawas-Fernández and, particularly, addressed the police authorities' involvement in the murder.⁶¹

64. On March 2, 2004, the prosecutor requested the Judge of the Court of First Instance in and for Tela to order the arrest of Police Sergeant Class III, Ismael Perdomo, as "alleged responsible for the crimes of abuse of authority and coercion to the detriment of public authorities".⁶² On March 10, 2004, the arguments of the prosecutor and of the defendant having been heard,⁶³ the Court ordered a prohibition to leave the country upon Police Sergeant Ismael Perdomo, and to get in contact with the witnesses or attend any places at which they are usually present.⁶⁴ On March 15, 2004, the Court of First Instance issued a warrant of arrest against the aforementioned Police sergeant⁶⁵ and rejected a request submitted by the defense for final dismissal on the grounds that the crime was statute-barred.⁶⁶ This decision was appealed.⁶⁷

65. On March 23, 2004, the Court of First Instance admitted without stay of execution the appeal filed by the defense; therefore, it ordered that the record be sent to the Court of Appeals of the city of La Ceiba, Atlántida.⁶⁸ On that same day, the prosecutor of the Attorney General's Office requested the Court to initiate trial proceedings against the National Police sergeant for the alleged commission of the crime of "concealment to the detriment of public authorities".⁶⁹ On March 25, 2004, the court denied the request on the

⁶¹ Cf. witness testimony of Saúl Benjamín Zapata-Mejía of January 20, 2004, *supra* note 31.

⁶² Cf. brief of request for issuance of a warrant of arrest filed by prosecutor Luis Javier Santos-Cruz to the Court of First Instance in and for Tela, on March 2, 2004 (record of appendixes to the answer to the application, appendix 8, folio 2402).

⁶³ Cf. brief of March 10, 2004, of Ismael Perdomo addressed to the Court of First Instance in and for Tela, Atlántida (record of appendixes to the answer to the application, appendix 8, folio 2403). On March 10, 2004, Mr. Ismael Perdomo appeared voluntarily at the premises of the First Instance Court in and for Tela, Atlántida, and requested that "his interrogatory statement be received pursuant to the procedure set forth by law and, furthermore, request that a provisional measure other than preventive detention be imposed".

⁶⁴ Cf. Order of the Court of First Instance in and for Tela, Atlántida, of March 10, 2004 (record of appendixes to the answer to the application, appendix 8, folios 2404 and 2405).

⁶⁵ Cf. Order for imprisonment against Ismael Perdomo-Velásquez issued by the First instance Court in and for Tela, Atlántida, on March 15, 2004, (record of appendixes to the answer to the application, appendix 8, folio 2407 and 2408).

⁶⁶ Cf. brief submitted by public counsel José Luis Mejía-Herrera before the First Instance Court in and for Tela, Atlántida, on March 15, 2004 (record of appendixes to the answer to the application, appendix 8, folios 2409 and 2410), and Order of the Court of First Instance in and for Tela, Atlántida, of March 15, 2004 (record of appendixes to the answer to the application, appendix 8, folio 2411).

⁶⁷ Cf. brief submitted by public counsel José Luis Mejía-Herrera before the Court of First Instance in and for Tela, Atlántida, on March 18, 2004 (record of appendixes to the answer to the application, appendix 8, folio 2414).

⁶⁸ Cf. Order issued by the Court of First Instance in and for Tela, Atlántida on March 23, 2004 (record of appendixes to the answer to the application, appendix 8, folio 2415).

⁶⁹ Cf. brief of March 23, 2004, filed by prosecutor Luis Javier Santos-Cruz before the Court of First Instance in and for Tela, Atlántida (record of appendixes to the answer to the application, appendix 8, folios 2416 and 2417).

grounds that “the order for imprisonment imposed upon Mr. [...] was appealed by the defense”.⁷⁰

66. On October 9, 2006, two years after the admission, the Court of Appeals of La Ceiba ruled on the appeal and decided that the order for detention issued “had defects that called for annulment”, since “the appropriate request from the prosecutor was not obtained”, in accordance with legislation on criminal procedures in force.⁷¹ In view of the decision, on November 23, 2006, the Court of First Instance in and for Tela ordered the Attorney General’s Office to carry out an analysis of the conduct of the defendant Police sergeant in order to file the related request from the prosecutor. That notwithstanding, no prosecutor had been assigned to the case at that time⁷² and the warrant of arrest was not requested again.

67. In 2007 and 2008, the Court of First Instance in and for Tela requested that certain evidentiary procedures be carried out,⁷³ including: search for Juan Francisco López-Mejía in official records,⁷⁴ inspection of the alleged victim’s workplace premises, PROLANSATE foundation and the offices of the National Preventive Police of La Ceiba,⁷⁵ interviews in the cities of Tela, La Ceiba, El Progreso, and San Pedro Sula.⁷⁶ Such procedures showed that Juan Francisco Mejía-López, who had been coerced to incriminate himself for the events of the instant case (*supra* paras. 57), died violently in 2008.⁷⁷

68. To date, the criminal proceeding initiated for the death of Mrs. Blanca Jeannette Kawas-Fernández is still at preliminary stage. The perpetrators of the murder have not been identified; and no criminal complaint has been filed against any individual. There is no evidence either that during these years domestic measures have been implemented to protect witnesses, other than those ordered by this Court in the context of the provisional measures adopted for the benefit of Mr. Dencen Andino-Alvarado on November 29, 2008 (*supra* paras. 15 and 16).

Threats and executions of environmental activists in Honduras

⁷⁰ Cf. Order of March 25, 2004, on the appeal filed on March 18, 2004, Court of First Instance in and for Tela, Atlántida (record of appendixes to the answer to the application, appendix 8, folio 2418).

⁷¹ Cf. Order of the Court of Appeals of La Ceiba, Atlántida, of October 9, 2006 (record of appendixes to the answer to the application, appendix 8, folios 2424 and 2425).

⁷² Cf. official letter of November 23, 2006, Court of First Instance in and for Tela, Atlántida (record of appendixes to the answer to the application, appendix 8, folio 2427).

⁷³ Cf. official letter of October 27, 2007, of the Court of First Instance in and for Tela, Atlántida (record of appendixes to the answer to the application, appendix 8, folio 2488).

⁷⁴ Cf. communication of the Municipal Registrar of Tela, Atlántida, of February 1, 2007 (record of appendixes to the answer to the application, appendix 8, folios 2440 to 2468).

⁷⁵ Cf. minutes of judicial inspection of September 11, 2007 (record of appendixes to the answer to the application, appendix 8, folio 2487).

⁷⁶ Cf. briefs of February 19, 2008, sent by inspector Evin Salinas, “Head of the Environmental Death Investigations unit,” *supra* note 53.

⁷⁷ Cf. brief of February 19, 2008, sent by inspector Evin Salinas, “Head of the Environmental Death Investigations unit,” *supra* note 53.

69. During the decade that followed the death of Mrs. Blanca Jeannette Kawas-Fernández, there have been reports of acts of aggression, threats and execution of various individuals who devoted to the defense of the environment in Honduras.⁷⁸ In 1996, Carlos Escaleras, a popular leader of Valle del Aguán,⁷⁹ was executed; in 1998, Carlos Luna, an environmental activist;⁸⁰ in 2001, Carlos Flores, a community leader and environmental activist of Olancho, and in 2006, Heraldo Zúñiga and Roger Iván Cartagena, members of the Olancho Environmental Movement (MAO).⁸¹ The information provided by the State shows that, even though there have been convictions for these events, some of the individuals responsible therefor have not been captured, and instigators have not been identified either.⁸²

70. Moreover, in 2007, the State organized the Group for Investigation of Environmental Activists' Deaths ("*Grupo de Investigación para la Muertes de los Ambientalistas*") -reporting to the Secretary of State, Security Office- which is exclusively in charge of the investigation of cases involving the death of environmental activists' deaths.⁸³ That notwithstanding, the

⁷⁸ Cf. expert opinion issued by Clarisa Vega-Molina before the Inter-American Court, *supra* note 54; Environment and Human Rights Center (*Centro de Derechos Humanos y Ambiente - CEDHA*), *El Costo Humano de Defender el Planeta. Violaciones de Derechos Humanos a Defensores Ambientalistas en las Américas*, Report 2002-2003 (record of appendixes to the brief of requests and arguments, appendix D, folios 1461 and 1505); Amnesty International, Honduras: *Asesinatos de activistas medioambientalistas en el Departamento de Olancho*. February 2007, table of contents: AI 37/001/2007 (record of appendixes to the brief of requests and arguments, appendix K, folios 1649 to 1653); Amnesty International. *Persecución y resistencia. La experiencia de defensores y defensoras de derechos humanos en Guatemala y Honduras*. August 2007, índice AI: AMR 02/001/2007 (record of appendixes to the brief of requests and arguments, appendix J, folio 1637); note of May 22, 2008, signed by the Coordinator of the Attorney General's Office of Juticalpa, Olancho (record of appendixes to the answer to the application, appendix 11, folio 2561-2570); copy of official letter No. FEDH-575-2009 of July 2, 2008, signed by the Coordinating Prosecutor of the Human Rights Prosecutor's Office of the Attorney General's Office (record of appendixes to the answer to the application, appendix 10, folio 2556-2559). In its answer to the application, the State indicated that as regards the threats against José Andrés Tamayo, Víctor Manuel Ochoa, René Wilfredo Gradiz, Elvin Noe Lanza, Macario Alfonso Zelaya, Pedro Amado Acosta, Heraldo Zúñiga, and Santos Efraín Paguada: the 10 people accused of these threats and the victims signed a Forgiveness Memorandum and Ordered the final dismissal of the accusations. Furthermore, dismissal was ordered also in the case against a person accused of forgery of public documents, fraud, damage, extortion, theft, and evasion to the detriment of companies related to the environment.

⁷⁹ As a result of these events, a person was convicted to 17 years' imprisonment and there is also a warrant of arrest against the person who escaped justice. Cf. official letter No. FEDH-575-2009 of July 2, 2008, *supra* note 78, and copy of the judgment rendered by the Court of First Instance in and for Tocoa, Colón, of October 16, 2002 (record of appendixes to the answer to the application, appendix 16, folios 2638-2645).

⁸⁰ Three individuals were convicted for these events, and warrants of arrest are pending execution against two individuals for the crime of murder. Cf. official letter No. FEDH-575-2009 of July 2, 2008, *supra* note 78, and copy of the judgment rendered by the Court of First Instance in and for Catacamas, Olancho, of December 11, 2002, and record signed by the Court Clerk of June 26, 2008 (record of appendixes to the answer to the application, appendix 15, folios 2627-2636).

⁸¹ Four people were found guilty for the events. Cf. expert opinion issued by Clarisa Vega-Molina before the inter-American Court, *supra* note 54, and Amnesty International, Honduras: *Asesinatos de activistas medioambientalistas en el Departamento de Olancho*. February 2007, table of contents: AI 37/001/2007 (record of appendixes to the brief of requests and argument, appendix K, folios 1649 to 1653). Cf. Amnesty International. *Persecución y resistencia. La experiencia de defensores y defensoras de derechos humanos en Guatemala y Honduras*. August 2007, índice AI: AMR 02/001/2007, *supra* note 78. Cf. official letter No. FEDH-575-2009 of July 2, 2008, *supra* note 78.

⁸² Cf. expert opinion issued by Clarisa Vega-Molina before the Inter-American Court, *supra* note 54.

⁸³ Cf. official letter No. SEDS-SG-1083-2007, whereby it reported the organization of this group through Agreement No. 0989-2007 of the Secretary of State at the Security Office (record of appendixes to the answer to the application, appendix 9, folios 2550 to 2551).

State has not implemented an overall public policy aimed at protecting the supporters of human rights, in particular environmental activists.⁸⁴

B) As regards the responsibility of the State

71. As established above (*supra* para. 55), as a result of the death of Mrs. Blanca Jeannette Kawas-Fernández, the State initiated judicial investigation proceedings. In accordance with the allegations of the parties, the Court will first analyze if such investigation proceedings reflect sufficient elements to establish a failure by the State to respect the right to life of Mrs. Kawas-Fernández, and if such investigation inured to the benefit of the latter as guarantee of her rights, pursuant to Article 1(1) of the American Convention. Furthermore, the Court will define certain aspects related to the right to justice corresponding to the relatives of Mrs. Blanca Jeannette Kawas-Fernández, considering the acknowledgment made by the State in that regard.

i) Duty to respect and guarantee the right to life (Article 4(1) of the Convention), in accordance with Article 1(1) of the American Convention

72. In accordance with Article 1(1) of the Convention, the States are bound to respect and guarantee the human rights protected under such instrument. The international responsibility of the State results from the acts or omissions of any of its bodies or agencies, regardless of their authority, which are in violation of the Inter-American Convention. It is a tenet of international law that the State is responsible for the acts and omissions of its agents acting in their official capacity, even when those agents act outside the scope of their authority.⁸⁵

73. In accordance with the precedents of this Court, in order to establish that a violation of the rights enshrined in the Convention has been committed, it is not required, as it is under domestic criminal law, that the perpetrators' liability or intent be established. Nor is it required that the agents to whom such violations are attributed be identified individually,⁸⁶ but rather it is enough to prove that there have been acts or omissions that allowed for the perpetration of such violations or that the State has failed to fulfill an obligation.⁸⁷

74. Compliance with Article 4(1) of the American Convention, in conjunction with Article 1(1) of this same Convention, not only requires that a person not be arbitrarily deprived of

⁸⁴ Cf. expert opinion of Rigoberto Ochoa-Peralta, rendered before a notary public (affidavit) on November 18, 2008 (record on the Merits, volume II, folios 482 and 483), and expert opinion rendered by Clarisa Vega-Molina before the Inter-American Court, *supra* note 54.

⁸⁵ Cf. *Case of Velásquez-Rodríguez. Merits*, *supra* note 17, para. 173; *Case of the "White Van" (Case of Paniagua-Morales et al.) Merits*, *supra* note 14, para. 91; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 119; and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 130.

⁸⁶ Cf. *Case of Velásquez-Rodríguez V. Honduras. Merits*, *supra* note 17, para. 173; *Case of the "White Van" (Paniagua-Morales et al.) Merits*, *supra* note 14, para. 91; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 117, and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 128.

⁸⁷ Cf. *Case of Velásquez-Rodríguez. Merits*, *supra* note 17, paras. 134 and 172; *Case of the "White Van" (Paniagua-Morales et al.) Merits*, *supra* note 14, para. 91; *Case of the Rochela Massacre V. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163, para. 68, and *Case of Zambrano-Vélez et al. V. Ecuador. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166, para. 104.

his or her life (negative obligation) but also that the States adopt all the appropriate measures to protect and preserve the right to life (positive obligation),⁸⁸ as part of their duty to ensure full and free exercise of the rights of all persons under their jurisdiction.

75. This duty to “guarantee” the rights entails a positive obligation for the State to adopt a series of conducts, depending on the specific substantive right involved.⁸⁹ In cases of violent death, such as the instant case, the Court has considered that the performance of an *ex officio*, prompt, serious, impartial and effective investigation constitutes a fundamental element essential for the protection of the rights affected in these situations.⁹⁰

76. In the judgment on the Merits issued in the case of *Velásquez-Rodríguez v. Honduras*, the Court established that, pursuant to the duty to guarantee:

[t]he State is [...] obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.⁹¹

77. The Court has also mentioned that the obligation to investigate not only derives from conventional International Law rules binding upon the States Parties, but also from domestic legislation related to the duty to investigate *ex officio* certain unlawful conduct and the rules that allow victims or their relatives to report or file claims to participate in criminal investigation proceedings in order to find the truth of the events.⁹²

78. In that regard, the Court has informed that the obligation persists irrespective of the agent to whom the violation may be eventually attributed, even individuals, since if the events are not investigated in depth, they would be, in some way, assisted by public authorities, which would entail international responsibility for the State”.⁹³

79. As to the duty to respect the right to life, the Court agrees, as in other opportunities,⁹⁴ that the Court should not analyze the hypothesis about perpetrators

⁸⁸ Cf. *Case of the “Street Children” (Villagrán-Morales et al.) Merits*. Judgment of November 19, 1999. Series C No. 63, para. 144; *Case of the Miguel Castro-Castro Prison v. Perú. Merits, Reparations and Costs*. Judgment of November 25, 2006. Series C No. 160, para. 237; and *Case of Zambrano-Vélez et al. Merits, Reparations and Costs*, *supra* note 87, para. 80.

⁸⁹ Cf. *Case of Cantoral-Huamani and García-Santa Cruz V. Perú. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, para. 101.

⁹⁰ Cf. *Case of the Pueblo Bello Massacre v. Colombia*, para. 145; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 283, and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 298.

⁹¹ Cf. *Case of Velásquez-Rodríguez. Merits*, *supra* note 17, para. 176.

⁹² Cf. *Case of García-Prieto et al. V. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 168, para. 104; *Case of Ticona-Estrada et al. Merits, Reparations and Costs*, *supra* note 8, para. 95; and *Case of Valle-Jaramillo et al. V. Colombia. Merits, Reparations and Costs*, *supra* note 8, para. 99.

⁹³ Cf. *Case of Velásquez-Rodríguez. Merits*, para. 174; and *Case of Godínez Cruz v. Honduras. Merits*. Judgment of January 20, 1989. Series C No. 5, para. 188.

⁹⁴ Cf. *Case of Cantoral-Huamani and García-Santa Cruz. Preliminary Objection, Merits, Reparations and Costs*, *supra* note 89, para. 87.

prepared during the investigation of the events of the instant case and determine individual responsibility, whose definition corresponds to domestic criminal tribunals, but rather evaluate the acts and omission of State agents, pursuant to the evidence submitted by the parties.

80. In the instant case, the Commission and the representatives find that the conduct of a FUSEP agent is an indication sufficient to conclude that there is direct State responsibility in the deprivation of life suffered by Mrs. Blanca Jeannette Kawas-Fernández. In that regard, they agree that “it is clear that the execution of Mrs. Kawas-Fernández was the result of prior planning” which involved two perpetrators and an unspecified number of instigators, accomplices and concealing parties.” In this sense, they alleged that the actions taken by the FUSEP sergeant “proved the direct relation to the murder of Mrs. Jeannette Kawas.”

81. The State, on the other hand, rejected the aforementioned argument and held that the investigation of the events of the instant case remains open and there are various hypotheses regarding the responsibility for the deprivation of the life of Mrs. Kawas-Fernández; therefore, no direct responsibility should be imposed upon the State for the acts of its agents.

82. International case law has upheld the power of international tribunals to freely evaluate evidence, without adopting a strict assessment of the quantum necessary to provide the grounds for a judgment,⁹⁵ and it is essential for the jurisdictional body to pay attention to the circumstances of the specific case and to take into account the limits imposed by respect of legal certainty and procedural balance between the parties.⁹⁶

83. The Court cannot ignore the special relevance of imposing upon a State Party to the Convention the responsibility for performing or tolerating within its territory the performance of practices such as those explained in the instant case. Therefore, the Court will now perform an evidence appraisal test that takes that circumstance into account while being capable of establishing the truth of the events alleged.⁹⁷

84. First of all, the Court notes that the authorities in charge of the investigation agree that the murder of Blanca Jeannette Kawas-Fernández was the product of careful planning in which people from the area were involved. The investigation report submitted by the Tela Bureau of Criminal Investigations stated that, “in murdering Janeth Kawas, the people who performed the deed were guided and advised in a manner such that they already knew she was by herself and which room she would be in, and the exact time at which it would go down; some of the people who saw it, particularly the person who was with her, has not said

⁹⁵ Cf. *Case of Velasquez-Rodriguez. Merits*, supra note 17, para. 127. Cf. also *Case of the Miguel Castro-Castro Prison*, supra note 88, para. 184; *Case of Cantoral-Huamani and Garcia-Santa Cruz. Preliminary Objection, Merits, Reparations and Costs*, supra note 89, para. 86.

⁹⁶ Cf. *Case of Baena Ricardo et al. V. Panamá. Merits, Reparations and Costs*. Judgment of February 2, 2001. Series C No. 72, para. 71; *Case of Tiu Tojin V. Guatemala. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 190, para. 38, and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, supra note 10, para. 95.

⁹⁷ Cf. *Case of Velasquez-Rodriguez. Merits*, supra note 17, para. 129; *Case of Rios et al. Preliminary Objections, Merits, Reparations and Costs*, supra note 10, para. 136, and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, supra note 10, para. 148.

a word for fear of getting killed, as he knows that whoever did this are from the same place and they know each other, and they are very dangerous people."⁹⁸

85. Also, as alleged by the Inter-American Commission and the representatives, the evidence taken domestically and the reports issued by the investigation organs evidence the involvement of a FUSEP official in this complex structure that was in charge of carrying out and concealing the murder of Mrs. Kawas-Fernández. In this regard, in the proven facts section of this Judgment (*supra* paras. 50 to 70) it was established that at least one police officer took steps aimed at obstructing the administration of justice in this case by threatening witnesses⁹⁹ (*supra* paras. 59, 60 and 64), by acts of coercion intended to throw the investigation off track¹⁰⁰ (*supra* para. 57), and by negligence in the gathering of evidence at the crime scene and in the performance of the steps customarily taken to arrest the perpetrators of this crime¹⁰¹ (*supra* para. 54).

86. In this regard, the Court notes that one year after the events, in their report of May 10, 1996, agents of the Tela Bureau of Criminal Investigations highlighted the involvement of a FUSEP official in the facts of the instant case. Accordingly, they stated that

we then realized that a sergeant from the Public Security Force [...] of this very same town coerced one Juan Francisco López-Mejía, offering to pay him money to say he was the perpetrator. When conducting our investigations we learned that Jorge Montoya owns a place nearby the city's Public Force building, about half a block away [...] what we could verify was that Public Security Force sergeant Perdomo was seen entering the house. We thus started finding links between these people and looking for sufficient evidence to clarify this crime.¹⁰²

87. The involvement of said police officer in the cover-up of Mrs. Kawas-Fernández's murder is also evidenced by the witness statement of Mr. Dencen Andino-Alvarado, which he rendered on October 30, 2003 before DGIC, stating that:

[...] we were brought to the Courthouse to give a statement on whether we knew the killers and, from there, we were taken back to the police station, taken to San Pedro Sula around three in the afternoon, because they claimed to have found a car [which] the killers had supposedly driven; sergeant Perdomo got there when we were in the holding cells and said to us, What you have to say is that you don't know them, so it will be you left, that you do not know them [...]

[...] I was home and received an anonymous message, the same one engineer Urraco got, saying we had to stick to what we had said, that we hadn't seen anything.

⁹⁸ Cf. memorandum addressed to Bureau of Criminal Investigation Director Wilfredo Alvarado, *supra* note 44.

⁹⁹ Cf. statement rendered by Dencen Alex Andino-Alvarado on August 9, 2003, *supra* note 51; Technical and Legal Opinion No. DCAT-SATJ- AFS 022/2003, *supra* note 31; investigation report of the General Bureau of Criminal Investigations of October 30, 2003, signed by Daniel Barahona, *supra* note 31, and brief of request for issuance of an warrant of arrest filed by prosecutor Luis Javier Santos-Cruz to the Court of First Instance in and for Tela, on March 2, 2004 (record of appendixes to the answer to the application, appendix 8, folios 1722-1725).

¹⁰⁰ Cf. witness testimony of Saúl Benjamin Zapata-Mejía of January 20, 2004, *supra* note 31; memorandum addressed to Bureau of Criminal Investigation Director Wilfredo Alvarado, *supra* note 44; Technical and Legal Opinion No. DCAT-SATJ- AFS 022/2003, *supra* note 31; brief of request for issuance of an warrant of arrest filed by prosecutor Luis Javier Santos-Cruz to the Court of First Instance in and for Tela, on March 2, 2004, *supra* note 99.

¹⁰¹ Cf. Technical and Legal Opinion No. DCAT-SATJ- AFS 022/2003, *supra* note 31.

¹⁰² Cf. memorandum addressed to Bureau of Criminal Investigation Director Wilfredo Alvarado, *supra* note 44.

[...] there's engineer Urraco, who can also say that sergeant Perdomo got there about two in the morning and told us that what we had to say was we hadn't seen anything, and he also said to say he hadn't said a word to us, that he was telling us so as not to make things worse later on.

[...] because of fear due to the threats I received, I hadn't made a statement because of the threat against my life [...] only because of sergeant Perdomo's threats.¹⁰³

88. In a subsequent statement rendered on December 9, 2003, the same witness extended his prior statement, saying that:

On Wednesday last week, at about ten to eleven in the morning, I was in the San José neighborhood along with my boss, the Municipal Head of Public Works, who was telling me where I was supposed to be sweeping, when ISMAEL PERDOMO came out and called me and said he wanted to talk to me, and I said OK, and he said that there was *[sic]* that we were going to see each other. [...] On Friday that week my daughter [...] told me some guys had come looking for me [...] that day the person in charge of the cards at the municipal building said that two persons who had identified themselves as agents [...] had come looking for me [...]

[...] around midnight last night some men came to my place, knocked on my door and asked me to step outside because they wanted to talk to me, but I didn't open the door, they stayed for about half an hour and as I wasn't stepping outside they left [...] Ismael Perdomo has something to do with this because of the words he said to us back when it all happened [...] I fear for my life and I want to be told what I can do.¹⁰⁴

89. Moreover, the Court notes that in the Attorney General's Office 2003 technical-legal report, it was found that FUSEP, which was then under the charge of sergeant Perdomo, "DID NOT TAKE ANY STEPS aimed at arresting the possible perpetrators of the murder, did not set up police posts, taking an indifferent and worriedless position in view of the situation arisen, in an attempt to repeatedly throw [...] the investigation off track or keep it completely stalled."¹⁰⁵ In this regard, it noted that:

pursuant to the investigations, Sergeant Ismael Perdomo had a very active participation in the course of investigation from the day of the events; [...] The witnesses Alex Dencen Andino and Marco Antonio Urraco stat[ed] that they were coerced by Sergeant Perdomo into refraining from declaring about the facts; and in the case of Juan Francisco Mejía, he was coerced to incriminate two individuals who had nothing to do with the case, in exchange for their freedom, since he was detained at Police locations for theft of a bicycle [...]

[Juan Francisco Mejía López is] a key witness to the resolution of this case, as the investigation team of the Bureau of Investigations confirmed that this young man was coerced by sergeant Ismael Perdomo into giving a statement against his two cousins [...] it should be noted that, to date, the whereabouts of this witness remain unknown and it is the Police' task [...] to find him so that he can render his witness statement before the Judge in charge of the case, so that sergeant Perdomo, who is involved in this case whichever way it is looked at, can be arrested.¹⁰⁶

90. In confirmation of the above, later on Saúl Benjamín Zapata, the former prosecutor in charge of the investigation, stated that:

the Police delegate for Tela then in office [...] called to Ceiba to [report] that they had arrested a 'minor' who claimed to be one of the perpetrators of the murder, [when questioned]; [w]hich

¹⁰³ Cf. statement rendered by Dencen Alex Andino-Alvarado on August 29, 2003, *supra* note 51.

¹⁰⁴ Cf. statement rendered by Dencen Alex Andino-Alvarado on December 9, 2003, *supra* note 51.

¹⁰⁵ Technical and Legal Opinion No. DCAT-SATJ- AFS 022/2003, *supra* note 31.

¹⁰⁶ Technical and Legal Opinion No. DCAT-SATJ- AFS 022/2003, *supra* note 31.

called our attention was that he said that the Head of Police Department of Tela[,] had exerted pressure upon him [to have him self incriminated] for the murder under threats of death; our suspicion that the Police knew the identity of the actual murderers and was concealing it[;] nearly a week afterwards, the Court of Tela released the minor due to lack of Merits of the accusation against him, but they found his testimony useful in the sense that we were initiating investigations on the participation of police authorities in the events. Thus, we reached a community called Sparta, where one of the individuals who had planned the murder lived, known by his nick name: "the Tiger", who had acted in connivance with other wealthy people of the area to plan the events, apparently having as main grounds or reason that Yaneth [*sic*] Kawas was a tireless environmental activist and opposed to a tourism project to be developed in Tela bay [...] at an area protected as National Park.¹⁰⁷

91. It is worth repeating that, based on the evidentiary elements provided on March 2, 2004, the prosecutor "assigned" to the case requested the Judge of the Court of First Instance in and for Tela to request the arrest of the Police sergeant as "alleged responsible for the crimes of abuse of authority and coercion to the detriment of public authorities"¹⁰⁸ (*supra* para. 64).

92. Based on the above, the Court notes that the authorities in charge of the investigation identified indications of the participation of the aforementioned police sergeant in the murder of Blanca Jeannette Kawas-Fernández¹⁰⁹. In addition to the actions for obstruction of justice by such police officer, the authorities considered that the early presence of the sergeant in the crime scene was suspicious,¹¹⁰ as well as the fact that a few days before the death of Mrs. Kawas-Fernández, he was seen while meeting¹¹¹ with an Army Colonel who had disagreements with Mrs. Kawas-Fernández and who is also suspected of having some kind of involvement in the crime.¹¹²

93. In that regard, in its reports, the DGIC held that "pursuant to the statements [received] and that of the last witness, Dencel, sergeant Ismael Perdomo is the key suspect for the events since he always tried to hide the identity of those who murdered Mrs. Kawas[. T]his witness, Dencen, states that sergeant Sargento Ismael Perdomo, when the Lombardía suspects were captured, [...] he drove the vehicle of Coronel Amaya,[and that]

¹⁰⁷ Cf. witness testimony of Saúl Benjamín Zapata-Mejía of January 20, 2004, *supra* note 31.

¹⁰⁸ Cf. brief of requests for a warrant of arrest sent by prosecutor Luis Javier Santos-Cruz to the Court of First Instance in and for Tela, March 2, 2004 (record of appendixes to the answer to the application, appendix 8, folio 2402).

¹⁰⁹ Cf. memorandum addressed to Bureau of Criminal Investigation Director Alvarado, *supra* note 44; Technical and Legal Opinion No. DCAT-SATJ- AFS 022/2003, *supra* note 31, and investigation report by the General Bureau of Criminal Investigations of October 30, 2003, signed by Daniel Barahona, *supra* nota 31.

¹¹⁰ Cf. Technical Legal Report No. DCAT-SATJ- AFS 022/2003, *supra* note 31.

¹¹¹ Cf. Technical Legal Report No. DCAT-SATJ- AFS 022/2003, *supra* note 31; statement rendered by Dencen Alex Andino-Alvarado on August 9, 2003, *supra* note 51; investigation report by the General Bureau of Criminal Investigations of October 30, 2003, signed by Daniel Barahona, *supra* nota 31, and official letter of October 29, 2003, addressed to the Non-commissioned Officer III of the DGIC by the Local Coordinator of the Attorney General's Office in and for Tela (record of appendixes to the answer to the application, appendix 8, folios 2344 to 2345).

¹¹² Cf. Technical Legal Report No. DCAT-SATJ- AFS 022/2003, *supra* note 31; report of the DGIC not dated (record of appendixes to the brief of requests and arguments, appendix L.1, folio 2393); report of November 27, 2006, addressed to the General Director of Criminal Investigations (record of appendixes to the answer to the application, appendix 8, folios 2498), and statement of Mario Amaya rendered on March 23, 1995, before Criminal Magistrate's Court in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2161).

after the event he saw the several times together in the white double-cab [T]oyota"; therefore "the Prosecutor's Office [was requested] to issue a warrant of arrest against sergeant Ismael Perdomo[, since] he appears to be the person who planned the murder."¹¹³

94. Furthermore, in its technical-legal report, the Attorney General's Office found that "sergeant Perdomo arrives immediately at the crime scene since, according to him, the police squad was covering a fake report on robbery of one of the banks of the city of Tela. This situation was challenged by the representatives of the banks in that city, who told the agents that on that day no robbery had been attempted at any bank branch."¹¹⁴ Also, "the team established that from February 3 to 4, 1995, i.e. 3 days before the murder, a person named Mario Pineda, also known as Chapín ((identified as a former member of a death squad known as Mano Blanca, and allegedly protected by Coronel Amaya), and Coronel Mario Amaya, met at the offices of the Police in Tela, with sergeant Ismael Perdomo."¹¹⁵

95. However, the Court has held that the use of circumstantial evidence, indication and assumptions to support the judgment as legitimate, "provided they can be used to infer consistent conclusions about the facts."¹¹⁶ In that regard, the Court has held that the plaintiff should, in principle, undertake the burden of proof regarding the facts connected with its arguments; however, the Court has highlighted that, as opposed to domestic criminal law, in proceedings for violations of human rights, the defense of the State may not lie on the impossibility of the plaintiff to produce evidence, when it is the State that has control of the means to clarify the events occurred within its territory.¹¹⁷

96. It is clear that, in the instant case, which involves the violent death of a person, the investigation initiated was to be carried out in a manner such that it could guarantee the due analysis of the responsibility hypothesis thus arrived at, particularly those which lead to suspect the participation of State agents.¹¹⁸ Honduras has not advised this Court of any progress in the investigation carried out by the State authorities which may disprove the indications pointing to the involvement of State agents in the murder of Mrs. Kawas-Fernández. The Court notes that, on the contrary, the defense of the State is supported in the lack of diligence in a judicial proceeding to clearly assess criminal responsibility for the death of Mrs. Blanca Jeannette Kawas-Fernández, which lack of diligence can only be attributed to its own judicial authorities (*infra* para. 114).

¹¹³ Cf. Investigation report by the General Bureau of Criminal Investigations of October 30, 2003, signed by Daniel Barahona, *supra* nota 31.

¹¹⁴ Cf. Technical Legal Report No. DCAT-SATJ- AFS 022/2003, *supra* note 31.

¹¹⁵ Cf. Technical Legal Report No. DCAT-SATJ- AFS 022/2003, *supra* note 31.

¹¹⁶ Cf. *Case of Velásquez-Rodríguez. Merits*, *supra* note 17, para. 130; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 101; and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 112.

¹¹⁷ Cf. *Case of Velásquez-Rodríguez. Merits*, *supra* note 17, para. 135; *Case of Yatama V. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 23, 2005. Series C No. 127, para 134; and *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 198.

¹¹⁸ Cf. Technical Legal Report No. DCAT-SATJ- AFS 022/2003, *supra* note 31.

97. Considering that, more than 14 years after the murder of Blanca Jeannette Kawas-Fernández, the State has allowed for it to be impossible so far to establish individual responsibility, the Court finds it reasonable to assess as evidence the indications contained in the case file (*supra* paras. 84 to 94) that point to the involvement of state agents in these events, particularly those handled by the very state agencies that were in charge of the investigation which have not been disproven by the State. Reaching any other conclusion would entail allowing the State to resort to its own negligence or inefficacy for the criminal investigation to release itself from responsibility for the violation of Article 4(1) of the Convention.

98. Moreover, the Court notes that, as per the statement rendered before the *Juzgado Primero de Letras Seccional* (First Divisional Trial Court) in and for Comayagua by the prosecutor formerly in charge of the investigation, Saúl Benjamín Zapata (*supra* para. 62), "the apparent main reason or motive [for her murder] was that Kawas was a tireless environmental advocate and was opposed to a tourist development to be built in Tela Bay [...] in an area protected under a National Park designation."¹¹⁹ In this regard, the reports issued by the authorities in charge of the investigation find that Mrs. Blanca Jeannette Kawas-Fernández was at odds with some people "owing to her work in defense of the environment, conducted through the PROLANSATE environmental foundation."¹²⁰ In this connection, Mr. Rafael Sambulá stated before this Court that "the reports [filed by] those who wor[k] in the environmental area or [...] in protected areas [...] are extremely related to economic interests, very powerful economic interests."¹²¹ Similarly, the State has acknowledged "the difficult situation facing those citizens engaged in the defense of the environment," among whom the State included Ms. Kawas-Fernández,¹²² economic groups that may not share their vision regarding environmental protection."

99. Considering the above, which the State itself has asserted, the Court notes that even though the murder of Blanca Jeannette Kawas-Fernández was caused by certain private interests, the specific circumstances surrounding it show that the murder was enabled by the involvement of people who acted under the protection of their authority as state agents, as established *supra*.

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100. Based on all of the above, it is clear that the State did not perform a serious, complete and effective investigation of the events, in compliance with its duty to "guarantee" rights (Article 1(1) of the Convention). Basically, the State has recognized that it has breached its duty upon accepting its international responsibility for the violation of Articles 8(1) and 25 of the American Convention (*supra* para. 7).

¹¹⁹ *Cfr.* Witness statement rendered by Saúl Benjamín Zapata Mejía on January 20, 2004, *supra* note 31.

¹²⁰ *Cf.* Technical Legal Report No. DCAT-SATJ- AFS 022/2003, *supra* note 31.

¹²¹ *Cf.* Statement rendered by Rafael Sambulá before the Inter-American Court, *supra* note 25.

¹²² *Cf.* UN, Human Rights Commission, Consideration of the reports submitted by states parties under Article 40 of the Covenant, Initial Report, HONDURAS, CCPR/C/HND/2005/1, April 26, 2005 (record of appendixes to the application, appendix 2, folio 56).

101. The Court has held that such duty entails an obligation to use best efforts, rather than an obligation to ensure results,¹²³ that does not mean, however, that the investigation can be “undertaken as a mere formality condemned in advance to be fruitless”.¹²⁴ In that regard, the Court has held that “each State act that composes the investigation proceeding, and the entire investigation in itself, should be oriented at a specific purpose: the determination of the truth and the investigation, finding, arrest, prosecution and, if applicable, punishment of those responsible for the events”.¹²⁵

102. The Court has specified the principles that should be applied in investigating a violent death. In accordance with the precedents of the Inter-American Court, State authorities in charge of conducting the investigation should at least try, *inter alia*: a) to identify the victim; b) to collect and preserve evidence related to the death in order to assist in any investigation; c) to identify possible witnesses and obtain testimonies in relation to the death under investigation; d) to determine the cause, manner, place and time of death, as well as any pattern or practice which may have brought about such death, and e) to distinguish between natural death, accidental death, suicide and homicide. In addition, it is necessary that a thorough investigation of the crime scene be conducted and rigorous autopsies and analyses of human remains be performed by competent professionals, using the best available procedures.¹²⁶

103. In this regard, the Court notes that during the first few weeks after the deprivation of life of Mrs. Blanca Jeannette Kawas-Fernández, the authorities in charge of the investigation adopted a series of enquiry and evidentiary procedures aimed at clarifying the events, including the identification of witnesses and obtaining their statements (*supra* para. 55). That notwithstanding, there are no records that the evidentiary elements present at the crime scene were duly safeguarded (*supra* paras. 54 and 55), or that an autopsy or other type of analysis of the remains of Mrs. Kawas-Fernández has been performed. Moreover, as established above (*supra* para. 54), the authorities verified that the squad of the FSP that appeared at the crime scene did not perform any action aimed at arresting the perpetrators of the events “taking an indifferent and worriedless position in view of the situation arisen”.¹²⁷

104. The testimonies received at the beginning of the investigation gave rise to various hypothesis regarding the responsibility for the crime; however, such investigation remained inactive for no apparent reason until 2003 (*supra* para. 59).

¹²³ Cf. *Case of Velasquez-Rodriguez. Merits*, *supra* note 17, para. 177; *Case of Heliodoro-Portugal V. Panamá. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 12, 2008. Series C. No. 186, para. 144; and *Case of Valle-Jaramillo et al. V. Colombia. Merits, Reparations and Costs*, *supra* note 8, para. 100.

¹²⁴ Cf. *Case of Velasquez-Rodriguez, Merits*, *supra* note 17, para. 177; *Case of Heliodoro-Portugal. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 123, para. 144; and *Case of Valle-Jaramillo et al. V. Colombia. Merits, Reparations and Costs*, *supra* note 8, para. 100.

¹²⁵ Cf. *Case of Cantoral-Huamaní and García-Santa Cruz. Preliminary Objection, Merits, Reparations and Costs*, *supra* note 89, para. 131.

¹²⁶ Cf. *Case of Juan Humberto Sánchez V. Honduras. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 7, 2003. Series C No. 99, para. 127; *Case of Escué-Zapata V. Colombia. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 165, para. 106; and *Case of Zambrano-Vélez et al. Merits, Reparations and Costs*, *supra* note 87, para. 121. Cf. also: *Case of the Mowana Community V. Surinam. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 15, 2005. Series C No. 124, para. 149.

¹²⁷ Cf. Technical Legal Report No. DCAT-SATJ- AFS 022/2003, *supra* note 31.

105. Later, when the instant case was being heard by the Inter-American Commission, the authorities carried out new investigation procedures (*supra* paras. 59 to 63 and 67), which must be positively assessed. That notwithstanding, the Court notes that the negligence of the authorities in charge of examining the circumstance of the death of Mrs. Blanca Jeannette Kawas-Fernández through the timely collection of evidence *in situ* and the timely taking of the relevant testimony can hardly be redressed through late evidentiary procedures,¹²⁸ as evidenced by the reports issued by the authorities in charge of the investigation (*supra* paras. 58 and 60 to 62). In that regard, the Court found takes note of the fact that one of the individuals identified as witness of the events died recently (*supra* para. 67).

106. In addition to the overt negligence in furthering the investigation, as mentioned before, the Court has verified through the body of evidence that certain witnesses have been threatened (*supra* paras. 59 to 61 and 64) and other individuals were coerced to render false testimonies; these circumstances have had an intimidating and discouraging effect on those in charge of investigations and potential witnesses, seriously affecting the effectiveness of the investigation. At the request of the representatives, this Court had to step in, through the adoption of provisional measures, in view of the hardening of threats to a given witness,¹²⁹ which indicates that, to date -14 years after the occurrence of the events- the risk has not yet come to an end. The fact that those responsible have not yet been punished gives rise to an intimidating effect that is permanent in nature.

107. This Court considers that, to fulfill the obligation to investigate, pursuant to Article 1(1) of the Convention, the State should adopt *ex officio* and immediately sufficient investigation and overall protection measures regarding any act of coercion, intimidation and threat towards witnesses and investigators, as suggested by its own authorities in various opportunities (*supra* paras. 58, 60 and 62). In the instant case, the participation of at least one State agent in the obstruction of the investigation became evident during the first weeks of such proceedings (*supra* paras. 57 and 58);¹³⁰ that notwithstanding, judicial actions against them were brought nine years afterwards (*supra* para. 64). Furthermore, there is evidence that since 1996, the Bureau of Criminal Investigations knew that certain witnesses were afraid of giving testimony (*supra* para. 58), but no protection scheme was ever implemented. The records show also that the authorities that conducted the investigation on the deprivation of life of Mrs. Kawas-Fernández perceived risks associated with their work. In that regard, in a given opportunity they requested that the investigation unit be strengthened through the provision of human resources, arms and a vehicle, and later suggested to transfer the case to a prosecutor's office outside the city of Tela (*supra* para. 60 and 62). There is no information as to whether such measures were adopted or not.

¹²⁸ Cf. *Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 1, 2006, Series C No. 148, para. 316.

¹²⁹ Cf. *Provisional measures Dencen Alvarado regarding Honduras*. Order of the Inter-American Court of Human Rights of November 29, 2008.

¹³⁰ Cf. memorandum addressed to Bureau of Criminal Investigations director Wilfredo Alvarado, *supra* note 44, and witness statement rendered by Saúl Benjamín Zapata-Mejía on January 20, 2004, *supra* note 31.

108. Based on the considerations above, the Court finds that the State did not fulfill its obligations to respect and guarantee the right to life of Mrs. Blanca Jeannette Kawas-Fernández, which constitutes a violation of Article 4(1) of the Convention, in connection with Article 1(1) thereof.

ii) Right to justice of the relatives of Mrs. Blanca Jeannette Kawas-Fernández

109. The fulfillment of the obligation to undertake a serious, complete and effective investigation of the events, in accordance with the guarantees of due process of law, entailed an examination of the term of the investigation¹³¹ and “the legal means available”¹³² to the relatives of the deceased victim, in order to guarantee that their testimony is received during investigation and judicial proceedings, and that they may openly participate therein.

110. In that regard, the Court has repeatedly maintained that the States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), and that these remedies must be provided in accordance with due process of law (Article 8(1)), all within the framework of the general State obligation to guarantee the free and full exercise of the rights recognized by the Convention to all those within its jurisdiction (Article 1(1)).¹³³

111. Even though the State has acknowledged its international responsibility for the violation of Articles 8(1) and 25(1), the Court finds it is convenient to analyze if the proceedings initiated in the domestic jurisdiction for the events of the instant case respected the right of the relatives of Mrs. Blanca Jeannette Kawas-Fernández to be heard subject to due legal guarantees and within a reasonable term, and if an effective resource was provided to guarantee the rights of access to justice, truth and reparation.

112. As regards the fairness of the term, the Court has stated that the right to fair trial should guarantee, within reasonable time, the right of the alleged victims or their relatives to have adopted all measures necessary to know the truth about the facts and to punish those responsible.¹³⁴ The Court found that it is necessary to take into account four elements to determine the fairness of such term: a) the complexity of the matter, b) the procedural activity of the interested party, c) the conduct of judicial authorities,¹³⁵ and d) the impairment to the legal situation of the person involved in the proceedings.¹³⁶

¹³¹ Cf. *Case of Genie-Lacayo V. Nicaragua. Merits, Reparations and Costs*. Judgment of January 29, 1997. Series C No. 30, para. 77; *Case of Ticona Estrada et al. Merits, Reparations and Costs*, supra note 8, para. 79; and *Case of Valle-Jaramillo et al. V. Colombia. Merits, Reparations and Costs*, supra note 8, para 140.

¹³² Cf. *Case of the “White Van” (Paniagua-Morales et al.) Merits*, supra note 14, para. 173.

¹³³ Cf. *Case of Velásquez-Rodríguez V. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 91; *Case of Yvon Neptune V. Haiti. Merits, Reparations and Costs*. Judgment of May 6, 2008. Series C No. 180, para. 77; and *Case of Castañeda-Gutman V. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 6, 2008. Series C No. 184, para. 34.

¹³⁴ Cf. *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 114; *Case of Tiu Tojin. Merits, Reparations and Costs*, supra note 96, para. 72; and *Case of Ticona-Estrada et al. Merits, Reparations and Costs*, supra note 8, para. 79.

¹³⁵ Cf. *Case of Genie-Lacayo. Merits, Reparations and Costs*, supra note 131, para. 77; *Case of Suárez-Rosero*. Judgment of November 12, 1997. Series C No. 35, para. 72; *Case of Bayarri V. Argentina. Preliminary*

113. As far as the first element is concerned, the Court considers that the death of Mrs. Kawas-Fernández does not reflect features that render the case complex. There is only one victim who is clearly identified, and from the very beginning of the investigation there have been indications as to the identity of the perpetrators and instigators of the crime (*supra* paras. 53, 54 and 57). As regards the second element, there is no evidence that the relatives of Mrs. Blanca Jeannette Kawas-Fernández have taken actions aimed at suspending investigations. On the contrary, it has been established that the brother of Mrs. Blanca Jeannette Kawas-Fernández repeatedly provided accommodation and traveling expenses to the DGIC agents who were to perform investigation procedures in the area¹³⁷ (*infra* para. 169).

114. As shown by the body of evidence (*supra* paras. 55 to 68), the inefficacy of domestic resources is attributable only to the conduct of the authorities in charge of directing proceedings, who first kept the investigation inactive for eight years, and, once resumed, adopted no further measures and, second, implemented measures aimed at deviating the investigation and intimidating witnesses (*supra* paras. 57 and 59). Particularly, the Court finds that the participation of Judges and prosecutors of the Attorney General's Office has also been evidently inadequate during the investigation.¹³⁸ In that regard, in its technical legal report, the Attorney General's Office set forth that:

"even though the judge has the power to order performing certain procedures based on its power to direct proceedings, such procedures have not been completed, thus causing an unjustified delay in the clarification of the case and, hence, the finding of justice. [...] The Attorney General's Office has had no active participation in proceedings since there has been no order to perform the procedures necessary to achieve an acknowledgment of responsibility by the perpetrators of the events."¹³⁹

115. As regards the fourth element, the Court has held that, in order to determine whether the term is reasonable, regard must be had to how the legal situation of the person involved in the proceeding has been impaired by its duration, considering, among other things, the subject-matter of the dispute. The Court has thus determined that where the lapse of time has a relevant impact on the individual's legal situation, the proceeding will need to be conducted more diligently in order that the case may be resolved in a brief period of time.¹⁴⁰ In the instant case, it is the Court's view that this element does not need to be analyzed in order to determine whether the duration of the investigation and the proceedings initiated due to the victim's death is reasonable.

Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, para. 107; and *Case of Valle-Jaramillo et al. V. Colombia. Merits, Reparations and Costs*, *supra* note 8, para. 155.

¹³⁶ Cf. *Case of Valle-Jaramillo et al v. Colombia. Merits, Reparations and Costs*, *supra* note 8, para. 155.

¹³⁷ Official letter signed by *Licenciado* Luis Javier Santos-Cruz, Coordinator of the Attorney General's Office in and for Tela, November 5, 2003 (record of appendixes to the answer to the application, appendix 8, folio 2366).

¹³⁸ Cf. official letter of November 23, 2006 addressed to the coordinator of prosecutors by the Court of First Instance in and for Tela (record of appendixes to the answer to the application, appendix 8, folio 2427).

¹³⁹ Cf. Technical Legal Report No. DCAT-SATJ- AFS 022/2003, *supra* note 31.

¹⁴⁰ Cf. *Case of Valle-Jaramillo et al. V. Colombia. Merits, Reparations and Costs*, *supra* note 8, para. 155.

116. Considering these elements, and the acknowledgement made by the State, the Court finds that in the 14-year term that took the domestic jurisdiction to carry out the investigation of the events exceeds openly a reasonable term for the State to perform the related investigation and constitutes a flagrant denial of justice to the detriment of the next of kin of Blanca Jeannette Kawas-Fernández.

117. Moreover, in cases as the one analyzed herein, pursuant to Articles 8(1) and 25 of the American Convention, the relatives of the deceased victim have the right to know the truth of the events¹⁴¹ and such right requires the procedural determination of the most complete historical truth as possible.¹⁴² The relatives of the victims also have the right, and the States the obligation, to have any damage and loss the sustained repaired.¹⁴³ In this sense, the State has the duty to repair directly and essentially those human rights violations for which it is responsible.¹⁴⁴ The Court finds that, as of the date of this Judgment, the relatives of Mrs. Blanca Jeannette Kawas-Fernández have had no judicial determination of the events and those responsible therefor, covering the reparation of violations, the clarification of the facts regarding the execution of Mrs. Kawas-Fernández and if applicable, the punishment of those responsible. The circumstances described above constitute a source of additional anguish and suffering to them (*infra* para. 139).

118. Based on the considerations above, the Court finds that the investigation opened in the domestic jurisdiction has not guaranteed true right to justice for the relatives of the deceased victim, which constitutes a violation of their rights to judicial protection and judicial guarantees, in accordance with the terms of Articles 8(1) and 25 of the American Convention.

119. Considering the acknowledgment made by the State (*supra* para. 28), the Court has verified that the individuals listed below are the relatives of Mrs. Blanca Jeannette Kawas-Fernández; therefore, they will be considered victims in the instant case: Blanca Fernández,¹⁴⁵ mother; Jacobo Kawas-Cury,¹⁴⁶ deceased father; Jaime Alejandro Watt-Kawas,¹⁴⁷ son; Selsa Damaris Watt-Kawas,¹⁴⁸ daughter; Carmen Marielena Kawas-

¹⁴¹ Cf. *Case of Velásquez-Rodríguez. Merits*, *supra* note 17, para. 181; *Case of Ticona-Estrada et al. Merits, Reparations and Costs*, *supra* note 8, para. 80, para. 289; and *Case of Heliodoro-Portugal. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 123, para. 244.

¹⁴² Cf. *Case of the Rochela Massacre. Merits, Reparations and Costs*, *supra* note 87, para. 195; and *Case of Valle-Jaramillo et al. V. Colombia. Merits, Reparations and Costs*, *supra* note 8, para. 155.

¹⁴³ Cf. *Case of Durand and Ugarte V. Perú. Merits*. Judgment of August 16, 2000. Series C No. 68, para. 130, and *Case of Valle-Jaramillo et al. V. Colombia. Merits, Reparations and Costs*, *supra* note 8, para. 103.

¹⁴⁴ Cf. *Case of Valle-Jaramillo et al. V. Colombia. Merits, Reparations and Costs*, *supra* note 8, para. 155.

¹⁴⁵ Cf. birth certificate of Mrs. Blanca Jeannette Kawas-Fernández (record on the Merits, volume III, folio 675).

¹⁴⁶ Cf. birth certificate of Mrs. Blanca Jeannette Kawas-Fernández (record on the Merits, volume III, folio 675).

¹⁴⁷ Cf. birth certificate of Mr. Jaime Alejandro Watt-Kawas (record of appendixes to the brief of requests and arguments, folio 1797).

¹⁴⁸ Cf. birth certificate of Mrs. Selsa Damaris Watt-Kawas (record of appendixes to the brief of requests and arguments, folio 1798).

Fernández,¹⁴⁹ sister; Jacobo Roberto Kawas-Fernández,¹⁵⁰ brother, and Jorge Jesús Kawas-Fernández,¹⁵¹ brother. The Commission included Mr. James Gordon Watt as husband of Mrs. Kawas-Fernández; that notwithstanding, he submitted no evidence to prove that such relationship existed; hence he will not be considered a victim for the purposes of the instant case.

120. The Court notes that in the instant case, Mrs. Blanca Jeannette Kawas should not be recognized as victim of the violation of Articles 8(1) and 25(1) of the American Convention, as requested by the representatives (*supra* para. 6), since in cases of violent deaths, the power to claim for these rights "corresponds to the relatives of the deceased victim, who are interested parties to the search for justice and to whom the State must provide effective resources to guarantee such right to justice, investigations and potential punishment, as applicable, of those responsible and the overall reparation of the consequences of violations".¹⁵²

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* *

121. Lastly, the Commission requested the Court to declare that the State is responsible for non-fulfillment of the duty to adopt domestic law measures, in accordance with Article 2 of the American Convention, in order to give efficacy to the State obligations resulting from Articles 8(1) and 25 of such treaty. The Commission supported such arguments in the statements made by the State during the processing of the case at such instance, pursuant to which "every deficiency in the furthering of proceedings resulted from the fact that the procedural framework in force at the time of the events has given rise to limitations in their investigation".¹⁵³ The Court finds that the Commission has not elaborated on this argument.

122. Accordingly, in the exercise of the rights contained in Article 53(2) of the Rules of Procedure, the Court finds that there are no elements in the instant case to conclude that the State has failed to fulfill its duties in accordance with Article 2 of the American Convention.

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¹⁴⁹ Cf. birth certificate of Mrs. Carmen Marilena Kawas-Fernández (record of appendixes to the brief of requests and arguments, folio 1799).

¹⁵⁰ Cf. birth certificate of Mr. Jacobo Kawas-Fernández (record of appendixes to the brief of requests and arguments, folio 1800).

¹⁵¹ Cf. Birth certificate of Mr. Jorge Jesús Kawas-Fernández (record of appendixes to the brief of requests and arguments, folio 1801).

¹⁵² Cf. *Case of Valle-Jaramillo et al v. Colombia. Merits, Reparations and Costs*, *supra* note 8, para. 170.

¹⁵³ Cf. Brief of the State submitted to the Commission on June 2, 2004 (record of appendixes to the application, appendix 3, folios 831 to 832). In said brief, the State alleged that "the case discussed herein is being studied in accordance with the Inquisitive Criminal Justice System, regulated by the Code of Criminal Procedure of 1984, which in principle establishes the concept of the "Investigating Judge", absolute director of the investigation stage of proceedings, assigning a merely formal role to the agents of the Attorney General's Office. In accordance with such regulations, they only participate in the trial stage of proceedings; hence the "Investigating Judge" does not have the elements and logistics (*sic*) necessary to promptly perform any enquiring procedures entrusted thereto; as opposed to the Attorney General's Office which does have the necessary elements. However, as mentioned before, the procedural participation of the Prosecutor's Office is merely formal and thus delays the regular progress of the criminal proceeding as described above".

123. In conclusion, pursuant to the partial acknowledgment of responsibility made in the instant case, the Court finds that the Honduras violated the rights set forth in Article 4(1) of the Convention, in relation to the obligation to respect and guarantee rights enshrined in Article 1(1) thereof, to the detriment of Mrs. Blanca Jeannette Kawas-Fernández. Furthermore, it considers that the State violated the rights enshrined in Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of such treaty, to the detriment of Mrs. Blanca Fernández, Mr. Jacobo Kawas-Cury, Mr. Jaime Alejandro Watt-Kawas, Mrs. Selsa Damaris Watt-Kawas, Mrs. Carmen Marielena Kawas-Fernández, Mr. Jacobo Roberto Kawas-Fernández and Mr. Jorge Jesús Kawas-Fernández.

VIII

ARTICLE 5(1) (RIGHT TO HUMANE TREATMENT)¹⁵⁴ IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) OF THE AMERICAN CONVENTION

124. The representatives requested the Court to find the State of Honduras responsible for the violation of the right to humane treatment to the detriment of the next of kin of Blanca Jeannette Kawas-Fernández, pursuant to the provisions set forth in Articles 5(1) and 5(2) of the American Convention, in relation to the general obligation to respect and guarantee human rights enshrined in Article 1(1) thereof. They alleged that the children, mother and brothers of Blanca Jeannette Kawas “have suffered serious emotional harm [...] not only as a result of the premeditated murder of Jeannette, but also as a consequence of years of impunity” insofar as they “[h]ave witnessed the passivity and incompetence of the authorities in charge of the investigation and the delay in gaining access to justice as a result of the omissions and obstructive behavior of public officials seeking to hinder the proceedings.” In this connection, they stated that “[their] expectations of justice were thwarted.” The representatives mentioned that the relatives of Blanca Jeannette Kawas “are frightened by the presence of people in their community who might be involved in the murder, [which] causes additional stress [that] affects their integrity.”

125. In its Reports on admissibility and Merits, the Inter-American Commission did not consider that a violation of Article 5 of the American Convention had occurred and, therefore, did not allege the violation of the right to humane treatment to the detriment of the next of kin of Blanca Jeannette Kawas-Fernández in the application filed with the Court.

126. The State of Honduras disputed the alleged violation of the right to humane treatment to the detriment of the next of kin of Blanca Jeannette Kawas-Fernández and requested the Court to consider the argument raised by the Inter-American Commission in its Report on the Merits, in which it found that “based on the analysis of the case, there are no other independent facts that may lead the Commission to conclude that Article 5 of the American Convention has been violated.”

127. In accordance with this Court’s precedents, the alleged victim, his or her next of kin

¹⁵⁴ In this regard, Article 5 provides that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

or representatives may invoke different rights from those included in the application filed by the Commission, based on the facts alleged therein.¹⁵⁵ In this case, the Court notes that given that the arguments raised by the representatives regarding the violation of Article 5(1) of the American Convention to the detriment of the next of kin of Blanca Jeannette Kawas-Fernández are based on facts contained in the application, the Court will proceed to consider such arguments.

128. On several occasions,¹⁵⁶ the Inter-American Court has declared the violation of the right to humane treatment in respect of the next of kin of victims of certain human rights violations or with respect to other persons having close relationships with such victims. In this connection, in the Case of *Valle-Jaramillo et al. v. Colombia*, the Court held that a violation of the right to mental and moral integrity of the direct next of kin of victims of certain human rights violations may be declared by applying a rebuttable presumption with regard to mothers and fathers, daughters and sons, husbands and wives, permanent companions (hereinafter “direct next of kin”) provided it responds to the specific circumstances of the case. With regard to such direct next of kin, it is for the State to rebut said presumption.¹⁵⁷

129. In all other cases, the Court must analyze if the evidence in the records of the case shows a violation of the right to humane treatment of the alleged victim, regardless of whether he/she is a next of kin of another victim in the case or not. As regards those persons in respect of whom the Court does not presume that the right to humane treatment has been violated because they are not direct next of kin, the Court must assess, for example, whether there is a particularly close relationship between them and the victims in the case that would enable the Court to find that the right to humane treatment has been violated. The Court may also assess whether the alleged victims have been actively involved in seeking justice in the specific case,¹⁵⁸ or whether they have suffered as a result of the facts of the case or of subsequent acts or omissions on the part of the State authorities in relation to the incidents.¹⁵⁹

130. The Court notes that the representatives have requested that the State be found responsible for the violation of Articles 5(1) and 5(2) of the American Convention to the detriment of the following direct next of kin of Blanca Jeannette Kawas-Fernández: Mr. Jacobo Kawas-Kury, father;¹⁶⁰ Blanca Fernández, mother;¹⁶¹ Selsa Damaris Watt-Kawas,

¹⁵⁵ Cf. Case of “Five Pensioners” V. Perú. Merits, Reparations and Costs. Judgment of February 28, 2003. Series C No. 98, para. 155; Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs, supra note 10, para. 42; and Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs, supra note 10, para. 32.

¹⁵⁶ Cf. Case of Blake V. Guatemala. Merits. Judgment of January 24, 1998. Series C No. 36, para. 114; Case of Heliodoro-Portugal. Preliminary Objections, Merits, Reparations, and Costs, supra note 123, para. 163; Case of Valle-Jaramillo et al. v. Colombia. Merits, Reparations, and Costs, supra note 8, para. 119.

¹⁵⁷ Cf. Case of Valle-Jaramillo et al. V. Colombia. Merits, Reparations, and Costs, supra note 8, para. 119.

¹⁵⁸ Cf. Case of Bámaca-Velásquez V. Guatemala. Merits. Judgment of November 25, 2000. Series C No. 70, para. 163; Case of Heliodoro-Portugal. Preliminary Objections, Merits, Reparations, and Costs, supra note 123, para. 163, and Case of Valle-Jaramillo et al. V. Colombia. Merits, Reparations, and Costs, supra note 8, para. 119.

¹⁵⁹ Cf. Case of Blake. Merits, supra note 156, para. 114; Case of Heliodoro-Portugal. Preliminary Objections, Merits, Reparations and Costs, supra note 123, para. 163; and Case of Valle-Jaramillo et al. Merits, Reparations and Costs, supra note 8, para. 119.

¹⁶⁰ Cf. Birth certificate of Blanca Jeannette Kawas-Fernández, supra note 145.

¹⁶¹ Cf. Birth certificate of Blanca Jeannette Kawas-Fernández, supra note 145.

daughter,¹⁶² and Jaime Alejandro Watt-Kawas, son.¹⁶³ Therefore, considering the circumstances of the instant case, in principle the Court presumes that the death of Blanca Jeannette Kawas-Fernández adversely affected their mental and moral integrity. However, given that the State, based on the findings of the Inter-American Commission in its Report on the Merits,¹⁶⁴ opposed any such ruling in relation to this alleged violation, the Court will examine the evidence presented by the representatives. The Court notes that the State did not challenge said evidence.

131. Based on the statements rendered during the course of these proceedings, it is clear that Mr. Jacobo Kawas-Kury, father of Mrs. Blanca Jeannette Kawas-Fernández, was significantly affected by her death. Mrs. Blanca Jeannette Kawas “was his right-hand person; she took care of him and his ailment [and] managed his business.”¹⁶⁵ Blanca Jeannette Kawas and her father had a very close relationship; she even left the United States of America to provide him with care.¹⁶⁶ Mr. Jacobo Kawas-Kury passed away a few months after the death of his daughter.¹⁶⁷

132. Also, in relation to Blanca Jeannette Kawas-Fernández’s relationship with her mother, Blanca Fernández, the record shows that the former traveled to the United States of America along with her two children in order to take care of her mother, who was ill.¹⁶⁸ Blanca Jeannette Kawas-Fernández subsequently returned to Honduras to take care of her father, but maintained regular contact with her.¹⁶⁹ Because of the facts of this case, Mrs. Fernández suffered “due to the feelings of anger and impotence [...] and cried inconsolably; to this date her favorite topic of conversation is [her] daughter.”¹⁷⁰

133. Furthermore, based on the record, Selsa Damaris Watt-Kawas and her mother, Mrs. Blanca Jeannette Kawas-Fernández, had a very close relationship. Ms. Watt-Kawas stated that her mother provided her with financial support for her studies in the United States of America and that “when she [had] some free time she visited her [and] was inspired by her environmental mission and vision.” She stated that she talked with her mother on the telephone “a few days before she died.” Ms. Watt-Kawas “has suffered emotional [t]rauma [as a result] of [her] mother’s violent death” and considers that it has caused “irreparable

¹⁶² Cf. Birth certificate of Selsa Damaris Watt-Kawas, *supra* note 148.

¹⁶³ Cf. Birth certificate of Jaime Alejandro Watt-Kawas, *supra* note 147.

¹⁶⁴ Cf. Report on Merits No. 63/06, *supra* note 2.

¹⁶⁵ Cf. Statement rendered by Mr. Jacobo Kawas-Fernández before the Inter-American Court, *supra* note 25.

¹⁶⁶ Cf. Statement rendered before a notary public (affidavit) by Mr. Jaime Alejandro Watt-Kawas on November 4, 2008 (record on the Merits, volume II, folio 453).

¹⁶⁷ Cf. Statement rendered by Mr. Jacobo Kawas-Fernández before the Inter-American Court, *supra* note 25, and statement rendered before a notary public (affidavit) by Mr. Jorge Jesús Kawas-Fernández on October 30, 2008 (record on the Merits, volume II, folio 444).

¹⁶⁸ Cf. statement rendered before a notary public (affidavit) by Mr. Jorge Jesús Kawas-Fernández on October 30, 2008 (record on the Merits, volume II, folio 443).

¹⁶⁹ Cf. Statement rendered before a notary public (affidavit) by Mr. Jaime Alejandro Watt-Kawas on November 4, 2008, *supra* note 166.

¹⁷⁰ Cf. Statement rendered before a notary public (affidavit) by Mr. Jorge Jesús Kawas-Fernández on October 30, 2008, *supra* note 168.

damage, searing and long-lasting grief.”¹⁷¹ She added that “she feels helpless and constantly stressed out when visit[ing] her family in Honduras” and that she “[is] disappointed at the incompetence displayed by the authorities in a murder case that has received national and international attention.” Currently, Selsa Damaris Watt-Kawas is living in Germany and is afraid of returning to Honduras.¹⁷²

134. Mr. Jaime Alejandro Watt-Kawas, son of Blanca Jeannette Kawas-Fernández, stated that he “always had a very close relationship” with his mother “and [that] she thoroughly fulfilled her role as mother.” Furthermore, he added that, when she died, he suffered from “feelings of loneliness and abandonment[,] feeling unprotected without the only person who was so close to him” and, therefore, he needed the support of his family to “cope with the overwhelming grief that [he] experienced [...]” Mr. Watt-Kawas stated that his life “underwent a radical, negative, frustrating change, imbued with emotional instability and deep sadness that led [him] to distrust everything and everyone” and that he “feels a sense of impotence and frustration in the face of the absence of competent authorities to determine what happened and why it happened.”¹⁷³ At the time Blanca Jeannette-Kawas was deprived of her life, her son was seventeen years old.¹⁷⁴

135. In addition, the representatives have requested the Court to declare the violation of Article 5 of the American Convention to the detriment of the siblings of Blanca Jeannette Kawas-Fernández: Jacobo Roberto;¹⁷⁵ Jorge Jesús,¹⁷⁶ and Carmen Marilena.¹⁷⁷ The Court points out that, in accordance with its case law (*supra* para. 128), the foregoing persons are not considered to be direct next of kin. Therefore, the Court must examine the evidence presented by the representatives to that effect.

136. During the public hearing (*supra* para. 10), Mr. Jacobo Roberto Kawas-Fernández stated that he arrived at the house of his sister, Blanca Jeannette Kawas-Fernández, a few minutes after she died. He said that he saw her “lying on the floor [and that] he tried to pick her up [and] carry her.” As evidenced by the record, he subsequently “led” the investigations initiated by the authorities regarding her death.¹⁷⁸ Mr. Kawas-Fernández pointed out that, as a result of the murder, “he no longer [has an] older sister who gave him all her support” and that “[his] life has changed in that he used to be engaged in other activities [and] had to [take over] the management of [his] father’s business,” formerly managed by Blanca Jeannette Kawas-Fernández. He mentioned that the possibility of

¹⁷¹ Cf. Statement rendered before a notary public (affidavit) by Selsa Damaris Watt-Kawas on October 28, 2008 (record on the Merits, volume II, folios 428 and 429).

¹⁷² Cf. Statement rendered before a notary public (affidavit) by Selsa Damaris Watt-Kawas on October 28, 2008, *supra* note 171.

¹⁷³ Cf. Statement rendered before a notary public (affidavit) by Mr. Jaime Alejandro Watt-Kawas on November 4, 2008, *supra* note 166.

¹⁷⁴ Cf. Birth certificate of Jaime Alejandro Watt-Kawas, *supra* note 147; and statement rendered before a notary public (affidavit) by Jorge Jesús Kawas-Fernández on October 30, 2008, *supra* note 168.

¹⁷⁵ Cf. Birth certificate of Jacobo Kawas-Fernández, *supra* note 150.

¹⁷⁶ Cf. Birth certificate of Jorge Jesús Kawas-Fernández, *supra* note 151.

¹⁷⁷ Cf. Birth certificate of Carmen Marilena Kawas-Fernández, *supra* note 149.

¹⁷⁸ Cf. Statement rendered before a notary public (affidavit) by Mr. Jorge Jesús Kawas-Fernández on October 30, 2008, *supra* note 168.

rendering testimony before the Inter-American Court meant “an opportunity for securing justice, the hope that impunity would end [...].”

137. Mr. Jorge Jesús Kawas-Fernández stated that he had a very close relationship with his sister, Blanca Jeannette Kawas-Fernández, that “she was like the head of the family; [that] whenever she c[a]me to Tegucigalpa she would stay at [his] home and vice versa.” Furthermore, he pointed out that “from an early age she was like a mother to [him].” He added that “when his biological mother left for the Unites States, Jeannette, barely eighteen years old, took over [his] care” and that “there was always a special bond between them beyond sibling love and that her personal demeanor and conduct [earned her] the respect and deep appreciation of the family.” Mr. Jorge Jesús Kawas pointed out that his sister’s death “was the end[;] an initial reaction of shock and disbelief which later developed into a profound grief and sorrow at her unjust death.” Furthermore, he stated that the family “[is] afraid [...] owing to the [State’s] inability to prosecute and punish those who commit violent crimes.”¹⁷⁹

138. As regards Carmen Marilena Kawas-Fernández, sister of the deceased victim, the record shows that they had a “very good” relationship and that “she always supported [her].”¹⁸⁰ In addition, from the statement rendered by Mr. Jacobo Roberto Kawas-Fernández, it is clear that since Blanca Jeannette was the oldest of four children, “at an early age, she had to look after her younger siblings [Carmen Marilena Kawas-Fernández among them] and to always watch over them [...].” Mr. Jacobo Kawas-Fernández also stated that his sister Carmen Marilena traveled to Honduras from the United States to go to her sister’s funeral.¹⁸¹ The Court points out that the State acknowledged the violation of Articles 8 and 25 of the American Convention to the detriment of “the next of kin of Blanca Jeannette Kawas-Fernández” (*supra* para. 7), Mrs. Carmen Marilena among others.

139. Based on the foregoing, the Court finds that Jacobo Roberto Kawas-Kury, Blanca Fernández, Selsa Damaris Watt-Kawas, Jaime Alejandro Watt-Kawas, Jacobo Kawas-Fernández, Jorge Jesús Kawas-Fernández and Carmen Marilena Kawas-Fernández’s close family relationship with Blanca Jeannette Kawas-Fernández has been established. Furthermore, the Court considers that the manner and circumstances in which Blanca Jeannette Kawas-Fernández was deprived of her life and the inefficiency of the measures adopted to investigate the murder and punish the perpetrators have caused them pain and suffering in addition to a feeling of insecurity, frustration and impotence at the public authorities’ failure to investigate the facts of the case, thus undermining their mental moral integrity (*supra* para. 117). Therefore, the Court finds that the State is responsible for the violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the abovementioned persons. The Court has not found a violation of Article 5(2) of the American Convention, in accordance with its previous decisions on the subject of torture and other cruel, inhumane or degrading treatment.

IX

¹⁷⁹ Cf. Statement rendered before a notary public (affidavit) by Mr. Jorge Jesús Kawas-Fernández on October 30, 2008, *supra* note 168.

¹⁸⁰ Cf. Statement rendered before a notary public (affidavit) by Selsa Damaris Watt-Kawas on October 28, 2008, *supra* note 171.

¹⁸¹ Cf. Statement rendered by Mr. Jacobo Kawas-Fernández before the Inter-American Court, *supra* para. 25.

**ARTICLE 16(1) (FREEDOM OF ASSOCIATION)¹⁸² OF THE AMERICAN CONVENTION,
IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) THEREOF**

140. The representatives pointed out that “[t]he murder of Jeannette Kawas, as a result of her tireless efforts to protect the environment through the foundation [PROLANSATE], of which she was the President, constituted a deprivation of her right [to] use any means she deem[ed] appropriate to exercise her freedom of association, [...] from the individual perspective of such right.” They added that her murder “must be seen as a violation of the freedom of association from a collective standpoint [insofar as] its impunity had an intimidating effect on the environmental movement in Honduras, especially because her death marks the start of a context of violence against environmental advocates. [...] The right of individuals to associate with others for an environmental cause in Honduras may not be freely exercised, and the murder and ensuing impunity in the Kawas case has been a true reflection of that situation.” Furthermore, they alleged that the State, through the Attorney General’s Office, “has accepted that all the theories regarding the incident are related to the Jeannette’s fight as an environmentalist.”

141. The Commission made no reference to the alleged violation of the right of freedom of association.

142. In its answer to the application, the State argued that “both the application and the brief containing pleadings, motions and evidence list the different activities carried out by Blanca Jeannette Kawas-Fernández as well as the organizations to which she belonged; therefore, it is evident that the State [...] never prevented her from freely associating with others, nor did it place any restrictions on such right.”

143. Article 16(1) of the American Convention provides that individuals under the jurisdiction of the States Parties have the right and freedom to associate freely with others, without any interference by the public authorities that could limit or impair the exercise of such right. It relates, therefore, to the right to join with others in lawful common pursuits, without pressure or interference that may alter or impair the nature of such purpose.¹⁸³

144. In addition to the aforesaid negative obligations, the Inter-American Court has pointed out that freedom of association also “gives rise to positive obligations to prevent attacks on it, to protect those who exercise it, and to investigate violations restricting such freedom.”¹⁸⁴ These positive obligations must be enforced, even in the sphere of relations between individuals, if necessary.¹⁸⁵

¹⁸² In this regard, Article 16(1) of the Convention provides that: “everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.”

¹⁸³ Cf. *Case of Baena-Ricardo et al. Merits, Reparations and Costs*, supra note 96, para. 156. Cf. also *Case of Huilca-Tecse v. Perú. Merits, Reparations and Costs*. Judgment of March 3, 2005. Series C No. 121, para. 69; and *Case of Cantoral-Huamaní and García-Santa Cruz v. Perú. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of July 10, 2007. Series C No. 167, para. 144.

¹⁸⁴ Cf. *Case of Huilca-Tecse. Merits, Reparations and Costs*, supra note 183, para. 76, and *Case of Cantoral-Huamaní and García-Santa Cruz. Preliminary Objection, Merits, Reparations, and Costs*, supra note 183, para. 141.

¹⁸⁵ Cf. *Case of Huilca-Tecse. Merits, Reparations and Costs*, supra note 183, para. 76; and *Case of Cantoral-Huamaní and García-Santa Cruz. Preliminary Objection, Merits, Reparations, and Costs*, supra note 183, para. 141.

145. In the instant case, the analysis of the potential violation of the right of freedom of association, as alleged by the representatives, must be made in the context of the link between the exercise of said right and the promotion and defense of human rights. In this regard, the Court has established that the States have the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity.¹⁸⁶

146. From this perspective, Article 16 of the American Convention also includes the right of individuals to set up and participate freely in non-governmental organizations, associations or groups involved in human rights monitoring, reporting and promotion. Given the important role of human rights defenders in democratic societies,¹⁸⁷ the free and full exercise of this right imposes upon the State the duty to create the legal and factual conditions for them to be able to freely perform their task.

147. The State acknowledged that the work of Blanca Jeannette Kawas-Fernández was performed "in her role as defender of human rights and of environmental and natural resource preservation" and recognized "the many achievements gained through her different activities." In connection with said acknowledgement, this Court finds it appropriate to point out that the defense of human rights is not limited to civil and political rights, but necessarily involves economic, social and cultural rights monitoring, reporting and education, in accordance with the principles of universality, indivisibility and interdependence enshrined in the American Declaration of the Rights and Duties of Man, the American Convention,¹⁸⁸ and the Inter-American Democratic Charter¹⁸⁹ and upheld by this Court in its case law.¹⁹⁰ In the same vein, the UN Special Rapporteur on the Situation of

¹⁸⁶ Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits*. Judgment of November 28, 2006. Series C No. 161, para. 77; and *Case of Valle-Jaramillo et al. Merits, Reparations, and Costs*, *supra* note 8, para. 91.

¹⁸⁷ Cf. *Case of Nogueira de Carvalho et al. Preliminary Objections and Merits*, *supra* note 186, para. 74; and *Case of Valle-Jaramillo et al. Merits, Reparations, and Costs*, *supra* note 8, para. 87. In the same vein, *cf.* Provisional Measures Mery Naranjo. Order of September 22, 2006, Considering clause No. 8; Provisional Measures Mery Naranjo. Order of January 31, 2008, Considering clause No. 4; Provisional Measures Lysias Fleury. Order of June 7, 2003, Considering clause No. 5; Provisional Measures Lysias Fleury. Order of December 2, 2003, Considering clause No. 10; Provisional Measures Carlos Nieto et al. Order of July 9, 2004, Considering clause No. 10; Provisional Measures Álvarez et al. Order of February 8, 2008, Considering clause No. 23; Provisional Measures Monagas Judicial Confinement Center ("La Pica"). Order of February 9, 2006, Considering clause No. 14; Provisional Measures in favor of the Members of the Community Studies and Psychosocial Action Team (ECAP). Order of October 20, 2006, Considering clause No. 10.

¹⁸⁸ In its Preamble, the American Convention recognizes that "the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights."

¹⁸⁹ The Inter-American Democratic Charter provides that "democracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence, embodied in the respective constitutions of States and in inter-American and international human rights instruments."

¹⁹⁰ Among other cases: *Cf. Case of the "Street Children" (Villagrán-Morales et al.). Merits*, *supra* note 88, para. 191; *Case of Baena-Ricardo et al. Merits, Reparations, and Costs*, *supra* note 96, paras. 156 and 168; *Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 2, 2004. Series C No. 112, paras. 149, 161, 166, 170 and 176; *Case of Huilca-Tecse. Merits, Reparations and Costs*, *supra* note 183, para. 67; *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of June 17, 2005. Series C No. 125, paras. 77, 87, 99, 101,

Human Rights Defenders concluded that the protection accorded to defenders “is not dependent on whether the focus of the work of the defenders [...] is on civil and political rights or on economic, social and cultural rights.”¹⁹¹

148. Furthermore, in accordance with the case law of this Court¹⁹² and the European Court of Human Rights,¹⁹³ there is an undeniable link between the protection of the environment and the enjoyment of other human rights. The ways in which the environmental degradation and the adverse effects of the climate change have impaired the effective enjoyment of human rights in the continent has been the subject of discussion by the General Assembly of the Organization of American States¹⁹⁴ and the United Nations.¹⁹⁵ It should also be noted that a considerable number of States Parties to the American Convention have adopted constitutional provisions which expressly recognize the right to a healthy environment.¹⁹⁶

and 103; *Case of the Girls Yean and Bosico v. Dominican Republic. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 8, 2005. Series C No. 130, paras. 142, 173 and 185; *Case of Ximenes-Lopes v. Brazil. Merits, Reparations and Costs*. Judgment of July 4, 2006. Series C No. 149, paras. 89, 90, 99 and 104; *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146, paras. 121, 164, 168 and 172; and *García-Santa Cruz. Preliminary Objection, Merits, Reparations, and Costs*, *supra* note 183, paras. 144 and 146.

¹⁹¹ Cf. Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders. A/HRC/4/37 January 24, 2007. See website: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/104/20/PDF/G0710420.pdf>

¹⁹² Particularly, in contentious cases and provisional measures regarding the rights of the members of indigenous communities and the special relationship they have with the land. Cf. *Matter of Pueblo indígena de Sarayaku regarding Ecuador. Provisional Measures*. Order of the Court of June 17, 2005, Considering clause No. 9; *Case of the Mayagna Community (Sumo) Awás Tingni*. Judgment of August 31, 2001. Series C No. 79, paras. 144, 149. *Case of the Yakyé Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of June 17, 2005. Series C No. 125, paras. 131, 137, and 141; *Case of the Sawhoyamaya Indigenous Community. Merits, Reparations and Costs*, *supra* note 190, paras. 118, 121 and 131; *Case of the Saramaka People. v. Suriname. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 28, 2007. Series C No. 172, paras. 121, 122, 123, 126, 128 and 146.

¹⁹³ Cf. European Court of Human Rights (ECHR), *cases of Guerra and others v. Italy, (1998); Lopez Ostra v. Spain, (1994), and Fadeyeva v. Russia (2005)*.

¹⁹⁴ Cf. Resolutions OEA/Ser.P AG/RES. 1819 (XXXI-O/01) “Human Rights and the Environment,” approved at the third plenary session held on June 5, 2001 (available at: http://www.oas.org/juridico/spanish/ag01/agres_1819.htm) AG/RES. 1896 (XXXII-O/02) “Human Rights and the Environment in the Americas,” approved at the fourth plenary session held on June 4, 2002 (available at: http://www.oas.org/juridico/spanish/ag02/agres_1896.htm); and AG/RES. 1926 (XXXII-O/03) “Human Rights and the Environment in the Americas,” approved at the fourth plenary session held on June 10, 2003 (available at: http://www.oas.org/juridico/spanish/ag03/agres_1926.htm); AG/RES. 2349 (XXXVII-O/07) “Water, Health and Human Rights,” approved at the fourth plenary session held on June 5, 2007 (available at: http://www.oas.org/dil/esp/AG-RES_2349_XXXVII-O07.doc), and AG/RES. 2429 (XXXVIII-O/08) “Human Rights and Climate Change in the Americas,” approved at the fourth plenary session held on June 3, 2008 (available at: http://www.oas.org/DIL/ESP/AGRES_2429.doc).

¹⁹⁵ Cf. Resolution 2005/60 adopted by the United Nations Commission on Human Rights, entitled “Human rights and the environment as part of sustainable development,” approved on April 10, 2005, E/CN.4/2005/L.10/Add.17 (available at: http://ap.ohchr.org/documents/S/CHR/resolutions/E-CN_4-RES-2005-60.doc)

¹⁹⁶ Cf. Constitution of the Argentine Republic, Article 41; Constitution of the Federative Republic of Brazil Art. 225; Constitution of the Republic of Chile, Art. 19(8); Constitution of the Republic of Colombia, Art. 79; Constitution of the Republic of Ecuador, Art. 14; Constitution of Haiti, Arts. 253 and 254; Constitution of the United Mexican States, Art. 4; Constitution of the Republic of Nicaragua, Art. 60; Constitution of the Republic of Panamá, Arts. 118 to 121; Constitution of the Republic of Paraguay, Art. 7, Constitution of the Republic of Perú, Art. 2(22); Constitution of the Bolivarian Republic of Venezuela, Art. 127.

These advances towards the development of human rights in the continent have been incorporated into the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador."¹⁹⁷

149. The recognition of the work in defense of the environment and its link to human rights is becoming more prominent across the countries of the region, in which an increasing number of incidents have been reported involving threats and acts of violence against and murders of environmentalists owing to their work.¹⁹⁸

150. In the judgment rendered by this Court in the cases of *Huilca-Tecse v. Peru* and *Cantoral-Huamaní and García-Santa Cruz v. Peru*, it was held that freedom of association can only be exercised in a situation in which fundamental human rights are fully guaranteed and respected, particularly those related to the life and safety of the individual.¹⁹⁹ In this regard, the impairment of the right to life or to humane treatment attributable to the State may, in turn, give rise to a violation of Article 16(1) of the Convention when such violation arises from the victim's legitimate exercise of the right to freedom of association.²⁰⁰

151. As it has been established (*supra* paras. 50 to 52), at the time of death, Blanca Jeannette Kawas-Fernández was the president of the PROLANSTATE foundation, and in that capacity she promoted the establishment of public policies on environmental protection in the department of Atlántida, Honduras, as well as awareness regarding natural resource preservation through education, and reported environmental degradation in the area. From the uncontroverted evidence presented, particularly from the statement rendered by Mr. Rafael Sambulá, former director of the foundation, on March 1, 1995, it is concluded that, before she died, Blanca Jeannette Kawas-Fernández reported "the problems affecting the protected areas" to the relevant authorities and the media[, ...] "that individuals were

¹⁹⁷ Cf. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador," which expressly recognizes the right of every human being to live in a healthy environment (Article 11).

¹⁹⁸ Cf. Inter-American Commission on Human Rights, Report No. 11/04 (admissibility), Petition 735/01, Teodoro García-Cabrera and Rodolfo Montiel-Flores, Mexico, February 27, 2004; Report No. 63/04 (admissibility), Petition 60/2003, Carlos Antonio Luna, Honduras, October 13, 2004; Report No. 58/06 (admissibility), Petition 1083/05, Erwin Haroldo Ochoa-López and Julio Armando Vásquez-Ramírez, Guatemala, July 20, 2006; Report No. 80/07 (Merits), Case 11.658, Martín Pelicó-Coxic, Guatemala, October 15, 2007. See also, among others, the following cases involving alleged violations of human rights of defenders, namely: Report No. 16/98 (admissibility), Case 11.324, Narciso González, Dominican Republic, March 3, 1998; Report No. 24/98 (Merits), Case 11.287, João Canuto De Oliveira, Brazil, April 7, 1998; Report No. 45/01 (admissibility), Case 11.149, Augusto Alejandro Zúñiga-Paz, Perú, March 5, 2001; Report No. 82/01 (admissibility), Case 12.000, Anibal Miranda, Paraguay, October 10, 2001; Report No. 14/02 (admissibility), Petition 12.352, Bruce Campbell Harris-Lloyd, Guatemala, February 28, 2002; Report No. 55/06 (admissibility), Petition 12.380, Members of José Alvéar Restrepo Lawyers' Collective, Colombia, July 20, 2006; Report No. 53/07 (admissibility), Petition 1193.03, María Nicolosa García-Reynoso, Mexico, July 24, 2007, and Report on the situation of human rights defenders in the Americas, March 2006, para. 220. See also, Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders. A/HRC/4/37 January 24, 2007, para. 40. (Defenders working on land rights, natural resources or environmental issues seem to be particularly vulnerable to attacks and violations of their rights under the Declaration on Human Rights Defenders in countries of Latin America and in parts of Asia); and Amnesty International. Persecution and Resistance. The Experience of Human Rights Defenders in Guatemala and Honduras. August 2007, AI Index: AMR 02/001/2007 (record of appendixes to the brief of requests and arguments, appendix J, folio 1637).

¹⁹⁹ Cf. *Case of Huilca-Tecse. Merits, Reparations and Costs*, *supra* note 183, para. 75; and *Case of Cantoral-Huamaní and García-Santa Cruz. Preliminary Objection, Merits, Reparations and Costs*, *supra* note 183, para. 146.

²⁰⁰ Cf. *García-Santa Cruz. Preliminary Objection, Merits, Reparations and Costs*, *supra* note 183, para. 147.

invading the core zone of the [Punta Sal National] Park and [that] others were mucking it out"; the witness also stated that as a result of a complaint filed with the *Corporación Hondureña de Desarrollo Forestal* (National Corporation for Forestry Development, AFE-COHDEFOR) by the PROLANSATE foundation, "the national authorities [...] terminated [a timber extraction] contract."²⁰¹

152. In Chapter VII, the Court held that it had been established that at least one agent of the State had been involved in the events that ended the life of Blanca Jeannette Kawas-Fernández, and that such acts were motivated by Ms. Kawas-Fernández's work in defense of the environment through the PROLANSATE foundation, especially in retaliation for reporting and opposing the exploitation of natural resources of certain protected areas in the municipality of Tela. It is the Court's view that her death, evidently, resulted in the deprivation of her right to associate freely with others.

153. As found in other cases,²⁰² it is undeniable that these circumstances have also had an intimidating effect²⁰³ on other people who are engaged in the defense of the environment in Honduras or that are related to this type of causes. This intimidating effect is reinforced and exacerbated by the fact that the crime remains unpunished (*supra* para. 68).

154. Furthermore, in the case *sub judice*, it has been established that during the decade following the death of Blanca Jeannette Kawas-Fernández, five people lost their life as a result of their work in defense of natural resources and the environment in Honduras²⁰⁴ (*supra* para. 69).

²⁰¹ Cf. statement rendered by Rafael Sambulá on March 1, 1995, *supra* note 31, and communication of February 28, 1996 from the executive director and coordinator of the "Vida y Naturaleza" (Life and Nature) radio show, broadcast on *Radio América*, *supra* note 32. It should be noted that the decree creating Punta Sal National Park established a system for the management and stewardship of the land comprising the national park which prohibits its use "for purposes other than conservation." Article 5 of the Decree No. 154-94 provides that "for management and stewardship purposes, Punta Sal National Park shall comprise main areas that can meet the park management objectives [...] a) Core zone, [...] is comprised of natural areas with minimum man-made alterations that contains unique and fragile ecosystems, species of flora and/or fauna and/or natural phenomena which deserve full protection for scientific purposes of environmental control. No change to or alteration of the ecosystem shall be permitted. [...] b) Buffer zone: special resources or habitats must be surrounded by a section of land that acts as a barrier to external impacts. This zone must be broad enough to absorb chemical and physical stressors, such as air, soil or water pollution, fires, illegal hunting, uncontrolled tourism, and noise. [...] The management of the park shall have the authority to approve or reject any form of economic development in this zone." In accordance with Section 14 of the aforesaid decree, the Park's management that includes a representative of the PROLANSATE foundation, among others has "the authority to make a decision regarding any form of development to be built in the protected areas" and may "approve or reject any form of economic development" in the buffer zone of the Park. Cf. Decree No. 154-94, *supra* note 28.

²⁰² Cf. *García-Santa Cruz. Preliminary Objection, Merits, Reparations and Costs*, *supra* note 183, para. 147.

²⁰³ Cf. statement rendered by Rafael Sambulá before the Inter-American Court, *supra* note 25. In his statement, the witness said that "initially, there was a great deal of agitation and fear among all the personnel working for the foundation; the relatives urged the co-workers to be careful because what happened to Jeannette could happen to us; she was a very responsible person and that she instilled a lot of confidence in the organization and that in the people who helped and supported us [...]."

²⁰⁴ In 1996, Carlos Escaleras, popular leader of the Honduran Aguán Valley was killed; Carlos Luna, environmental activist, was murdered in 1998; Carlos Flores, community leader and environmental activist of Olancho was killed in 2001, and Heraldo Zúñiga and Roger Iván Cartagena, members of the Olancho Environmental Movement (MAO) were murdered in 2006. Cf. Official Letter No. FEDH-575-2008 of July 2, 2008, *supra* note 78.

155. Therefore, the Court finds that the State is responsible for the violation of the right to freedom of association provided for in Article 16(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Blanca Jeannette Kawas-Fernández.

**X
REPARATIONS
(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)**

156. It is a principle of International Law that any violation of international obligations which causes damage purports the duty to make adequate reparations.²⁰⁵ Based on Article 63(1) of the American Convention, the Court has adopted decisions in this regard.²⁰⁶

157. Considering the partial acknowledgment of liability made by the State, the considerations on such acknowledgment and the violations to the American Convention declared in the previous chapters, in the light of the criteria established in the Court's judicial precedents with regard to the nature and scope of the obligation to repair,²⁰⁷ the Court will proceed to analyze the demands presented by the Commission and the representatives, as well as the allegations of the State, in order to determine the measures aimed at repairing the damage caused to the victims.

A) Injured Party

158. The representatives requested the Court to consider Mrs. Blanca Jeannette Kawas-Fernández as beneficiary of the right to reparation in her capacity as direct victim of the violations alleged in the instant case. Furthermore, they identified as victims and beneficiaries of the reparations "[her] closest relatives, due to the violations they suffered throughout the years," to wit: Blanca Fernández, mother; Jacobo Kawas-Cury, deceased father; Jaime Alejandro Watt-Kawas, son; Selsa Damaris Watt-Kawas, daughter; Carmen Marilena Kawas-Fernández, sister; Jacobo Roberto Kawas-Fernández, brother, and Jorge Jesús Kawas-Fernández, brother. Similarly, the Commission identified the relatives of Mrs. Blanca Jeannette Kawas-Fernández, including Mr. James Gordon Watt (alleged husband), as beneficiaries of the requested reparations.

159. The State did not file any challenge to the list of beneficiaries proposed by the representatives and the Commission, but "f[ound] the relationships [...] should be proven through the appropriate documents" (*supra* para. 28). In that regard, the State accepted "to provide reparation to the individuals to be designated in the appropriate Judgment as entitled to reparation for pecuniary and non-pecuniary damage".

²⁰⁵ Cf. *Case of Velásquez-Rodríguez V. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para 395; and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para 404.

²⁰⁶ Article 63(1) of the Convention states that:

[i]f the Court finds that there has been a violation of a right or freedom protected by [this] Convention, the Court shall rule that [the] party harmed be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted that breach of such a right or freedom be remedied and that fair compensation be paid to the injured party.

²⁰⁷ Cf. *Case of Velásquez-Rodríguez. Reparations and Costs*, *supra* note 205, paras. 25 to 27; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 397; *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 406.

160. This Court restated that those individuals who have been declared victims of violations of any of the rights enshrined in the Convention will be deemed injured parties (*supra* para. 27). Consequently, based on the determinations made in the preceding paragraphs, the Court finds that the individuals listed below must be considered “injured parties”: Blanca Jeannette Kawas-Fernández, Jacobo Kawas-Cury, Blanca Fernández, Jaime Alejandro Watt-Kawas, Selsa Damaris Watt-Kawas, Jacobo Roberto Kawas-Fernández, Jorge Jesús Kawas-Fernández and Carmen Marilena Kawas-Fernández. The aforementioned individuals will be the beneficiaries of the reparations to be awarded by the Tribunal.

161. Mr. James Gordon Watt cannot be considered an injured party in the instant case because he has not been declared victim of a violation of any right enshrined in the Convention (*supra* para. 119).

B) Compensation

1) Pecuniary damage

162. In its judicial precedents, the Court has developed the concept of pecuniary damage and the situations in which it must be redressed.²⁰⁸

163. In the instant case, the Inter-American Commission requested the Court to order the State to “provide full reparation to the relatives of Mrs. Blanca Jeannette Kawas-Fernández, including [...] the pecuniary [...] aspect, as a result of the human rights violations suffered”. In this sense, the Inter-American Commission requested payment of a compensation for consequential damage and loss of earnings. The representatives also requested compensations for such items.

164. Below, the Court will establish the compensations to be paid for this item based on the violations recognized in the instant Judgment, taking into account the specific circumstances of the case, the evidence submitted by the parties and their allegations.

1.i) “Consequential damage”

165. The Commission held that “the relatives of the victim made significant economic efforts to seek justice in domestic courts and to overcome the physical, psychological and moral trauma sustained as a result of the acts of the State of Honduras”. Therefore, it requested the Court to establish, on equitable basis, the amount of the appropriate compensation.

166. Furthermore, the representatives requested payment of a compensation for any expenses incurred as a result of the violations, to wit: Blanca Fernández, Jaime Alejandro and Selsa Damaris Watt-Kawas, and Carmen Marilena Kawas-Fernández, “who were in the United States at the time of the murder [and] were forced to travel immediately to Honduras, incurring a series of expenses in transportation, accommodation and food[, and that even though] the family does not have the corresponding vouchers, those expenses are

²⁰⁸ This Court has sustained that pecuniary damage involves a “loss of, or detriment to, the income of the victims, the expenses incurred as a result of the events and the pecuniary consequences that may have a cause-effect link with the events in the instant case”. *Cf. Case of Bámaca-Velásquez V. Guatemala. Reparations. Judgment of February 22, 2002, para. 43; Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs, supra* note 10, para. 396; and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs, supra* note 10, para. 405.

estimated in the approximate amount of eight thousand United States dollars". Furthermore, the representatives requested payment of the expenses incurred by Mr. Jacobo Kawas-Fernández and "the family", in order to give "proper burial to the victim", and any expenses personally incurred by the latter for the purposes of investigating the death of his sister. The representatives requested the Court to establish the amount of the compensation for this item, on an equitable basis.

167. The State filed no specific allegation on this matter.

168. The various statements rendered during the proceedings in the instant case show that Mrs. Selsa Damaris Watt-Kawas, Mrs. Blanca Fernández and Mrs. Carmen Marilena Kawas-Fernández were in the United States of America at the time Mrs. Blanca Jeannette Kawas-Fernández was deprived of her life.²⁰⁹ That notwithstanding, contrary to the allegations of the representatives and in accordance with his own statement, Mr. Jaime Alejandro Watt-Kawas was in Tegucigalpa, Honduras, at that time.²¹⁰ The Court finds it reasonable to believe that such individuals incurred certain expenses to travel to the city of Tela, Honduras, in order to attend the funeral of Blanca Jeannette Kawas-Fernández. In the case of her children Selsa Damaris and Jaime Alejandro Watt-Kawas, such expenses were covered, according to their statements, by "[their] grandfather [and] their mother's siblings."²¹¹

169. Moreover, the body of evidence shows that the members of the family of the Blanca Jeannette Kawas-Fernández contributed various economic and physical resources, and logistic support to promote the investigation initiated by the authorities.²¹² In that regard, Mr. Jorge Jesús Kawas-Fernández and Mr. Jaime Alejandro Watt-Kawas agreed on their statements upon stating that "[the] family acted [...] in support of the investigations [...] under the instructions of [...] Jacobo [Kawas-Fernández]".²¹³ Also, Mr. Jorge Jesús Kawas-Fernández acknowledged that "[a]ll expenses incurred upon the investigation were borne by [his] brother Jacobo, who covered such expenses with the income obtained from [his] father's real estate business".²¹⁴ Furthermore, he stated that the estimated expenses incurred totaled "six thousand United States dollars for food, fuel, accommodation and

²⁰⁹ Cf. statement rendered before a notary public (affidavit) by Mrs. Selsa Damaris Watt-Kawas on October 28, 2008, *supra* note 171; statement rendered before a notary public (affidavit) by Mr. Jorge Jesús Kawas-Fernández on October 30, 2008, *supra* note 168; and, statement of Mr. Jacobo Kawas-Fernández rendered before the Inter-American Court, *supra* note 25.

²¹⁰ Cf. statement rendered before a notary public (affidavit) by Mr. Jaime Alejandro Watt-Kawas on November 4, 2008, *supra* note 166, and statement rendered before a notary public (affidavit) by Mrs. Selsa Damaris Watt-Kawas on October 28, 2008, *supra* note 171.

²¹¹ Cf. statement rendered before a notary public (affidavit) by Mr. Jaime Alejandro Watt-Kawas on November 4, 2008, *supra* note 166, and statement rendered before a notary public (affidavit) by Mrs. Selsa Damaris Watt-Kawas on October 28, 2008, *supra* note 171.

²¹² Cf. Statement rendered before a notary public (affidavit) by Mr. Jorge Jesús Kawas-Fernández on October 30, 2008, *supra* note 168, statement rendered by Mr. Jaime Alejandro Watt-Kawas, on November 4, 2008, *supra* note 166, and statement rendered by Mr. Jacobo Kawas-Fernández before the Inter-American Court, *supra* note 25.

²¹³ Cf. Statement rendered before a notary public (affidavit) by Mr. Jaime Alejandro Watt-Kawas, on November 4, 2008, *supra* note 166, and statement rendered before a notary public (affidavit) by Mr. Jorge Jesús Kawas-Fernández on October 30, 2008, *supra* note 168.

²¹⁴ Cf. Statement rendered before a notary public (affidavit) by Mr. Jorge Jesús Kawas-Fernández on October 30, 2008, *supra* note 168.

traveling, both for the different investigation teams that worked on the case and the various individuals who provided information on the case [...].²¹⁵ As regards the possible disbursement of funds on this account (*supra* para. 113), it has been proven in the records that in November 2003, the Coordinator of the Attorney General's Office sent a letter to the hearing Judge, stating that "[t]he agents initiated their work in the afternoon [on October 29, 2003], but first they warned the Prosecutor's Office that had to coordinate their stay in the city because they had not been assigned traveling expenses, [and], for that reason, Mr. Jacobo Kawas [...] was contacted, and he offered an apartment and HNL 1,000.00 for them to work."²¹⁶ The Court finds that the family of the Blanca Jeannette Kawas-Fernández effectively incurred certain expenses as detailed above, which were borne directly by Mr. Jacobo Kawas-Fernández.

170. Furthermore, it has been stated in the records that Mr. Jacobo Kawas-Cury, father of Mrs. Blanca Jeannette Kawas-Fernández, and her siblings, made certain disbursements as a result of her funeral.²¹⁷

171. Based on the considerations above, the Court establishes, on an equitable basis, the following amounts for the items specified below: USD\$ 600.00 (six hundred United States dollars) to the benefit of Mrs. Blanca Fernández for traveling expenses to attend her daughter's funeral, and USD\$ 600.00 (six hundred United States dollars) to the benefit of Mrs. Carmen Marilena Kawas-Fernández for the same purpose.

172. Moreover, the Court establishes, on an equitable basis, the amount of USD\$ 800.00 (eight hundred United States dollars) for traveling expenses to attend the funeral of Mrs. Blanca Jeannette Kawas-Fernández to her children Selsa Damaris and Jaime Alejandro, and USD\$ 300.00 (three hundred United States dollars) for expenses incurred in the funeral of Mrs. Blanca Jeannette Kawas-Fernández. Such amounts must be delivered to Mr. Jacobo Kawas-Fernández, who will, in turn, deliver the appropriate amounts to the relatives specified in the Judgment who timely incurred the aforementioned expenses. In accordance with the precedents of this Court,²¹⁸ the amount corresponding to Mr. Jacobo Kawas-Cury – who passed away- must be distributed equally to his children, taking into account that at the time of his death he was separated from Mrs. Blanca Fernández.²¹⁹

²¹⁵ Cf. statement rendered before a notary public (affidavit) by Mr. Jorge Jesús Kawas-Fernández on October 30, 2008, *supra* note 168.

²¹⁶ Cf. official communication of November 5, 2003, signed by *Licenciado* Luis Javier Santos-Cruz, Coordinator of the Attorney General's Office of the City of Tela, *supra* note 137.

²¹⁷ Cf. statement rendered before a notary public (affidavit) by Mrs. Selsa Damaris Watt-Kawas on October 28, 2008, *supra* note 171; statement rendered before a notary public (affidavit) by Mr. Jorge Jesús Kawas-Fernández on October 30, 2008, *supra* note 168; statement rendered before a notary public (affidavit) by Mr. Jaime Alejandro Watt-Kawas on November 4, 2008, *supra* note 166, statement of Mr. Jacobo Kawas-Fernández rendered before the Inter-American Court, *supra* note 25.

²¹⁸ Cf. *Case of Myrna Mack-Chang. Merits, Reparations and Costs*, *supra* note 8, para. 294; *Case of Ticona-Estrada et al. Merits, Reparations and Costs*, *supra* note 8, para. 182; and *Case of Valle-Jaramillo et al. Merits, Reparations and Costs*, *supra* note 10, para. 245.

²¹⁹ Cf. statement rendered before a notary public (affidavit) by Mr. Jorge Jesús Kawas-Fernández on October 30, 2008, *supra* note 168, and statement rendered by Mr. Jacobo Kawas-Fernández before the Inter-American Court, *supra* note 25.

173. Lastly, the Court establishes, on an equitable basis, the amount of USD\$ 1,000.00 (one thousand United States dollars) to the benefit of Mr. Jacobo Kawas-Fernández, for the expenses incurred upon the investigation of the events in the instant case.

1.ii) Loss of earnings

174. The Commission requested the Court to establish, on an equitable basis, the amount of the compensation payable for "loss of profits".

175. The representatives held that Mrs. Blanca Jeannette Kawas-Fernández had a professional diploma in Commerce and Accounting ("*Perito Mercantil y Contador Público*"), but was mainly involved in the management of the family's businesses" and that at the time of her death she was "49 years old". Furthermore, the representatives stated that "[i]n accordance with the report issued by the National Statistics Institute of Honduras (*Instituto Nacional de Estadística de Honduras*), life expectancy for women upon birth in this country can be established at 75.3 years [...], thus leading to infer that, in ordinary conditions, Mrs. Kawas could have lived an average of 26 years more". Furthermore, the representatives stated that Mrs. Kawas "earned a monthly salary of HNL 20.000, equivalent to USD\$ 1.050.00". Additionally, the representatives stated that "the legislation of Honduras contemplates two additional monthly salaries per year [...] as a means for social compensation" pursuant to legal terms and conditions. Based on the above, the representatives requested that the State be ordered to provide compensation to the victim in the amount of "USD\$ 303,849.00 [three hundred three thousand, eight hundred forty-nine United States dollars]", obtained from multiplying the aforementioned monthly amount and two additional monthly salaries by the 26-year life expectancy remainder, plus a 6% interest for loss of earnings, less 25% for expenses that the victim would have incurred had she been alive; the "total amount that [should] be paid by the State of Honduras to the relatives of the victim as compensation for loss of earnings".

176. For the purposes of proving the level of income of Mrs. Blanca Jeannette Kawas-Fernández, the State submitted as documentary evidence her annual income tax return for the year 1994,²²⁰ the year immediately preceding that of her death, "in order for the [...] Court to have sufficient evidence to establish the appropriate pecuniary damage". The representatives did not object to the validity or authenticity of such evidence.

177. The Court finds that the aforementioned annual income tax return reflects annual income for Mrs. Kawas-Fernández in the amount of HNL 52,000.00 (fifty-two thousand), i.e. approximately HNL 4333.33 (four thousand three hundred and thirty-three and thirty-three cents) per month.

178. Based on the considerations above, and given the time elapsed since Mrs. Blanca Jeannette Kawas-Fernández was deprived of her life and her probable life expectancy, the Court orders the State to pay, on an equitable basis, the amount of USD\$ 70,000.00 [seventy thousand United States dollars], which, pursuant to applicable judicial precedents (*supra* para. 162), should be distributed equally to her children.

2) Non-pecuniary damage

²²⁰ Cf. annual income tax return of January 27, 1995 (record of appendixes to the answer to the application, volume 3, appendix B, folio 2608).

179. Based on its precedents, the Court has established various methods to provide for reparation for non-pecuniary damage sustained.²²¹

180. The Commission requested the Court to establish, on an equitable basis, the amount of the compensation to be paid for non-pecuniary damage as a result of the "suffering endured by the relatives of the victim due to lack of an efficient investigation of the events and adequate punishment of those responsible, among other things".

181. Furthermore, the representatives indicated that "it is evident that the relatives of Mrs. Blanca Jeannette Kawas-Fernández suffered considerably as a result of her death". In that regard, they requested the Court to establish compensation considering "the pain caused given the violent and sudden nature of the victim's death [;] [as] this event took place while most of her relatives [were] out of Honduras[;] and that [t]he anguish feeling increased as result of the frustration and defenselessness for having her murder go unpunished". The representatives also requested the Court to consider that her death originated in her capacity as environmental activist".

182. The State did not submit specific allegations in that regard.

183. In Chapters VII and VIII of this Judgment, the Court concluded that the manner and circumstances in which Mrs. Blanca Jeannette Kawas-Fernández was murdered, and failure by Government authorities to investigate that event as well as the inefficacy of the measures adopted to clarify the events and, if applicable, punish those responsible therefor, have affected the moral and psychological health of the late Jacobo Kawas-Cury, Blanca Fernández, Selsa Damaris and Jaime Alejandro Watt-Kawas, Jacobo Roberto Kawas-Fernández, Jorge Jesús Kawas-Fernández and Carmen Marilena Kawas-Fernández, all of them relatives of Mrs. Blanca Jeannette Kawas-Fernández.

184. Judgments whereby violations of rights are acknowledged, pursuant to repeated international precedents, constitute in and of themselves a form of reparation.²²² That notwithstanding, given the circumstances of the instant case, the Court finds that it is appropriate to order payment of a compensation, assessed on an equitable basis, for non-pecuniary damage sustained by the relatives of Mrs. Blanca Jeannette Kawas-Fernández, who are considered victims of violations of the rights enshrined in Articles 5(1), 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof (*supra* paras. 117 to 119 and 131 to 139). Based on the considerations above, the Court orders the State to pay the amount of USD\$ 20,000.00 (twenty thousand United States dollars) to the benefit of each of Selsa Damaris and Jaime Alejandro Kawas-Fernández; the amount of USD\$

²²¹ Non pecuniary damage may include distress and suffering caused directly to the victim or its relatives, tampering with individual core values, and changes of a non pecuniary nature in the victim's or relatives' everyday life. Given that it is impossible to assess the value of the non pecuniary damage sustained in a precise equivalent in money, [...] compensation may be made effective by paying an amount of money or by delivering property or services whose value may be established in money, as the Court may reasonably determine [...] based on equitable standards; and on the other hand by public actions or works aimed at acknowledging the victim's dignity and avoiding new human rights violation. *Cf. Case of Neira Alegria v. Perú. Reparations and Costs.* Judgment of September 19, 1996. Series C No. 29, para. 57; *Case of the "Street Children" (Villagrán-Morales et al.) V. Guatemala. Reparations and Costs.* Judgment of May 26, 2001. Series C No. 77, para. 84; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs, supra* note 10, para. 396, and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs, supra* note 10, para. 405.

²²² *Cf. Case of Neira Alegria et al v. Perú. Reparations and Costs.* Judgment of September 19, 1996. Series C No. 29, para. 56; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs, supra* note 10, para. 403; and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs, supra* note 10, para. 413.

20,000.00 (twenty thousand United States dollars) to the benefit of Mrs. Blanca Fernández and Mr. Jacobo Kawas-Kury, each; USD\$ 10,000.00 (ten thousand United States dollars) to the benefit of Jacobo Kawas-Fernández and, the amount of USD\$ 5,000.00 (five thousand United States dollars) to the benefit of Mrs. Carmen Marilena and Mr. Jorge Jesús, both bearing the surname Kawas-Fernández, each. The amount corresponding to Mr. Jacobo Kawas-Kury must be paid in equal parts to his children.

185. Moreover, as previously held by the Court,²²³ in cases such as the instant case, the non-pecuniary damage inflicted upon the victim is evident. In this regard, and even though no request has been made to this effect by the Commission or the representatives, the Court has decided to order the State to pay compensation in the amount of USD\$ 50,000.00 (fifty thousand United States dollars) on account of the moral damage sustained by Blanca Jeannette Kawas-Fernández. Said amount shall be paid in full and in equal parts to the victim's children Selsa Damaris and Jaime Alejandro Watt-Kawas.

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* *

186. The State shall pay these compensations for pecuniary and non-pecuniary damage directly to their beneficiaries within one year from the date of service of this Judgment, in accordance with *infra* paras. 221 to 225.

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* *

C) *Obligation to investigate the facts that resulted in violations in the instant case, and to identify, prosecute and, as the case may be, punish those responsible*

187. The Inter-American Commission requested the Court to order the State: a) to expeditiously conduct a full, impartial and effective judicial investigation intended to establish the circumstances in which Mrs. Blanca Jeannette Kawas-Fernández was killed, identify all persons involved in her death at the various decision-making and execution stages, and impose the appropriate punishment; and b) to expeditiously conduct a full, impartial and effective judicial investigation into the obstructions of justice that took place in the proceeding concerning the murder of Mrs. Blanca Jeannette Kawas-Fernández. The Commission argued that the State is required to comply with its obligations to “investigate the facts and make known those which can be sufficiently established; [...] prosecute and punish those responsible therefor; [and] remove from the security forces anyone who has been proven to have committed, ordered or tolerated such abuses [...].” In its final written arguments, the Commission put emphasis on “the State's obligation to remove all such factual and legal obstacles as may hinder the exhaustive judicial clarification of the human rights violations committed in the instant case.”

188. The representatives requested the Court to order the State to “[i]nvestigate, prosecute and punish those responsible for planning and carrying out the execution of Jeannette Kawas, as well as those who committed irregularities and omissions in the

²²³ Cf. *Case of Myrna Mack-Chang. Merits, Reparations and Costs*, *supra* note 8, para. 260; *Case of Carpio-Nicolle et al. V. Guatemala. Merits, Reparations and Costs*. Judgment of November 22, 2004. Series C No. 117, para. 117; *Case of Zambrano-Vélez et al. Merits, Reparations and Costs*, *supra* note 87, para. 142; and *Case of Huilca-Tecse. Merits, Reparations and Costs*, *supra* note 183, para. 97.

relevant judicial proceeding, thus causing the violations in this case to remain unpunished.” In this regard, they noted that “[i]t is evident that being an environmentalist in Honduras entails high risk. An environmentalist’s work becomes increasingly dangerous every day. The impunity surrounding the case of Kawas opened the door to a context of violence targeting environmentalists, with the State failing to effectively take preventive and investigative measures, in addition to the judicial officers’ failure to act on their own motion.” The representatives requested the Court that “[the victims] be allowed full access and recognized the standing to act at all procedural stages, in accordance with domestic law and the American Convention[,] [that the] outcome of the investigation [be] made publicly known and widely publicized in order that it is known by the Honduran society, [and that] the State of Honduras be ordered to refrain from resorting to procedural obstacles such as amnesty, the statute of limitations or any other mechanism intended to promote the exclusion of liability of those involved in the facts.”

189. In Chapter VII of this Judgment, the Court established that about 14 years have elapsed since Mrs. Blanca Jeannette Kawas-Fernández was deprived of her life. It was further established that the body of evidence contains sufficient elements indicating that state agents were involved in these events. The measures taken domestically in this regard have not amounted to an effective recourse to guarantee true access to justice for the next of kin of Mrs. Blanca Jeannette Kawas-Fernández within a reasonable period of time, including the clarification of the facts of her murder, the investigation of the acts of obstruction, and, as the case may be, the punishment of all persons responsible and reparation of the violations (*supra* paras. 117 and 118).

190. The Court repeats that the State is required to fight such impunity by all means available, as impunity fosters the chronic repetition of human rights violations and renders victims -who have a right to know the truth of the facts- completely defenseless.²²⁴ The acknowledgment and exercise of the right to know the truth in a specific situation represent a means of reparation. Therefore, in the instant case, the right to know the truth creates in the victims a legitimate expectation that must be satisfied by the State.²²⁵ The guarantee obligation enshrined in Article 1(1) of the American Convention entails the duty of the States Parties to the Convention to organize the governmental apparatus and, in general, all the structures through which public authority is exercised in a manner such that they may ensure, in legal terms, the free and full exercise of human rights.²²⁶

191. Considering the above, as well as the Court’s case law,²²⁷ the Court orders that the State is to effectively conduct the criminal proceedings that are currently pending in connection with both the murder of Mrs. Blanca Jeannette Kawas and the hindering of the

²²⁴ Cf. *Case of Velásquez-Rodríguez. Merits*, *supra* note 17, para. 174; *Case of La Rochela Massacre, Merits, Reparations and Costs*, *supra* note 87, para. 289; and *Case of Heliodoro-Portugal. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 123, para. 244.

²²⁵ Cf. *Case of Velásquez-Rodríguez. Merits*, *supra* note 17, para. 181; *Case of Heliodoro-Portugal. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 123, para. 244; and *Case of Tiu Tojin. Merits, Reparations and Costs*, *supra* note 96, para. 103.

²²⁶ Cf. *Velásquez-Rodríguez. Merits*, *supra* note 17, para. 166; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 137, and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 149.

²²⁷ Cf. *Case of Baldeón-García v. Perú. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147, para. 199; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 404; and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 414.

proper investigation thereof, as well as such other proceedings as may be instituted to establish responsibility for the facts of the instant case, and effectively enforce the legally-prescribed consequences. The State must institute and complete the relevant investigations and proceedings within a reasonable period of time, to establish the truth of the facts.

192. The Court notes that, in compliance with its obligation to investigate and, if appropriate, punish those responsible for the facts, the State must remove all factual and legal obstacles hindering their proper investigation, and use all means available to expedite such investigation and the relevant proceedings with a view to preventing the recurrence of facts such as those of the instant case.

193. Moreover, it has been established that various witnesses related to the events of the instant case have been threatened, and that one such witness is a beneficiary of the provisional measures ordered by this Court in the course of the proceeding before it (*supra* paras. 15 and 16). Accordingly, based on the body of evidence in this case, the State must apply its domestic law to provide effective protection to any witnesses of the events related to the murder of Mrs. Blanca Jeannette Kawas-Fernández and offer guarantees to any person who may wish to testify. The State must guarantee the enforcement of any and all orders issued by a competent authority restricting or limiting any contact between said witnesses and the parties who are likely to be responsible for the facts and take the necessary measures should such orders not be observed. Also, the State must, in a fully diligent manner and within a reasonable period of time, process and fully deal with any complaint of coercion, intimidation or threats made by the witnesses in the domestic proceedings and take all legally prescribed measures for their investigation. Additionally, as established in this Judgment, the State must guarantee that the prosecutors and other officers in charge of the investigation and proceeding concerning the murder of Mrs. Blanca Jeannette Kawas-Fernández have adequate resources, including, without limitation, economic and logistic resources, and the required protection to move the investigation of and proceeding concerning the facts of the instant case forward.

194. Based on the Court's case law,²²⁸ the State must ensure that the victims are given full access and recognized the standing to act at all stages of such domestic investigations and proceedings, such that they are allowed to submit claims, receive information, provide evidence, make arguments and, basically, assert and enforce their interests. The goal of such involvement must be to have access to justice, to know the truth of the facts and to secure just reparation. Additionally, the outcome of the proceeding must be publicized in order that the Honduran society may be made aware of the judicial determination of the facts and the parties responsible therefore in the instant case.²²⁹

195. Considering the above, the Court finds it appropriate to order the State, pursuant to paragraph 226 of this Judgment, to provide specific information on the following issues: a) the status of the criminal files that are currently open concerning the murder of Mrs. Blanca Jeannette Kawas-Fernández and the obstruction of the related investigations; b) the measures adopted to provide the agents in charge of the investigation with the necessary

²²⁸ Cf. *Case of the Caracazo v. Venezuela. Reparations and Costs*. Judgment of August 29, 2002. Series C No. 95, para. 118; *Case of Bayarri. Preliminary Objection, Merits, Reparations and Costs*, *supra* note 135, para. 176; and *Case of Valle-Jaramillo et al. Merits, Reparations and Costs*, *supra* note 10, para. 233.

²²⁹ Cf. *Case of Las Palmeras V. Colombia. Reparations and Costs*. Judgment of November 26, 2002. Series C No. 96, para. 67; *Case of Heliodoro-Portugal. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 123, para. 247; and *Case of Valle-Jaramillo et al. Merits, Reparations and Costs*, *supra* note 10, para. 233.

resources to carry out their work, as well as such measures of protection as may be ordered, if any; c) the measures of protection ordered for the benefit of the witnesses, and d) any substantive progress made in the relevant investigations and proceedings.

D) Measures of satisfaction and guarantees of non-repetition

196. In this regard, the State claimed it would “comply with such measures as the Honorable Court may order in this regard.”

1) Publication of the relevant parts of this Judgment

197. The Commission requested the Court to order the State “to publish the judgment to be rendered by the Court in the printed and broadcast media.”

198. Furthermore, the representatives requested the Court “the publication of the whole Judgment both in the Official Gazette and in two newspapers of major circulation in Honduras [...], once in each.”

199. As ordered in previous cases,²³⁰ the State shall make a one-time publication, in the Official Gazette and in another major nationwide circulation newspaper, of paragraphs 1 to 8; 17 to 35; 45 to 155; and 189 to 195 of this Judgment, footnotes excluded, and the operative section of this Judgment. Such publication shall be made within six months from notice of this Judgment.

2) Public acknowledgment of international responsibility

200. The Commission requested that the Court order the State “[to hold] a ceremony of public acknowledgement of its international responsibility for the damage caused and violations committed, in a decent and significant manner as required by the goal of reparations, in consultation with the victim’s next of kin and their representatives.”

201. Moreover, the representatives requested the Court to order the State “to carry out a public acknowledgment of responsibility [...] at which the State’s highest authority will apologize not only to the next of kin of Mrs. Blanca Jeannette Kawas-Fernández but also to the next of kin of all environmentalists who suffered human rights violations subsequently to the killing of Kawas.” Moreover, they requested that such acknowledgment be made “at a highly busy site in the city of Tela, [and be] covered [by] the main national media, [with] the members of the Kawas family being given a key role, should they so desire.” In addition, the representatives asked that “the State of Honduras prepar[e] a written document acknowledging its international responsibility and [offering its] apologies to the Kawas family [...] Such document is to be a full page long and published in the printed medium with the largest national circulation.”

202. The Court has already stated in this Judgment that the State’s acknowledgment of responsibility constitutes a positive contribution to this proceeding and to the application of the principles that inspire the American Convention (*supra* para. 32). However, in order for it to be fully effective, it is the Court’s view that the State must carry out a public

²³⁰ Cf. *Case of Cantoral-Benavides v. Perú. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 79; *Case of Ríos et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* nota 10, para. 405, and *Case of Perozo et al. Preliminary Objections, Merits, Reparations and Costs*, *supra* note 10, para. 415.

acknowledgment of responsibility concerning the facts of the instant case, to honor the memory of Mrs. Blanca Jeannette Kawas-Fernández. During such public acknowledgment, reference must be made to the human rights violations established in this Judgment. Also, the acknowledgment shall be made via a public ceremony to be attended by State authorities. The State shall guarantee the participation of those next of kin of Mrs. Blanca Jeannette Kawas-Fernández who have also been declared victims by this Court and may so desire. The specifics of such public ceremony must be subject to prior and proper consultation with the next of kin of Mrs. Kawas-Fernández. The State shall have a period of one year to comply with this obligation.

203. As regards the representatives' request that the State prepare a written document acknowledging its international responsibility and apologizing to the next of kin of Mrs. Blanca Jeannette Kawas-Fernández, and to have such document published, the Court finds that the publication of this Judgment (*supra* para. 199) and the public ceremony acknowledging responsibility (*supra* para. 202) are sufficient for such purposes.

3) Construction of a monument and mounting of signs at the national park

204. The representatives requested the Court to order the State to “[c]reate a monument in memoriam of Mrs. Blanca Jeannette Kawas-Fernández and to mount signs at the National Park named after her.” In this regard, they argued that “[the] monument’s design must be in line with its environmental context and [created] by Mr. Jaime Kawas -the son of Jeannette Kawas-, who is an architect[;] the Ministry of the Environment and another equal-level official, as well as the City’s local authorities [...] including top-level police authorities [...] shall take part [i]n the unveiling ceremony.” Likewise, they asked the Court to “order the State to mount signs [at the National Park,] clearly identifying the correct name of the park and explaining the history of such name, so that visitors may learn the facts surrounding the creation of the Park.”

205. In this regard, the Court notes that while the instant case was being processed before the Inter-American Commission, the State repeated that “it agreed on the construction of the requested monument at the site indicated by the representatives and [the victim’s next of kin] within the land [...] of the Blanca Jeannette-Kawas-Fernández National Park [and that] the funds w[ould] be provided by the State directly to such individual or legal entity as the representatives may appoint, [...] in line with the funding estimate and design already submitted by engineer Jaime Watt-Kawas, [the son of Mrs. Blanca Jeannette Kawas-Fernández].” Also, the State repeated “its undertaking to mount signs at the Blanca Jeannette Kawas-Fernández National Park [...].”²³¹

206. The Court notes that the measures requested by the representatives seek to keep the memory of Blanca Jeannette Kawas-Fernández alive and prevent the future recurrence of facts such as those of the instant case.²³² Accordingly, the Court finds it appropriate to order the State to construct a memorial monument for the victim as well as to mount signs at the national park named after her, as requested by the representatives. The Court stresses that such signs shall note the fact that the victim was killed defending the environment and, in particular, such national park. The monument unveiling ceremony shall

²³¹ Cf. Third report of the State of Honduras regarding compliance with the recommendations made in Merits Report No. 63-06 in case No. 12.507 Ref.: Blanca Jeannette Kawas Honduras and reply regarding compliance with the recommendations made by the petitioners’ representatives, of January 23, 2008 (record of appendixes to the application, appendix 3, folio 1273).

²³² Cf. *Case of Valle-Jaramillo et al. Merits, Reparations and Costs*, *supra* note 10, para. 229.

be attended by State authorities. Also, the State shall guarantee the participation of the next of kin of Mrs. Blanca Jeannette Kawas-Fernández who were also declared victims by this Court who may so desire. Both obligations are to be complied with in a period of two years as from the date of notice of this Judgment.

4) Psychological care

207. The Commission requested that the Court order the State to “adopt rehabilitation measures for the benefit of the victim’s next of kin, [which measures] must necessarily include psychological and medical rehabilitation measures.”

208. Moreover, the representatives stated that “[t]here is no denying the profound pain that the execution of Mrs. Blanca Jeannette Kawas has caused to her next of kin, in addition to the fact that no justice has been served in over thirteen years.” Accordingly, they asked that the Court order the State “to provide free-of-charge psychological care to such next of kin of Mrs. Blanca Jeannette Kawas who may so request[, ...] [which] measure shall include the cost of any medication prescribed, such that the next of kin [...] are not forced to incur further monetary costs [and that such] care sh[all] be personalized and fit the needs of each beneficiary.”

209. Based on the damage sustained by the next of kin of Mrs. Blanca Jeannette Kawas-Fernández, as established in Chapter VIII of this Judgment, the Court finds it appropriate to order the State to immediately provide free-of-charge adequate and effective psychological and/or psychiatric care, via its specialized health institutions, to such of the next of kin the Court has declared victims as may so request. Such treatment must be provided by personnel and institutions specialized in the disorders and illnesses suffered by such people as a result of the facts of this case. Said treatment is to begin when the beneficiaries so request; the beneficiaries shall have a period of two years to seek the treatment as from the date of notice of this Judgment. Furthermore, said treatment is to be provided for as long as necessary and shall include the supply of any medication which may be required; it shall also account for the sufferings of each beneficiary in connection with the facts of the instant case, as determined through a personal evaluation. The State shall report on such steps and on the actual provision of treatment as established in paragraph 226 *infra*.

5) Other reparations sought

210. The Commission requested the Court to order Honduras “to adopt, as a priority measure, a policy intended to root out violence against natural resources advocates, including preventive and protective measures,” and “to adopt a public policy to fight impunity in cases of violations of the human rights of human rights advocates.”

211. In turn, the representatives asked the Court to call upon the State to implement a “public policy intended to protect human rights advocates, including, among other things, ‘[e]ducation and publicity activities for all State agents, society in general and the media, to create awareness in society regarding the importance and value of the work of human rights advocates[;]’ ‘[e]ffective measures to protect the life and physical integrity of those human rights advocates who have been threatened,’ [and...] ‘fight against impunity in connection with violations of the human rights of human rights advocates.’”

212. It has been established in this Judgment that the murder of Mrs. Blanca Jeannette Kawas-Fernández was caused by her work as an environmentalist (*supra* para. 98). It has also been mentioned that, later on, other environmentalists were the targets of threats and

attacks or even killed as well (*supra* para. 69). In the course of the instant case, the State acknowledged the complex situation of those who devote themselves to defending the environment in that country (*supra* para. 98).

213. The Court appreciates the organization of the Group for the Investigation of Environmental Activists' Deaths ("*Grupo de Investigación para las Muertes de Ambientalistas*"), attached to the Secretary of State, Security Office, in response to the acts of violence perpetrated against that group (*supra* para. 70). In that regard, it reiterates that the threats and attempts against the integrity and life of human right supporters and impunity in this type of events are particularly serious in a democratic society. In accordance with the general obligation to respect and guarantee human rights enshrined in Article 1(1) of the Convention, the State has a duty to adopt legislative, administrative and judicial measures, or to fulfill those already in place, guaranteeing the free performance of environmental advocacy activities; the instant protection of environmental activists facing danger or threats as a result of their work; and the instant, responsible and effective investigation of any acts endangering the life or integrity of environmentalists on account of their work.

214. In this vein, and as a way to contribute to avoiding the recurrence of facts such as those of the instant case, the Court finds it appropriate to order the State to carry out a national campaign to create awareness and sensitivity regarding the importance of environmentalists' work in Honduras and their contribution to the protection of human rights, targeting security officials, agents of the justice system and the general population. For such purpose, the State shall have a period not to exceed two years as from the date of notice of this Judgment.

215. For such purpose, it shall report to the Court, in the terms of paragraph 226 *infra*, on the steps taken for this and the progress, if any, made in its execution.

E) Costs and Expenses

216. The Inter-American Commission requested the Court "to order the State of Honduras to pay such necessary and reasonable costs and expenses as may be duly proven to have been incurred so far or in the future in the processing of this case domestically and before the Inter-American System of Human Rights."

217. Initially, the representatives requested "[p]ayment to the next of kin of Mrs. Jeannette Kawas and the organizations involved in the proceedings (CEJIL and ERIC), as appropriate, of the costs and expenses incurred on account of the domestic proceedings as well as the proceedings before the Inter-American Commission and this [...] Court." However, later on they reported that "ERIC [had] waive[d] such right."²³³ As regards the expenses incurred by CEJIL in its capacity as a representative, the amount sought is "USD\$ 11,546.77" [eleven thousand five hundred and forty-six United States dollars and seventy-seven cents], on account of traveling, postal, telephone, and fax expenses and supplies. Likewise, in their brief containing pleadings and motions, the representatives asked the Court to order the State to bear "future expenses" relating to the remaining procedures in the processing of this case before the Court; accordingly, in their final written arguments

²³³ Cf. Letter of waiver of costs and expenses incurred by the Reflection, Investigation and Communication Team (ERIC) in connection with these proceedings (record of appendixes to the brief of requests and arguments, appendix R, folio 1838).

they requested payment of the expenses incurred on account of their trip to the City of Mexico to attend the public hearing of the instant case, as well as accommodation expenses and per diem for the attorneys, one expert witness, two witnesses and Mrs. Selsa Damaris Watt-Kawas, the daughter of the deceased victim. The total amount sought by the representatives on account of such expenses equals USD\$ 8,465.48 [eight thousand four hundred and sixty-five United States dollars and forty-eight cents]. The total expenses requested by the representatives amount to USD\$ 20,012.25 (twenty thousand twelve United States dollars and twenty-five cents). The representative specifically noted that "it has acted as representative of the victim[s] [...] since the initial petition was filed with the Inter-American Commission in January 2003."

218. In its answer to the application, the State agreed to pay "such necessary and reasonable [costs and expenses] as may be duly proven to have been incurred so far or in the future in the processing of this case domestically and before the Inter-American Human Rights System."

219. Based on the vouchers for expenditures provided by the representatives, the Court notes that some of them bear no connection to the instant case,²³⁴ with others relating not exclusively to expenses incurred in relation to this case.²³⁵ The Court verifies that, considering the foregoing, the expenditures proven by the representatives total US \$15,695.00 [fifteen thousand six hundred and ninety-five United States dollars], related to traveling and commuting expenses to: the Inter-American Commission, in connection with the filing of the application, hearing and proceedings in the instant case; Honduras, in connection with various steps in the processing of this case; and the city of Mexico, to attend the hearing held before the Court in the instant case (*supra* para. 9). The Court considers it reasonable to add the amount corresponding to the proportional expenditures made not exclusively for the processing of the instant case.

220. Accordingly, the Court has decided to equitably set at US \$19,000.00 [nineteen thousand United States dollars] the amount due on account of expenses incurred during the processing of this case before the organs of the Inter-American System. Such amount shall be paid to Mr. Jacobo Kawas-Fernández, who shall turn over the appropriate amounts to the representatives. Such amount is inclusive of future expenses which the next of kin of Blanca Jeannette Kawas-Fernández may incur domestically or at the stage of monitoring

²³⁴ Cf. statement of advance payment of traveling expenses, dated November 24, 2006, for the trip to Honduras intended to follow up on the enforcement of the judgments rendered against Juan Humberto Sánchez, Alfredo López and Servellón García (record of appendixes to the brief of requests and arguments, appendix Q, folio 1822).

²³⁵ Cf. Statement of advance payment of traveling expenses dated November 24, 2006, for the trip to Honduras to follow up on the cases of "J. Kawas, C. Escaleras and C. Luna and misc. training" (record of appendixes to the brief of requests and arguments, appendix Q, folio 1823); statement of advance payment of traveling expenses dated February 26, 2007, for the trip to Honduras "in preparation for the Merits hearing in the case of Oscar Daniel Medina, meeting with the next of kin of Carlos Escaleras, Jeannette Kawas, Cerrito Lindo, MAO, reflection seminars with environment organizations, litigant organizations and HIV organizations" (record of appendixes to the brief of requests and arguments, appendix Q, folio 1831); CEJIL, Application for advance payment of traveling expenses for the European Community Project trip to Honduras, of March 2003 (record of appendixes to the brief of requests and arguments, appendix Q, folio 1820); statement of advance payment of traveling expenses for the Germany Project trip to Honduras, dated December 4, 2006 (record of appendixes to the brief of requests and arguments, appendix Q, folio 1825); and statement of advance payment of traveling expenses for the Embassy of Germany Project trip to Honduras, to contact journalists reporting on the subject of human rights, to report to CEJIL and to publicize the cases, dated February 19, 2007 (record of appendixes to the brief of requests and arguments, appendix Q, folio 1833).

compliance with this Judgment. The State shall pay this amount due on account of costs and expenses within a one-year period as from the date of notice of this Judgment.

F) Method of compliance with ordered payments

221. The payment of the compensations set forth herein will be made directly to the individuals specified in this Judgment (*supra* paras. 171 to 173, 178, 184 and 185). As regards the reimbursement of costs and expenses, payment will be made directly to Mr. Jacobo Kawas-Fernández, in accordance with the provisions of this Judgment (*supra* para. 220). In the case of the beneficiaries who die before receiving the corresponding compensation, payment thereof will be made to their successors, pursuant to applicable domestic law.

222. The State must fulfill its obligations through payment in United States dollars or an equivalent amount in the legal tender of Honduras, applying to that effect the exchange rate in force in the market of New York, United States of America, on the day prior to the date of payment.

223. If due to reasons attributable to the beneficiary or its successors, respectively, it is not possible for the latter to receive such payment within the specified term, the State shall deposit the corresponding amounts to their name in an account or through a certificate of deposit with a financial institution from Honduras, in United States dollars and subject to the most favorable financial conditions allowed by bank and legal practice. If after 10 years such compensation has not been claimed, the corresponding amounts will be returned to the State plus any interest accrued.

224. The amounts granted by way of compensation and reimbursement of costs and expenses through this Judgment must be delivered to the individuals specified above (*supra* para. 221) in full in accordance with the provisions of this Judgment, subject to no reduction as a result of potential tax burdens.

225. In the event of failure by the State to make such payment, the State shall pay interest on the pertaining amount, calculated on the basis of the default bank interest in force in Honduras.

226. Pursuant to its common practice, the Court reserves its right under its powers and Article 65 of the American Convention to supervise full compliance with this Judgment. The case will be deemed closed once the State has fully honored the orders contained in this Judgment. Within a term of one year following notice of this Judgment, the State shall submit to the Court a report on the measures adopted to comply with this Judgment.

XI

OPERATIVE PARAGRAPHS

227. Now, therefore,

THE COURT

DECLARES:

Unanimously that:

1. It accepts the State's partial acknowledgment of international responsibility, in accordance with paragraphs 31 to 34 of this Judgment, and holds that there was a violation of the rights to fair trial and judicial protection, as enshrined in Articles 8(1) and 25(1) of the American Convention on Human Rights, respectively, in connection with the general obligation to respect and guarantee the rights laid down in Article 1(1) thereof, to the detriment of Jacobo Roberto Kawas-Cury, Blanca Fernández, Selsa Damaris Watt-Kawas, Jaime Alejandro Watt-Kawas, Jacobo Roberto Kawas-Fernández, Jorge Jesús Kawas-Fernández and Carmen Marilena Kawas-Fernández, in the terms of paragraphs 117 to 119 of this Judgment.

2. The State violated the right to life enshrined in Article 4(1) of the American Convention on Human Rights, in connection with the obligation to respect and guarantee laid down in Article 1(1) thereof, to the detriment of Blanca Jeannette Kawas-Fernández, in accordance with paragraphs 72 to 108 of this Judgment.

3. The State violated the right to humane treatment enshrined in Article 5(1) of the American Convention on Human Rights, in connection with Article 1(1) thereof, to the detriment of Jacobo Roberto Kawas-Cury, Blanca Fernández, Selsa Damaris Watt-Kawas, Jaime Alejandro Watt-Kawas, Jacobo Roberto Kawas-Fernández, Jorge Jesús Kawas-Fernández and Carmen Marilena Kawas-Fernández, in accordance with paragraphs 131 to 139 of this Judgment.

4. The State violated the right to freedom of association recognized in Article 16(1) of the American Convention on Human Rights, in connection with Article 1(1) thereof, to the detriment of Mrs. Blanca Jeannette Kawas-Fernández, in accordance with paragraphs 151 to 155 of this Judgment.

5. In accordance with paragraphs 122 and 122 of this Judgment, a State's failure to comply with its duty to adopt domestic measures under Article 2 of the American Convention has not been established.

6. The State did not violate the right to humane treatment of Jacobo Roberto Kawas-Cury, Blanca Fernández, Selsa Damaris Watt-Kawas, Jaime Alejandro Watt-Kawas, Jacobo Roberto Kawas-Fernández, Jorge Jesús Kawas-Fernández and Carmen Marilena Kawas-Fernández, recognized in Article 5(2) of the American Convention on Human Rights, in accordance with paragraph 139 of this Judgment.

AND DECIDES,

Unanimously, that:

7. This judgment constitutes *per se* a form of reparation.

8. The State shall pay to Blanca Fernández, Selsa Damaris Watt-Kawas, Jaime Alejandro Watt-Kawas, Jacobo Roberto Kawas-Fernández, Jorge Jesús Kawas-Fernández and Carmen Marilena Kawas-Fernández, the sums set forth in paragraphs 171 to 173, 178, 184, 185 and 220 of this Judgment on account of compensation for pecuniary and non-pecuniary damage and reimbursement of costs and expenses, as applicable, within a period of one year as from the date of notice of this Judgment, in accordance with paragraphs 221 to 225 hereof.

9. The State shall carry out or initiate the required criminal proceedings concerning the facts that gave rise to the violations in the instant case, completing them as legally prescribed within a reasonable period of time, in accordance with paragraphs 189 to 195 of this Judgment.

10. The State shall make a one-time publication in the Official Gazette and in a newspaper of major national circulation of paragraphs 1 to 8 of Chapter I, 17 to 35 of Chapter V, 45 to 155 of Chapters VII, VIII and IX, and 189 to 195 of Chapter X of this Judgment, the relevant footnotes excluded, and the operative paragraphs hereof, within a period of six months of notice of this Judgment, in accordance with paragraph 199 hereof.

11. The State shall have a period of one year to carry out a public acknowledgement of international responsibility, in accordance with paragraph 202 of this Judgment.

12. The State shall have a period of two years to construct a monument in memoriam of Blanca Jeannette Kawas-Fernández, and to mount up signs at the national park named after her, in accordance with paragraph 206 of this Judgment.

13. The State shall immediately and for as long as may be necessary provide free-of-charge psychological and/or psychiatric care to Blanca Fernández, Selsa Damaris Watt-Kawas, Jaime Alejandro Watt-Kawas, Jacobo Roberto Kawas-Fernández, Jorge Jesús Kawas-Fernández and Carmen Marilena Kawas-Fernández, should they so request, in accordance with paragraph 209 of this Judgment.

14. The State shall have a period of two years to carry out a national awareness and sensitivity campaign regarding the importance of the work performed by environmentalists in Honduras and their contribution to the defense of human rights, in accordance with paragraph 214 of this Judgment.

15. It shall monitor full compliance with this Judgment and shall consider the instant case closed upon full compliance by the State with the provisions hereof, in accordance with paragraph 226 of this Judgment.

Judge García-Ramírez presented to the Court his Separate Opinion, which has been attached to this Judgment. Judge García-Sayán adhered to the Opinion of Judge García-Ramírez.

Done in Spanish and English, the Spanish text being authentic, in Santo Domingo, Dominican Republic.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Leo Valladares-Lanza
Judge *ad hoc*

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary

SEPARATE OPINION OF JUDGE SERGIO GARCÍA-RAMÍREZ ON THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE *CASE OF KAWAS-FERNÁNDEZ V. HONDURAS*, OF APRIL 3, 2009

1. In the judgment rendered in the *Case of Kawas-Fernández v. Honduras* by the Inter-American Court of Human Rights on April 3, 2009, the Court held that there was a violation of Article 4 (Right to life) in connection with Article 1(1) of the American Convention on Human Rights. I agree on such finding, which was made unanimously, and add my opinion explaining my own reasoning which, as I said, is concurrent with that of my colleagues as to the fundamental finding made in the Judgment.

2. To me, it is clear that the State failed to comply with its duty to investigate the facts surrounding the deprivation of the victim's life. Solid evidence has established the mistakes, misplacements, delays and insufficiencies in the investigation, which evidences the violation of the State's duty of guarantee, in the terms of the judgments of the Inter-American Court. Hence the violation of Articles 4 and 1(1) of the Pact of San José.

EVIDENCE AND JUDGMENT

3. That said, I find that some considerations regarding the evidence, which is a key subject in the proceedings and a topic of constant occupation for the Inter-American Court, are in order. Essentially, the trial is an evidentiary exercise that will lead – based on solid grounds – to the Court's decision.

4. It is my view that a judge hearing and determining a case involving human rights violations must use utmost care in the analysis of the available evidence to establish the existence of certain conduct by action or omission (attributable to State agents or third parties whose behavior is attributable to the State) and the link between the conduct and the result that entails a human rights violation. It is based on such evidence that the adjudication will be made.

5. I agree that, considering its jurisdiction *ratione materiae* and its human rights protection mission, the Inter-American Court should not mechanically adopt the criteria for the admission and assessing of evidence which prevail in the domestic legal system. Indeed, it is not entrusted with a criminal function and it may and usually does more freely accept and analyze that evidence which is offered to it or which it orders on its own initiative.

6. However, the above does not mean that the Court actually tones down or reduces the evidentiary requirements which, along with the relevant logical and legal reasoning, will provide the foundation for the findings on the facts constituting violations of fundamental rights, the international responsibility of the State and the legal consequences stemming from both. The Court itself – a court of Law – constantly refers to the rules of sound judgment that guide its evidentiary assessments.

7. My experience on this subject is no different from that of any other judge facing the heavy responsibility of analyzing facts which are not always apparent and sufficiently established via conclusive evidence, and making serious findings based on the properly assessed available evidence. The judge will thus find it necessary to address the doubts,

which will naturally arise in the course of the examination. The solution to these dilemmas lies with the evidence: it is only through the evidence that such doubt is quelled.

8. By evidence, I naturally mean means of conviction - I deliberately use this word: conviction – sufficient to persuade the judge passing a judgment of conviction: “sufficient evidence.” I am not talking about a criminal conviction; just conviction that is explained by the – “convincing” – verification of certain unlawful facts, which are the result of the – also verified – actions of a given agent. Obviously enough, I do not expect all the facts at issue in a case to be established through official, unquestionable documents and univocal and reliable testimony, or irrefutable expert opinions. Doing so would be childish. I accept the possibility and efficacy of indirect means of evidence, provided, however, that they overcome the – often imprecise and elusive – line separating sufficient evidence from those data which, by themselves, do not possess this essential quality.

9. Naturally, conviction is a strictly personal matter. I acknowledge the fact that each person may arrive at their own conclusions with full intellectual probity and a completely clean conscience, and that these deserve as much respect and consideration as is afforded to contrary conclusions. A difference of opinion does not entail reproach, as noted in all of my separate opinions. Other than that, I have already said that I agree that there was a violation of Articles 4 and 1(1) of the Convention. The insufficiency of the evidence concerning a given point in the alleged facts is precisely that: insufficiency. It is not - not even by a long shot – a clearing of the allegations. It has not been so in the instant case.

PRESERVATION OF THE ENVIRONMENT

10. The Inter-American Court has categorically and constantly highlighted the special duty of the State when it comes to human rights defenders. Such persons are, just like the State itself – and so I have repeatedly noted – central players in the Inter-American Human Rights Systems, the operation of which is largely dependent on the progress made in such protection in the countries of the Americas and the expansion of the human rights culture.

11. I must further note that the violation of the duty of guarantee in this case – in which the right to life was violated – runs counter to the general protection of those who devote their life and work to the preservation of the environment, a service that reaches well beyond the individual right of one or a few persons: it concerns and affects us all. Such devotion has now become evident, since the victim was a recognized environmentalist who had faced opposition and adversity because of her being such.

12. Any actions and omissions that directly affect those who act in this context also intimidate others who are engaged in similar activities. Therefore, they create individual and social discouragement, causing serious damage to the community as a whole. The position of the Court on this subject is, moreover, in line with the repeated requirement that special protection be provided to persons engaged in the defense of human rights. Preservation of the environment, the integrity of which is a right of all, gravitates in that direction and calls for protection.

REASONABLE TIME

13. On the other hand, I would like to address the repetition, in this Judgment, of something which has meant a step forward in the Inter-American Court's case law. I am talking about the inclusion (as seen in paragraph 112) of a piece of information for the analysis regarding the reasonable time period: the "the impairment to the legal situation of the person involved in the proceedings," an element which was previously included in the judgment rendered in the *Case of Valle-Jaramillo et al. v Colombia* (para. 155).

14. In its analysis, the Court has often addressed the "reasonable time" to comply with an obligation or ensure the protection of a right. For such purpose, it has resorted to certain elements taken from the case law of the European Court, namely: the complexity of the matter, the procedural activity of the interested party, and the conduct of the judicial authorities. The reasonable nature of the time elapsed, *i.e.* the reasonableness of the time period in question, has been evaluated in the light of such factors or references.

15. In the judgments rendered in the cases of *Valle-Jaramillo and Kawas-Fernández* we can find – alongside the aforementioned data – the assessment of the weight or influence of the lapse of time on the legal situation of the person involved in the proceedings (or in a procedure, generally speaking) the duration of which gives rise to the discussion we are now dealing with. It is evident that the key lies not in adding "conditions" or "requirements" to the assessment of the time period but in calling the tribunal's attention to other data that may contribute to a better analysis of the matter.

16. In the judgment rendered in the *Case of Valle-Jaramillo*, the Court reiterated "that three elements must be taken into account in order to determine whether the time is reasonable: a) the complexity of the matter, b) the procedural activity of the interested party, and c) the conduct of the judicial authorities;" and then added: "*In addition, the Court finds it pertinent to clarify that, in this analysis of reasonableness, the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it must be taken into account; bearing in mind, among other elements, the matter in dispute. If the passage of time has a relevant impact on the judicial situation of the individual, the proceedings should be carried out more promptly so that the case is decided as soon as possible*" (para. 155) (emphasis added).

17. Clearly, however, in certain cases no in-depth analysis of the fourth element will be necessary, just like in other cases it was and is not necessary to analyze each of the three remaining elements. The matters submitted to the Court's decision are presented and adjudicated based on their own characteristics. It is those characteristics which will point the court in the direction of a more exhaustive or less detailed examination of each of the points of reference contributed by the European case law, as well as of the one recently added by the Inter-American decisions.

18. It is, in my view, plausible that the Court has made progress in the examination of this subject, as per its own experience and reasoning, thereby expanding the framework contributed by the European case law. The new inclusion does not impair or darken; on the contrary, it improves and favors the analysis of judicable cases and the adoption of relevant definitions. The Inter-American Court has come a long way in the enrichment of international case law, sometimes overcoming obstacles and dispelling reluctances, and it will certainly walk a long way in the future as well.

19. I cannot fail to mention the fact that, in certain separate opinions, I have for some time now dealt with this "fourth element" of assessment, and I will also approvingly make reference to certain legal authors who have addressed the same subject. So is expressly

noted, for instance, by judge Cecilia Medina-Quiroga when analyzing the reasonable time period (cf. *La Convención Americana: teoría y jurisprudencia. Vida, integridad personal, libertad personal, debido proceso y recurso judicial* (Universidad de Chile, Facultad de Derecho, Centro de Derechos Humanos, San José, C.R., 2003, p. 311).

20. As far as my opinion goes, I will point out that in my separate opinion on the judgment rendered in the *Case of López-Alvarez v Honduras*, of February 1, 2006 – which I addressed in my opinion in the *Case of Valle-Jaramillo* – I tried to characterize the nature and scope of the elements of the reasonable time period as taken from the European case law, and noted the convenience of “expand[ing] the analysis of the reasonable time and examin[ing] the possibility of incorporating other elements that merited analysis into this concept – in order to assess respect for or failure to respect due process.”

21. I maintained as follows: “It seems possible that the complexity of the matter that motivates the process, the behavior of the interested party – in this case, the defendant – and the acts of the authority may not be enough to provide a convincing conclusion of the undue delay, that violates or puts the judicial rights of the subject in grave danger. Thus the appropriateness, in my opinion, of exploring other elements that complement, but do not substitute them, for the determination of a fact - the violation of the reasonable time - for which there are no quantitative universally-applicable boundaries.”

22. Then I mentioned “a possible fourth element to be considered in estimating reasonable time,” what I called the ‘*actual impairment of an individual's rights and obligations caused by the proceedings – that is, his judicial situation.*’ “It is possible that the latter could have little relevance on this situation; if this is not so, that is, if the relevance increases, until it is intense, it would be necessary, for the sake of justice and security, both seriously threatened, that the process be more diligent so that the subject's situation, which has begun to seriously affect his life, may be decided in a short time – ‘reasonable time’. The impairment must be real, not simply possible or probable, eventual or remote.”

23. “At times, when weighing harm, the time elapsed is irrelevant; in others, it is very detrimental to the victim. Consequently, the other elements used to assess reasonableness – complexity of the matter and conduct of authorities and private individuals – should also be examined in light of the prejudice that is being caused to the victim. Time does not elapse equally for everyone, and the elements usually taken into consideration to establish the reasonableness of time do not affect everyone in the same way (...)” I again addressed this subject in my opinions on the judgments rendered in the cases of *Sawhoyamaxa v Paraguay*, of March 28, 2006, and *Ituango Massacres v Colombia*, of July 1, 2006.

24. Then, just like I am doing here, I stressed that: “it is not my purpose to replace the elements of traditional legal doctrine and concentrate all the consequences of measuring reasonable time on the harm caused; on no account. Nor have I suggested that a lack of appreciable harm legitimates the passage of time, whatsoever the length, and absolves the State of responsibility as regards due process; on no account. I am merely suggesting the pertinence of looking at the traditional elements of measurement also – and only, also – from the optic or the perspective of the actual harm that the passage of time causes to the victim. This constitutes an additional factor in the assessment, which should be combined with the other factors considered to measure the reasonableness of the elapsed time.

Sergio García-Ramírez

Judge

Pablo Saavedra-Alessandri
Secretary

Judge García-Sayán adhered to this Opinion of Judge Sergio García-Ramírez.