

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF LUNA LÓPEZ v. HONDURAS

**JUDGMENT OF OCTOBER 10, 2013
(Merits, Reparations and Costs)**

In the case of *Luna López*,

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

Diego García-Sayán, President;
Manuel E. Ventura Robles, Vice-President;
Alberto Pérez, Judge;
Eduardo Vio Grossi, Judge;
Roberto F. Caldas, Judge;
Humberto Antonio Sierra Porto, Judge; and
Eduardo Ferrer Mac-Gregor Poisot, Judge;

also present,

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

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, “the Convention” or “the American Convention”) and Articles 31, 32, 62, 63, 64, 65 and 67 of the Court’s Rules of Procedure (hereinafter, “the Rules of Procedure”), delivers this Judgment, which is structured as follows:

CASE OF LUNA LÓPEZ v. HONDURAS

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I

INTRODUCTION TO THE CASE AND PURPOSE OF THE DISPUTE

1. *The case before the Court.* On November 10, 2011, the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court the case of "Carlos Antonio Luna López" (hereinafter, "submission brief") against the Republic of Honduras (hereinafter, "the State" or "Honduras"), indicating that Carlos Antonio Luna López (hereinafter, "Carlos Luna López" or "Mr. Luna López"), a human rights advocate and member of the city council of Catacamas, Olancho Province, Honduras, was murdered on May 18, 1998, as he was leaving a meeting in the Mayor's Office of Catacamas. In response to this incident, the competent authorities did not take any immediate steps to protect the crime scene or to conduct an autopsy. Subsequently a process was opened against the perpetrators and instigators of the crime. During the proceedings one of the material authors was prosecuted; he was later murdered in a maximum security prison after indicating that he feared for his life for having named several of the intellectual authors of the crime. Moreover, a number of witnesses were subjected to harassment and threats during the proceedings; several judges even excused themselves during the process. The State did not open an investigation into the evidence indicating the involvement of state officials. During the public hearing in this case, the Court learned of the sentence imposed on another material author involved in the facts of the case.

2. *Proceedings before the Inter-American Commission.* The proceedings before the Commission were as follows:

- a) *Petition.* On January 13, 2003, the Team for Analysis, Investigation and Communication (ERIC, for its Spanish acronym) and the Center for Justice and International Law (CEJIL) presented the initial petition before the Commission;
- b) *Report on Admissibility.* On October 13, 2004, the Commission approved Report on Admissibility No. 63/04;¹
- c) *Report on Merits.* On July 22, 2011, the Commission approved the Report on Merits No. 100/11,² in compliance with Article 50 of the Convention (hereinafter, "Report on Merits" or "Report No. 100/11"), in which it reached a number of conclusions and made several recommendations to Honduras.

a. *Conclusions.* The Commission concluded that the State was responsible for the violation of the following rights recognized by the American Convention:

- i. the right to life (Article 4 of the Convention), in relation to Article 1(1) thereof, to the detriment of Carlos Luna López;
- ii. the right to a fair trial and judicial protection (Articles 8 and 25 of the Convention), in relation to Article 1(1) thereof, to the detriment of the family of Mr. Luna López, namely Mariana Lubina López, Rosa Margarita Valle Hernández, Carlos Antonio Luna Valle, Lubina Mariana Luna Valle, César Augusto Luna Valle, Allan Miguel Luna Valle, José Fredy Luna Valle and Roger Herminio Luna Valle;

¹ In this Report, the Commission declared petition No. 60/03 admissible with respect to the presumed violation of Articles 1(1), 4, 5(1), 5(2), 8(1), 23 and 25(1) of the American Convention. *Cf.* Report on Admissibility No. 63/04, P. 60-2003, Carlos Antonio Luna López, October 13, 2004 (File on the proceeding before the Commission, pages 3645 to 3652).

² Report on Merits No. 100/11, Case 12.472, Carlos Antonio Luna López *et al.* v. Honduras, July 22, 2011 (File on the proceeding before the Commission, pages 3873 to 3925).

- iii. the right to participate in government (Article 23 of the Convention), in relation to Article 1(1) thereof, to the detriment of Carlos Luna López.
 - iv. the right to humane treatment (Article 5(1) of the Convention), in relation to Article 1(1) thereof, to the detriment of the family of Mr. Luna López, namely Mariana Lubina López, Rosa Margarita Valle Hernández, Carlos Antonio Luna Valle, Lubina Mariana Luna Valle, César Augusto Luna Valle, Allan Miguel Luna Valle, José Fredy Luna Valle and Roger Herminio Luna Valle.
- b. *Recommendations.* Consequently, the Commission made a series of recommendations to the State:
- i. provide adequate reparation for the human rights violations declared in the Report on Merits in both material and moral aspects;
 - ii. conduct and complete an impartial and effective judicial investigation, in an expeditious manner, to establish the circumstances that resulted in the death of Mr. Luna López, identify all the persons involved in his death at the different decision-making and executive levels and impose the appropriate sanctions;
 - iii. order the corresponding administrative, disciplinary or legal measures in relation to the actions or omissions by state officials which contributed to a denial of justice and impunity in this case, and
 - iv. adopt legislative, institutional and legal measures in order to reduce the risks to which human rights defenders are exposed, when in situations of vulnerability. In this regard, the State should:
 1. strengthen its institutional capacity to combat the pattern of impunity in cases of threats and deaths of human rights defenders, through the formulation of investigation protocols that take into account the risks inherent to human rights work, and in particular the right to a healthy environment, leading to the sanction of those responsible and to appropriate reparation for the victims. Furthermore, the State must ensure that when public officials are involved in investigations on human rights violations, such investigations are conducted efficiently and independently;
 2. strengthen the mechanisms to effectively protect witnesses, victims and their families who are at risk as a result of their connection to the investigation, and
 3. develop appropriate and timely measures for institutional response to ensure effective protection for human rights advocates in situations of risk.
- d) *Notification to the State.* On August 10, 2011, the Report on Merits was notified to the State, which was granted a period of two months to report on compliance with the recommendations.
- e) *Extension.* On October 7, 2011, the State requested an extension of the deadline for compliance with the recommendations made in Report No. 100/11, which was granted by the Commission. Nevertheless, on October 20, 2011, the State presented its report to the Commission on its compliance with the aforementioned recommendations.
- f) *Submission to the Court.* On November 10, 2011, the Commission submitted the case to the Court in consideration of "the need to obtain justice for the victims, given the State's failure to comply with the recommendations. In this regard, the Commission point[ed] out that 13 years after the events, the Honduran State had still not conducted a diligent and effective investigation in the [facts], had not determined the responsibilities of the intellectual authors [...], nor had it opened an investigation into the clear evidence regarding the involvement of state officials." The Commission appointed Commissioner Felipe González and then Executive Secretary Santiago A. Canton as its delegates before the Court, and Elizabeth Abi-Mershed, Assistant Executive Secretary, Karla Quintana and Isabel Madariaga Cuneo, attorneys of the Executive Secretariat, as its legal advisors.
3. *Requests from the Inter-American Commission.* Based on the foregoing, the Commission asked the Court to declare the State's international responsibility for the violations of: a) Article 4 of the Convention, in relation to Article 1(1) thereof, to the

detriment of Carlos Luna López; b) Articles 8, 25 and 5(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of the family of Mr. Luna López, namely Mariana Lubina López, Rosa Margarita Valle Hernández, Carlos Antonio Luna Valle, Lubina Mariana Luna Valle, César Augusto Luna Valle, Allan Miguel Luna Valle, José Fredy Luna Valle and Roger Herminio Luna Valle, and c) Article 23 of the Convention in relation to Article 1(1) thereof, to the detriment of Carlos Luna López.

II PROCEEDINGS BEFORE THE COURT

4. *Notification to the State and the representatives.* The Commission's submission of the case was notified to the State and to the representatives on February 20, 2012.

5. *Brief of pleadings, motions and evidence.* On April 21, 2012, the representatives of the presumed victims submitted their brief of pleadings, motions and evidence (hereinafter, "brief of pleadings and motions") to the Court. They agreed with the legal claims made by the Commission.³ Finally, they asked the Court to order the State to adopt several measures of reparation and provide reimbursement for certain costs and expenses.

6. *Answer brief.* On August 3, 2012, the State presented its brief in response to the brief submitting the case and observations on the brief of pleadings and motions (hereinafter, "answer brief") to the Court. It appointed Ethel Deras Enamorado, Attorney General of the Republic, as its principal Agent and Ricardo Rodríguez, Assistant Attorney General of the Republic, as its Alternate Agent.

7. *Public hearing and additional evidence.* By means of an Order issued by the President of the Court on December 20, 2012, and the Court on January 31, 2013,⁴ the parties were summoned to a public hearing to present their final oral arguments and observations on the merits, reparations and costs and to receive the statements of César Luna Valle, presumed victim; Omar Menjivar Rosales and Adrián Octavio Rosales, witnesses, and the expert opinion of Juan Antonio Mejía Guerra. The public hearing took place on February 7, 2013, at the Court during its 98th Regular Period of Sessions.⁵ At the hearing, the statements of the persons summoned convened were received along with the final oral observations and arguments of the Commission, the presumed victims' representatives and the State, respectively. Subsequent to the hearing, the Court required the parties to present specific information and documentation for a better decision. Additionally, the statements requested by the President of the Court's Order of December 20, 2012, were received (*infra* para. 11).

³ In addition, the representatives alleged the violation of Article 5(1) (humane treatment) by the State to the detriment of Carlos Luna López (Merits file, pages 172 to 174).

⁴ *Cf. Case of Luna López v. Honduras.* Order of the President of the Inter-American Court of December 20, 2012. Available at: http://www.corteidh.or.cr/docs/asuntos/luna_20_12_12.pdf and *Cf. Case of Luna López v. Honduras.* Order of the Inter-American Court of January 31, 2013. Available at: http://www.corteidh.or.cr/docs/asuntos/lunalopez_31_01_13.pdf.

⁵ The following persons appeared at this hearing: a) for the Commission: Jose de Jesús Orozco Henríquez, Silvia Serrano Guzmán and Jorge H. Meza Flores; b) for the representatives of the alleged victims: Joaquín A. Mejía, Marcia Aguiluz, Alejandra Nuño and Paola Limón, and c) for the State of Honduras: Jair López Zúñiga and Sonia Gálvez.

8. *Final written arguments and observations.* On March 8, 2013, the State and the representatives submitted their final written briefs and the Commission presented its final written observations. The representatives and the State answered the Court's requests for information and documentation to facilitate adjudication.

III JURISDICTION

9. The Court has jurisdiction to hear this case under the terms of Article 62(3) of the Convention, given that Honduras has been a State Party to the Convention since September 8, 1977 and recognized the Court's binding jurisdiction on September 9, 1981.

IV EVIDENCE

10. Based on the provisions of Articles 46, 47, 50, 57 and 58 of the Court's Rules of Procedure as well as its case law regarding evidence and the assessment thereof,⁶ the Court shall now examine and assess the documentary evidence forwarded by the parties at different procedural stages, the affidavits rendered and the statements received at the public hearing and the evidence requested by the Court to facilitate adjudication of the case. In doing so, the Court shall adhere to the principles of sound judgment within the applicable legal framework.⁷

A. *Documentary, testimonial, and expert evidence*

11. The Court received several documents presented as evidence by the Inter-American Commission, the representatives and the State, attached to their main briefs (*supra* paras. 4 to 6 and 8). The Court also received the statements of the following presumed victims rendered by affidavit:⁸ Rosa Margarita Valle Hernández, Carlos Antonio Luna Valle, Mariana Luna Valle, Allan Luna Valle, José Luna Valle and Roger Luna Valle; and of the expert witnesses Michael Reed-Hurtado,⁹ Luis Enrique Eguren¹⁰ and María Cecilia Kirby Villa.¹¹ In

⁶ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of Suárez Peralta v. Ecuador. Preliminary Exceptions, Merits, Reparations and Costs.* Judgment of May 21, 2013. Series C No. 261, para. 30.

⁷ Cf. *Case of the "White Van" (Paniagua Morales et al.)*, *supra*, para. 76 and *Case of Suárez Peralta*, *supra*, para. 30.

⁸ Affidavits rendered by the presumed victims Rosa Margarita Valle Hernández and Carlos Antonio Luna Valle regarding the facts of the case, the threats received and the damage and effects suffered by them and their family following the death of Carlos Antonio Luna López. Affidavits rendered by the alleged victims Mariana Luna Valle, Allan Luna Valle, José Luna Valle, and Roger Luna Valle with respect to the facts of the case and the damages and impacts suffered by them and their families.

⁹ Affidavit rendered by the expert Michael Reed-Hurtado on international standards concerning the State's duty to prevent cases of threats against defenders and its duty to combat the pattern of impunity of actions that affect them, through the application of investigation protocols that take into account the risks inherent to the work of human rights defenders.

¹⁰ Affidavit rendered by the expert Luis Enrique Eguren regarding the basic and essential standards that should be considered in establishing a global policy for the protection of human rights defenders and other countries' best practices for this type of policy.

¹¹ The representatives requested the substitution of the expert opinion of Mrs. Alicia Neuburger, indicated in the brief of pleadings and motions, for that of Mrs. María Cecilia Kirby Villa. In the absence of any objection by the State, the Court approved the request. Cf. Order of the Inter-American Court of Human Rights on January 31, 2013, Ruling of the Inter-American Court of January 31, 2013, Resolution 2. Affidavit rendered by the expert witness María Cecilia Kirby Villa regarding the effects suffered by Rosa Margarita Valle Hernández, Carlos Antonio Luna Valle, César Augusto Luna Valle, Lubina Mariana Luna Valle, Allan Miguel Luna Valle, José Fredy Luna Valle and Roger Herminia

addition the Court authorized the inclusion of the expert opinion of Clarisa Vega, a former Special Environmental Prosecutor, rendered in the *Case of Kawas Fernández v. Honduras*, and the documentation presented before the Court by this expert in support of her assessment.¹² Regarding the evidence rendered at the public hearing, the Court heard the statements of the presumed victim, Mr. César Augusto Luna Valle;¹³ of two witnesses, Messrs. Omar Menjívar Rosales¹⁴ and Adrián Octavio Rosales,¹⁵ and the expert witness, Mr. Juan Antonio Mejía Guerra¹⁶ (*supra* para. 7).

B. Admission of the evidence

B. 1. Admission of the documentary evidence and the testimony of the presumed victims

12. In this case, as in others, the Court admits those documents forwarded by the parties at the appropriate procedural stage (*supra* paras. 4 to 6), which have not been disputed or challenged, or their authenticity questioned.¹⁷ The documents that were requested by the Court and submitted by the parties after the public hearing¹⁸ have been incorporated into the body of evidence in accordance with Article 58 of the Court's Rules of Procedure.

13. Regarding the report on the investigation conducted by the Honduran Criminal Investigation Division, requested by the Court at the public hearing and submitted by the State together with its final written arguments, the representatives argued that they did not have an opportunity to perform an exhaustive analysis of the report, and asked the Court to "remove from the body of evidence those documents referring to evidence that does not form part of the factual framework established by the [...] Commission." In this respect, the Court reiterated its jurisprudence that a contentious case is fundamentally a dispute between the State and a petitioner or a presumed victim. Both of them and the State can

Luna Valle as a result of violations of their human rights, particularly the execution of Carlos Antonio Luna López. Furthermore, the State withdrew the opinion of the expert Mr. Nery Velázquez.

¹² Cf. *Case of Luna López v. Honduras*. Order of the President of the Court on December 20, 2012, *supra*, Considering para. 14.

¹³ Statement of César Augusto Luna Valle regarding the facts of the case, the efforts made at the domestic level to obtain justice, the threats received during the proceedings and the damages and effects suffered by him and his family.

¹⁴ Statement of Omar Menjívar Rosales, attorney and former Prosecutor assigned to the case of Carlos Antonio Luna López, with respect to the conduct of the investigation process, the obstacles faced in punishing all those responsible, the threats received by him and the irregularities that were committed to delay the proceedings and ensure the impunity of some of those responsible.

¹⁵ Statement of Adrián Octavio Rosales, Prosecutor of the Office of the Honduran Attorney General, with respect to the visit made by Messrs. Carlos Antonio Luna López and Jose Ángel Rosa Hernández to him; the manner in which they discussed the criminal trial in accordance with the 1984 Code of Criminal Procedures, and the progress made during his period in charge of the Public Prosecutor's Office to determine the criminal responsibility of those involved in the death of Mr. Carlos Antonio Luna López.

¹⁶ Statement of the expert Juan Antonio Mejía Guerra, Licentiate in Philosophy and Agronomy, regarding the context of risk, violence and impunity that affects human rights defenders in Honduras, including environmentalists from the 1990's until the present day.

¹⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Suárez Peralta*, *supra*, para. 32.

¹⁸ Memorandum from the Secretariat of the Inter-American Human Rights Court of February 22, 2013, requesting a copy of the police investigation file of the case referred to in file 1128, namely the Investigation Report of the Honduran Criminal Investigation Division, to facilitate adjudication. The State provided this along with its final brief of pleadings and attached a copy of the judgments delivered in the judicial proceedings against Messrs. Oscar Aurelio Rodríguez Molina, Ítalo Iván Lemus Sánchez, José Ángel Rosa Hernández and Jorge Adolfo Chávez for the death of Mr. Carlos Luna López.

refer to evidence that permits them to explain, contextualize, clarify or dismiss what has been mentioned in the Report on Merits or to respond to the claims made by the other party, based on their arguments and the evidence they offer to support these, without affecting procedural fairness or the principle of adversarial proceedings, given that the parties are granted procedural opportunities to respond to these arguments at all stages of the process.¹⁹

14. As to the newspaper articles²⁰ and audio-visual material²¹ submitted by the parties and the Commission along with their various briefs, the Court considers these may be assessed when they refer to well-known public facts or statements by State officials, or when they corroborate aspects related to the case. Thus, the Court decides to admit those newspaper articles that are complete, or at least those whose source and publication date can be verified, and shall assess them according to the body of evidence, the observations of the parties and the rules of sound judgment,²² and shall be examined in the corresponding paragraphs (*infra* Chap. V – Proven Facts).

15. Similarly, in a communication dated September 5, 2013, based on Article 58(b) of the Court's Rules of Procedures, the Court asked the State to forward specific information on: i) the investigations undertaken following the murder of Mr. Oscar Aurelio Rodríguez Molina; ii) the status of the execution of the arrest warrant against Mr. Ítalo Iván Lemus Santos, and iii) any procedure or mechanism for claiming the State's non-contractual responsibility to which the victims could have had recourse for the alleged lack of guarantees of the right to life of Mr. Carlos Luna. In this regard, on September 12, the State submitted the requested information and on September 24, the representatives and the Commission presented their respective observations. Subsequently, on October 1, 2013, the Court received the additional documentation from the State regarding the investigations into the murder of Mr. Oscar Aurelio Rodríguez Molina. On October 7, 2013, the representatives and the Commission submitted their observations on the additional documentation. In this regard, the representatives indicated, *inter alia*, that the submission

¹⁹ Cf. *Mutatis mutandis*, *Case of "Five Pensioners" v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Barrios Family v. Venezuela. Merits, Reparations and Costs*. Judgment of November 24, 2011, para. 32.

²⁰ Newspaper articles: a) articles published in the newspaper *El Heraldo* of March 7, 1998, entitled, "In Catacamas: Olancho, Members of the municipality testify against lumber merchants" (File of attachments to the Report on Merits, page 449); b) article published in the newspaper *El Heraldo* on March 7, 1998, entitled, "I will continue to report predators of the forest: Mayor of Catacamas" (File of attachments to the Report on Merits, page 450); c) article published in the newspaper *La Tribuna* on July 2, 2008, entitled, "Chango" Rosa was murdered to settle a personal score (File of attachments to the Report on Merits, pages 703 to 704); d) article published in the newspaper *La Tribuna* on May 19, 2008, entitled, "10 years after his death, the crime against Carlos Luna remains unpunished" (File of attachments to the Report on Merits, pages 706 to 707); e) article published in the newspaper *La Tribuna* on April 29, 2008, entitled, "Ítalo Iván pleads innocent and claims he did not know Luna" (File of attachments to the Report on Merits, pages 708 and 709); f) article published in the newspaper *La Tribuna* on April 29, 2008, entitled, "Deported from the US, the suspect in the death of Carlos Luna is returned" (File of attachments to the Report on Merits, pages 710 and 711); g) article published in the newspaper *La Tribuna* on May 21, 1998, entitled, "'No to the culture of death,' crowds demand at the burial of Carlos Luna" (File of attachments to the brief of pleadings and motions, page 4633); h) article published in the newspaper *La Tribuna* on June 13, 1998, entitled, "Crowd demands that Luna's death does not go unpunished," (File of attachments to the brief of pleadings and motions, page 4637); i) article published in the newspaper *El Periódico* on September 18, 1998, entitled, "Carlos Luna's family seeks justice" (File of attachments to the brief of pleadings and motions, page 4639), and j) article published in the newspaper *El Heraldo* on September 18, 1998, entitled, "Assistance sought for Flores to solve Luna's murder" (File of attachments to the brief of pleadings and motions, page 4641).

²¹ Transcript and audio of the interview with Carlos Luna López on the radio program, *Estamos a Tiempo* (File of attachments to the Merits Report, pages 452 and 453), and transcript and audio of the interview with Carlos Luna López on the program *Sucesos de la Voz de Olancho*, on the radio station *La Voz de Olancho* on April 17, 1998 (File of attachments to the Report on Merits, pages 454 to 457).

²² Cf. *Case of Velásquez Rodríguez. Merits, supra*, para. 146 and *Case of Suárez Peralta, supra*, para. 33.

of the State's evidence was extemporaneous. For its part, the Commission pointed out that the State's report corroborated the allegation of the lack of impetus in the investigation into the death of Oscar Aurelio Rodríguez. In view of the foregoing, only those documents and allegations submitted in response to the Court's questions will be admitted.²³

16. Finally, according to the Court's case law, the statements of the presumed victims rendered by affidavit and at the public hearing (*supra* para. 11) cannot be assessed in isolation, but rather within the body of the evidence in the case, given that they are useful only insofar as they provide additional information on the alleged violations and their consequences.²⁴

V PROVEN FACTS

A. *Situation of environmentalists in Honduras*

17. First of all, the Court takes note of the report submitted by the State to the United Nations Committee on Human Rights on February 21, 2005, according to which:²⁵

"in some cases the villagers that defend natural resources and the environment lose their lives (such as Janeth Kawas) when opposing the destruction or misappropriation of sites considered as the patrimony of all inhabitants for their scenic beauty and as their source of employment (such as *Bahía de Tela*), which offer relief to families through the provision of income and food. Carlos Luna is another martyr who lost his life while defending the forest resources of Olancho. Other local people who have attempted to exercise their right to freely use the country's natural wealth and resources (such as estuaries, natural lagoons or mangroves) have met a similar fate, when they got in the way of powerful economic interests (such as the 12 fishermen in the southern region of Honduras who were murdered between 1990 and 2001) and whose deaths remain unpunished."

18. Similarly, in the case of *Kawas Fernández v. Honduras*, the Court established that, "during the decade following the death of Blanca Jeannette Kawas Fernández, acts of aggression, threats and the executions of several people dedicated to the defense of the environment in Honduras²⁶ have been reported. In 1996, Carlos Escaleras, a community leader in the Valley of Aguán, was executed; in 1998 the environmental activist, Carlos Luna; in 2001, Carlos Flores, a community leader and environmentalist from Olancho, and

²³ Cf. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251, para. 23.

²⁴ Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Suárez Peralta, supra*, para. 37.

²⁵ United Nations Organization, Committee on Human Rights. *Report submitted by the State of Honduras under Article 40 of the Pact* of February 21, 2005, CCPR/C/HND/2005/1, document with the end date of April 26, 2005, para. 15 (file of attachments to the Report on Merits, page 224).

²⁶ *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, para. 69, footnote 78, which cites the documentation presented during the prosecution of that case, specifically: "the assessment rendered by Clarisa Vega Molina before the Inter-American Court [...]; Center for Human Rights and the Environment (CEDHA for its Spanish acronym), *The Human Cost of Defending the Planet. Violations of the Human Rights of Environmentalists in the Americas*, Report 2002-2003 [...]; Amnesty International, *Honduras: Murders of Environmental Activists in the Olancho Province*. February 2007, contents: AI 37/001/2007 [...]; Amnesty International. *Persecution and resistance. The experience of human rights defenders in Guatemala and Honduras*. August 2007, contents: AI AMR 02/001/2007 [...]; memorandum of May 22, 2008, signed by the Coordinator of the Public Prosecutor's Office, Juticalpa, Olancho [...]; copy of letter No. FEDH-575-2009 of July 2, 2008, signed by Coordinating Prosecutor of the Public Prosecutor's Office of Human Rights [...]"

in 2006, Heraldo Zúñiga and Roger Iván Cartagena, both members of the Olancho Environmental Movement (MAO for its Spanish acronym). From the information provided by the State, it is clear that people have been convicted of these crimes, though not all of those responsible have been captured nor have the intellectual authors been identified.”²⁷

19. During the public hearing in this case, the expert Juan Antonio Mejía Guerra stated that “[t]he environment in Honduras emerge[d] as a topic [...] of public interest beginning in the decade of [1980,] with the establishment of environmental organizations. The central issues were conservation, preservation, sustainable development and environmental education. The leaders of these environmental groups were usually [...] university-educated professionals [...] During the decade of [1990], however, a new type of environmental leader emerged, [that] no longer [was] professionals with university degrees, but rather [...] a community leader [...] motivated [by] the Agricultural Modernization Law, [that] privatize[d] the land, [...] increased deforestation of the forest resources [and] the presence [...] of certain mining corporations [...] with the new Mining Law approved in 1998[.]”²⁸

20. In this regard, the Court notes that between 1991 and 2011, at least 16 environmentalists were killed in Honduras, five of them between 1991 and 1998, before the death of Carlos Luna López and 10 occurring after his death, between 2001 and 2011.²⁹ It is worth pointing out that in the Olancho Province, subsequent to the death of Carlos Luna, eight more environmentalists were killed between 1998 and 2011. According to the testimony of expert Juan Antonio Mejía Guerra during the public hearing, these deaths “have in common the fact that they took place in places and among organizations and individuals who h[ad] direct confrontations with companies that had major economic interests either in the forests, the water, the land or the mines.”³⁰

21. Based on the foregoing, the Court confirms that at the time of the death of Mr. Luna López, environmentalists in Honduras faced a situation of particular risk, which grew worse in the years following his death and during the investigation of the events.

22. Furthermore, the Court notes that, in a report in 2006, Hina Jilani, the former special Representative of the UN Secretary-General on Human Rights Defenders, expressed her

²⁷ *Case of Kawas Fernández, supra*, para. 69.

²⁸ Cf. Expert testimony of Mr. Juan Antonio Mejía Guerra during the public hearing held on February 7, 2013, before the Inter-American Court of Human Rights. The expert provided, *inter alia*, the following documentary information: Frontline Defender. Honduras: Mr. Adalberto Figuero, human rights advocate, was murdered on May 14, 2010; Amnesty International Report 1995 – Honduras of January 1, 1995; Olancho Environmental Movement. Marching for life in Honduras, 2008, and Broad Front for Dignity and Justice. Juan de Jesús Figueroa murdered. Stop the harassment, threats and deaths of September 20, 2011. At the same time the expert referred to laws recently approved in Honduras related to forests, energy, mining and water issues.

²⁹ Cf. *Case of Kawas Fernández, supra*, para. 69, plus the documentation and expert testimony of Mr. Juan Antonio Mejía Guerra offered at the public hearing before the Court, *supra*. In this regard, the Court noted that the deaths of Vicente Matute in the Province of Francisco Morazán in 1991 (Attachments to the expert opinion, page 8727); Jeannette Kawas in the Province of Atlántida in 1995; Carlos Escaleras in the Province of Yoro in 1996 (*Case of Kawas Fernández, supra*, para. 69); Cándido Amador in the Province of Copán in 1997 (Attachments to the expert opinion, page 8770); Silvano Mejía in 1997 (Attachments to the expert opinion, page 8749); Carlos Antonio Luna López in Olancho Province in 1998; Carlos Roberto Flores in Olancho Province in 2001 (annexes to the expert opinion, page 8808); José Mauricio Hernández Cáceres in Olancho Province in 2002 (Attachments to the expert opinion, page 8724); Carlos Ortiz in Olancho Province in 2003 (Transcript of public hearing, page 58); Carlos Arturo Reyes in Olancho Province in 2003 (Attachments to the expert opinion, page 8827); Germán Antonio Rivas in the Province of Copán in 2003 (Attachments to the expert opinion, page 8827); Heraldo Zúñiga and Roger Iván Cartagena, in Olancho Province in 2006 (*Case of Kawas Fernández, supra*, para. 69); Humbario Bifarro in Olancho Province in 2007 (Transcript of the public hearing, page 58); Adalberto Figueroa in Olancho Province in 2010 (Attachments to the expert opinion, page 8723), and Juan Figueroa in the Province of Atlántida in 2011 (Attachments to the expert opinion, page 8963).

³⁰ Expert testimony of Mr. Juan Antonio Mejía Guerra at the public hearing before the Court, *supra*.

concern regarding the “violations of the right to life, security and to the physical and psychological integrity of human rights advocates in Honduras, particularly environmental activists and indigenous leaders defending rights in their communities.”³¹ Margaret Sekaggya, the Special Rapporteur on the status of human rights advocates, spoke out in this same spirit in her December 13, 2012, report on the mission to Honduras.³²

23. In 2007, in turn, the State created the “Group for the Investigation of Environmentalists’ Deaths,” attached to the Ministry of Security, which had exclusive responsibility for investigating cases related to deaths of the environmentalists.³³ The Court has no information regarding the period when this mechanism was operational.³⁴

B. Facts of the Case

B. 1. Carlos Luna López’s political actions and his defense of human rights and of the environment

24. Mr. Carlos Luna López was born on June 13, 1955, in city of La Ceiba in the Province of Atlántida, Honduras.³⁵ In 1982, he was an activist in several movements of the Liberal Party, while at the same time supporting local farmers’ groups in their struggle for land. In 1985, he became a congressional candidate for the Province of Olancho. However, at the end of this electoral process Mr. Luna López withdrew from political life until 1997. During this period, Mr. Luna López continued to support the Committee for the Defense of Human Rights in Honduras and the Visitación Padilla Women’s Peace Movement.³⁶

25. In 1997 Mr. Carlos Luna López took part in the general election as mayoral candidate of the Democratic Unification Party of the Municipality of Catacamas, in Olancho Province. As a result, he was elected to the post of Eighth Member of the City Council of Catacamas for the 1998-2002 period.³⁷

³¹ UN, Economic and Social Council. *Report submitted by Hina Jilani, Special Representative of the Secretary-General on Human Rights Defenders. Addendum. Compilation of advances in the area of human rights defenders*, E/CN.4/2006/95/Add.5, March 6, 2006, para. 724 (File of attachments to Merits Report, page 149).

³² UN, Human Rights Council. *Report by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*. Mission to Honduras, A/HRC/22/47Add.1, December 13, 2012, paras. 73 and 82, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2247Add.1_Spanish.PDF, in which the Rapporteur: “73. Observ[ed] with concern the level of violence with which they act against those using peaceful means to claim their economic, social and cultural rights, including rights over the land. [...] Many of them live in a state of constant fear. In addition, she received information on acts of violence specifically directed at community leaders by police officials and security guards contacted by private companies [...] 82. Cases of the defenders of human rights that protect natural resources (forests, lands, and water) have been registered and they have been repeatedly detained, beaten and in some cases killed because of their activities. Others who report environmental problems and inform people on their rights to the land and food have been considered as members of the resistance, guerrillas, terrorists, political opposition or delinquents.”

³³ *Cf. Case of Kawas Fernández, supra*, para. 70.

³⁴ This mechanism was assessed in the *Case of Kawas Fernández, supra*, para. 70. In this regard, the representatives indicated that it remained operational for a few months only and no longer exists (Merits file, page 206).

³⁵ *Cf. Erguidos Como Pinos. Memoria sobre la Construcción de la Conciencia Ambientalista* (Report) by the Committee of Families of the Detained-Disappeared in Honduras (COFADEH). Honduras, December, 2006 (File of attachments to the Report on Merits, page 326).

³⁶ *Cf. Erguidos Como Pinos, supra* (File of attachments to the Report on Merits, page 330).

³⁷ *Cf. Erguidos Como Pinos, supra* (File of attachments to the Report on Merits, page 331), and Credential of Carlos Antonio Luna López issued by the National Electoral Tribunal (File of attachments to the brief of pleadings and motions, page 4283).

26. On January 25, 1998, in a Special Session of the Catacamas Municipal Council, Mayor Alejandro Fredy Salgado Cardona (hereinafter, "Mayor Salgado") appointed Mr. Luna López to the Municipal Environmental Commission, with the recommendation that he review all the land titles of communal properties in the Municipality, the number of titles held by the Municipality and investigate the Municipality's upcoming lumber auctions.³⁸ In addition, on April 21, 1998, Mr. Luna López was appointed Head of the Catacamas Environmental Unit.³⁹

27. In his position as member of the Catacamas City Council and Head of its Environmental Unit, Mr. Luna López complained to the relevant judicial authorities and the media about alleged acts of corruption, illegal exploitation of the forest by the companies "PROFOFI," "IMARA" and "La Fosforera," and the use of "phantom cooperatives" known as the "Quebrada de Catacamas," for illegal forest exploitation.⁴⁰

B. 2. Threats suffered by Carlos Luna López and his family

28. On the night of February 26, 1998, Mr. José Ángel Rosa, a lumber merchant and rancher,⁴¹ threatened Mr. Luna López by pointing a gun to his head and firing into the air. The dispute took place following the accusations made by Carlos Luna López concerning problems with the extraction of lumber.⁴² That same day he called the Public Prosecutor to denounce this threat. On the basis of this complaint, a meeting took place in the Public Prosecutor's office in which Mr. Rosa apologized to Carlos Luna López and stated that at the

³⁸ Cf. Certified copy of Minutes No. 4 of the Special Session of the Catacamas Municipality on January 25, 1998, (File of attachments of the Report on Merits, page 404).

³⁹ Cf. Certified copy of Minutes No. 14 of the Regular Session of the Catacamas Municipality on April 21, 1998, (File of attachments of the Report on Merits, page 406) and testimony of Alejandro Fredy Salgado Cardona rendered on June 10, 1998 (File of attachments to final written arguments, page 9403).

⁴⁰ Cf. Complaint filed by Carlos Antonio Luna López before the Public Prosecutor on February 28, 1998, marked as No. 068-98 (File of attachments to the Report on Merits, pages 494 and 495); article published in the newspaper *El Heraldo* on March 7, 1998, *supra*; interview with Carlos Luna on the radio program *Estamos a Tiempo*, *supra*; interview on the program *Sucesos de la Voz de Olancho*, April 7, 1998, *supra*; affidavit rendered by Rosa Margarita Valle Hernández on January 21, 2013 (file on Merit, page 563); affidavit rendered by Carlos Antonio Luna Valle on January 21, 2013 (file on Merit, page 578) and testimony of Inés Verónica Mejía Herrera rendered on July 16, 1998 (File of attachments to the State's response, page 5029).

⁴¹ Cf. Witness testimonies rendered before the Catacamas Civil Court, specifically: statement of Henry Guillermo Bustillo rendered on August 6, 1998 (File of attachments to the State's response, page 5052); statement of Carlos Antonio Luna Valle rendered on August 26, 1998 (File of attachments to the State's response, page 5091); statement of María Teodora Ruiz Escoto rendered on November 30, 1998 (File of attachments to the State's response, page 5214); statement of Alejandro Fredy Salgado rendered on February 17, 2000 (File of attachments to the State's response, page 5311); statement of Manuel Antonio Pacheco rendered on April 5, 2000 (File of attachments to the State's response, page 5382) and statement of the defendant Jose Ángel Rosa rendered on October 1, 2002 (File of attachments to the State's response, page 5871).

⁴² Cf. Witness statements rendered before the Catacamas Civil Court, specifically: statement of Inés Verónica Mejía Herrera rendered on July 16, 1998 (File of attachments to the State's response, page 5029); statement of Deira Idhelin Rodríguez Cruz rendered on July 9, 1998 (File of attachments to the State's response, page 5049); statement of Henry Guillermo Bustillo Rosales rendered on August 6, 1998 (File of attachments to the State's response, page 5052); statement of Rosa Margarita Valle Hernández rendered on August 24, 1998 (File of attachments to the State's response, page 5077); statement of Carlos Antonio Luna Valle rendered on August 26, 1998 (File of attachments to the State's response, page 5091); statement of Ángel Estanislao Martínez rendered on October 19, 1998 (File of attachments to the State's response, page 5159); statement of Luis Felipe Rosales López rendered on November 19, 1998 (File of attachments to the State's response, page 5203); statement of José Guillermo Peralta rendered on November 30, 1998 (File of attachments to the State's response, page 5211); statement of María Teodora Ruiz Escoto rendered on November 30, 1998 (File of attachments to the State's response, page 5214); statement of Alejandro Fredy Salgado rendered on February 17, 2000 (File of attachments to the State's response, page 5311); statement of Oscar Orlando Palacios Moya rendered on February 17, 2000 (File of attachments to the State's response, page 5314), and statement of Manuel Antonio Pacheco rendered on April 5, 2000 (File of attachments to the State's response, page 5382).

time he had been inebriated.⁴³ However, the District Attorney did not prepare a record because, according to his statement, the legislation in force at the time of the events did not require a record to be made for conciliatory proceedings.⁴⁴ The Court notes that no record exists of the complaint filed.

29. In an article published in the Honduran newspaper *El Heraldo* on March 7, 1998, Mr. Luna López, referring to the complaint he filed before the Civil Court on March 6, stated that he had received “death threats after making public information about the irregularities detected in the pine forest [...] He confirmed that the death threat was made by the businessman José Ángel Rosa, who together with the Nationalist Congressman Lincoln Figueroa, own[ed] the company PROFOFI, *Productos Forestales Figueroa* [...] after discovering [irregularities] that we publicly denounced and because of this they have threatened us, but we must make clear that we are only defending the interests of the people.”⁴⁵

30. Similarly, on April 4, 1998, José Ángel Rosa allegedly telephoned the home of Mr. Luna López⁴⁶ and, according to the statements, told Carlos Luna that he had the money, the weapons and the people to kill him and all of his family.⁴⁷ As a result of this, according to testimony in the domestic jurisdiction and before this Court, that same day Mr. Luna López telephoned the Public Prosecutor to report this threat.⁴⁸ The State challenged the existence of this telephone call.⁴⁹

31. Furthermore, according to testimony rendered in the domestic proceedings, at the beginning of May, 1998, Mr. Luna López, in the company of Messrs. Henry Rodríguez, an investigating officer of the Public Prosecutor’s Office, and Saúl Guzmán, an engineer with the Honduran Corporation for Forestry Development (CODEFHOR for its Spanish acronym), conducted an inspection of the Quebrada Cooperative of Catacamas. During this inspection, Mr. Luna López was informed that Messrs. Jorge Chávez and Roberto Núñez, lumber

⁴³ Cf. Testimony of prosecutor Adrián Octavio Rosales rendered on April 9, 2000 before the Choluteca Civil Court (File of attachments to the State’s response, page 5378) and testimony rendered in the public hearing before the Court, *supra*, and statement of José Ángel Rosa rendered on June 16, 1998 (File of attachments to the Report on Merits, page 472).

⁴⁴ Cf. Testimony of prosecutor Adrián Octavio Rosales rendered on April 9, 2000, *supra* and testimony rendered in the public hearing before the Court, *supra*.

⁴⁵ Article published in the newspaper *El Heraldo* on March 7, 1998, *supra*.

⁴⁶ Cf. Witness statement of José Ángel Rosa rendered on June 16, 1998 (File of attachments to the Report on Merits, page 472).

⁴⁷ Cf. Statement rendered by affidavit by Rosa Margarita Valle Hernández on March 21, 2013 (Merits file, page 564), and testimony rendered by Carlos Antonio Luna Valle on January 21, 2013 (Merits file, pages 578 to 579). Also, testimony rendered before the Catacamas Civil Court, specifically: testimony of Deira Idhelin Rodríguez Cruz rendered on July 9, 1998 (File of attachments to the State’s response, page 5049); testimony of Rosa Margarita Valle Hernández rendered on August 24, 1998 (File of attachments to the State’s response, page 5078); testimony of Carlos Antonio Luna Valle rendered on August 26, 1998 (File of attachments to the State’s response, page 5091), and testimony of Augusto Luna Valle rendered on August 27, 1998 (File of attachments to the State’s response, page 5096).

⁴⁸ Cf. Testimony from affidavits rendered by Rosa Margarita Valle Hernández on January 21, 2013 (Merits file, page 564), and by Carlos Antonio Luna Valle on January 21, 2013 (Merits file, page 579).

⁴⁹ In this regard, the State pointed out that “on the day that Mr. Carlos Antonio Luna López encountered Mr. José Ángel Rosa Hernández, at the time he was accosted, Mr. Luna López indicated that “neither in his legal complaints nor in the radio programs did he mention names...” hence the difference in the complaint he made – both before the Public Prosecutor and to the Municipality – for this particular action (threats made by José Ángel Rosa), Mr. Luna López did not make any other complaint, not against any person in particular, let alone against a public official, making it impossible not only for the prosecutor to offer Mr. Luna López protection against possible threats from powerful groups but also to initiate investigations into threats that he was not aware existed” (Merits file, page 260).

merchants connected to the *Quebrada de Catacamas*,⁵⁰ had stated that if he went to the mountains, “he would come back dead.”⁵¹

32. According to testimony rendered in the domestic proceeding on May 13, 1998, at approximately 10:00 pm, Mr. Luna López was returning from Gualaco after working with a commission when Jorge Chávez pointed a gun at him.⁵²

33. On May 14, 1998, Mr. Luna López made a telephone call to the Committee of Families of the Detained-Disappeared in Honduras (hereinafter, “COFADEH”) to report a “plan to murder him” and gave the names of those likely to be responsible. The COFADEH officials asked Mr. Luna López to go to their office to give a press conference and to try to speak to the President of the Congress in an effort to prevent what was being planned in Catacamas; however, due to Mr. Luna López’s work commitments, the conference was scheduled for May 20, 1998.⁵³

34. Additionally, on May 15, 1998, according to witness statements, Mr. Jorge Chávez told Congressman Miguel Rafael Madrid López, a cousin of Mr. Luna López, that Carlos Luna “did not kno[w] who he was dealing with, that [he had] confiscated a large quantity of lumber, [that] he did not have “*horchata*” running in his veins (i.e. he could not be pushed around) [and that he was] ex-soldier.”⁵⁴

35. For his part, according to a statement, on Monday, May 18, Mr. Luna López told his wife, Rosa Margarita Valle Hernández, that he knew that “they were paying fifty thousand *lempiras* to kill [him]” and that someone was following him.⁵⁵

36. Also according to testimony from both the Mayor of Catacamas, Alejandro Fredy Salgado Cardona, and from other members of the Catacamas City Council, they were aware of the death threats received by Mr. Luna López before he was killed.⁵⁶

⁵⁰ Cf. Articles of Incorporation of the Agro-forestry Group *Quebrada de Catacamas* (File of attachments to the State’s answer brief, pages 5350-5354).

⁵¹ Cf. Statement of Rosa Margarita Valle Hernández rendered on August 24, 1998 (File of attachments to the State’s answer brief, page 5080); witness statement of Carlos Antonio Luna Valle rendered on August 26, 1998 (File of attachments to the State’s response, page 5092) and statement of César Augusto Luna Valle rendered on August 27, 1998 (File of attachments to the State’s answer brief, page 5097).

⁵² Cf. Statement of Inés Verónica Mejía Herrera rendered on July 16, 1998 (File of attachments to the State’s answer brief, page 5030).

⁵³ Cf. Statement of Berta Otilia Olivia Guifarro before the First Instance Criminal Court of Francisco Morazán Province rendered on April 22, 2002 (File of attachments to the State’s response, page 5803). In this statement she mentioned the names of Jorge Chávez, Pineda Ponce, Lincoln Figueroa and Mayor Salgado.

⁵⁴ Cf. Statements rendered before the Civil Court of Catacamas, specifically: statement of Miguel Rafael Madrid López rendered on May 9, 2001 (File of attachments to the State’s response, page 5576); statement of Mariana Lubina López de Luna rendered on October 15, 1998 (File of attachments to the State’s response, page 5146), and confrontation hearing between Messrs. Miguel Rafael Madrid López and Jorge Chávez Hernández held on November 9, 2001 (File of attachments to the State’s response, page 5732).

⁵⁵ Cf. Statements rendered before the Civil Court of Catacamas, specifically: testimony of Margarita Valle Hernández rendered on August 24, 1998 (File of attachments to the State’s response, page 5080); testimony of César Augusto Luna Valle rendered on August 27, 1998 (File of attachments to the State’s response, page 5100); testimony of Salvador de Jesús Ortiz Medina rendered on June 25, 1998 (File of attachments to the State’s response, page 5009); testimony of Eracles Javier Escobar rendered on March 8, 2000 (File of attachments to the State’s response, page 5335), and confrontation hearing between Messrs. Fredy Noel Salgado Mejía and Eracles Javier Escobar (File of attachments to the State’s response, page 5483). Also, testimony rendered before the Criminal Investigation Division, specifically: statement of César Augusto Luna Valle rendered on June 12, 1998 (File of attachments to the State’s final pleadings brief, page 9533); statement of Doris Lilitana Herrera Asencio rendered on May 21, 1998 (File of attachments to the State’s final written arguments, page 9542); statement of Eliseo Oviedo rendered on May 22, 1998 (File of attachments to the State’s final written arguments, pages 9561 and 9562).

37. In this regard, Mr. Luna López “told everyone in the [Municipality] that he had problems with [José Ángel] Rosa,”⁵⁷ who had threatened him with shots fired into the air because of alleged problems regarding accusations of corruption and illegal felling of trees.⁵⁸

38. Finally, on repeated occasions Mr. Luna López made his family and friends aware of the commission of alleged acts of corruption involving a municipal authority and a lumber merchant.⁵⁹

B. 3. Murder of Mr. Carlos Luna López

39. On May 18, 1998, Mr. Luna López attended a session of the Catacamas City Council, in Olancho Province.⁶⁰ At the end of the meeting, at approximately 10:45 pm, Mr. Luna López left the Municipality building in the company of Silvia Gonzales, City Council Secretary, and Fausto Rovelo, City Councilman.⁶¹

40. As they were leaving, they were approached by two young men who began to shoot in Mr. Luna López’s direction. He responded by taking out his gun and returning the gunfire. Subsequently the young men fled, running into the street opposite the Municipality.⁶²

⁵⁶ Cf. Testimony of Alejandro Fredy Salgado rendered on February 17, 2000 (File of attachments to the State’s response, page 5311), and statement of Mr. Oscar Orlando Palacios Moya rendered on February 17, 2000 (File of attachments to the State’s answer brief, page 5314), both before the Civil Court of Catacamas.

⁵⁷ Statement of Mr. Alejandro Fredy Salgado rendered on February 17, 2000 (File of attachments to the State’s answer brief, page 5311).

⁵⁸ Cf. Statement of Mr. Oscar Orlando Palacios Moya rendered on February 21, 2000, before the Civil Court of Catacamas (File of attachments to the State’s answer brief, page 5314).

⁵⁹ Referring to Messrs. Alejandro Fredy Salgado Cardona and Antonio Moradel. Cf. Statements rendered before the Civil Court of Catacamas by: Rosa Margarita Valle Hernández on August 24, 1998 (File of attachments to the State’s response, pages 5080 and 5081); César Augusto Luna Valle on August 27, 1998 (File of attachments to the State’s response, pages 5100 and 5101); Gonzalo Zúñiga on October 19, 1998 (File of attachments to the State’s response, page 6783); José Guillermo Peralta on November 30, 1998 (File of attachments to the State’s response, page 5211), and María Teodora Ruiz Escoto on November 30, 1998 (File of attachments to the State’s response, page 5214).

⁶⁰ Cf. Sequence of photographs taken on May 19, 1998 (File of attachments to the final written arguments, page 9201).

⁶¹ Cf. Statements rendered before the Criminal Investigations Division by: Oscar Orlando Palacios Moya on May 19, 1998 (File of attachments to the final written arguments, pages 9380 and 9384); Obdulio Roberto Cruz Navarro on June 9, 1998 (File of attachments to the final written arguments, pages 9429); Fausto Paulino Rovelo Vargas on June 10, 1998 (File of attachments to the final written arguments, page 9371); Alejandro Fredy Salgado Cardona on June 10, 1998 (File of attachments to the final written arguments, pages 9388). Also, testimony rendered before the Civil Court of Catacamas by Alejandro Fredy Salgado Cardona on August 17, 1998 (File of attachments to the State’s response, page 5061) and testimony of Silvia Gonzales rendered on August 10, 2009 (File of attachments to the State’s response, page 6315).

⁶² Cf. Statements rendered before the Criminal Investigation Division, namely: testimonies of Álvaro Danilo Zapata Lara rendered on May 19 and June 26, 1998 (File of attachments to the final written arguments, pages 9347 and 9348, 9364 and 9367); testimonies of Oscar Orlando Palacios Moya rendered on May 19, and June 9 and 25, 1998 (File of attachments to the final written arguments, pages 9381, 9386, 9387 and 9357); testimony of Obdulio Roberto Cruz Navarro rendered on June 9, 1998 (File of attachments to the final written arguments, page 9427), and testimony of Fausto Paulino Rovelo Vargas rendered on June 10, 1998 (File of attachments to the final written arguments, page 9373). Similarly, witness statement of Álvaro Danilo Zapata Lara rendered on June 26, 1998 before the Magistrate’s Criminal Court of Catacamas (File of attachments to the State’s response, pages 5011 and 5012), and statements rendered before the Civil Court of Catacamas by: Obdulio Roberto Cruz Navarro on August 24, 1998 (File of attachments to the State’s response, page 5075); Fausto Paulino Rovelo Vargas on February 17, 2000 (File of attachments to the State’s response, page 5307), and Oscar Orlando Palacios Moya on February 17, 2000 (File of attachments to the State’s response, page 5315).

41. As a result of this incident, two people were injured, Mrs. Silvia Gonzales with a bullet wound to the head, and Mr. Luna López, with a bullet lodged in his back.⁶³

42. The injured were assisted by passersby. Mr. Luna López handed his gun to Oscar Palacios, City Councilman, and several documents to Mayor Salgado. Subsequently the injured were lifted into the Mayor's vehicle and taken to the health center (in Catacamas) known as the Campos Clinic. Mr. Fausto Rovelo got into his car and followed the Mayor Salgado's vehicle.⁶⁴

43. According to witness statements, upon arrival they found that the Campos Clinic was closed, so they then took the wounded to the San Francisco Hospital in Juticalpa. However, realizing that the Mayor's vehicle was low on fuel, they transferred the wounded to Mr. Fausto Rovelo's vehicle and continued to the hospital.⁶⁵

44. Upon arrival at San Francisco Hospital in Juticalpa, approximately 45 minutes away from the Campos Clinic, the doctor who assisted them informed them that Mr. Luna López had died and that Silvia Gonzales was in critical condition. For this reason she was sent by ambulance to Tegucigalpa to receive medical care.⁶⁶ A second doctor removed a small bullet from Mr. Luna López's back and gave it to his son, César Augusto Luna Valle.⁶⁷

⁶³ Cf. Statements rendered before the Criminal Investigation Division by: Fausto Paulino Rovelo Vargas on June 10, 1998 (File of attachments to the final written arguments, pages 9372 and 9373); Alejandro Fredy Salgado Cardona on June 10, 1998 (File of attachments to the final written arguments, page 9391), and Obdulio Roberto Cruz Navarro on June 9, 1998 (File of attachments to the final written arguments, page 9427). Also, the statement of Álvaro Danilo Zapata Lara rendered on June 26, 1998 before the Catacamas Magistrate's Criminal Court (File of attachments to the State's response, pages 5011 and 5012), and statements rendered before the Catacamas Civil Court by: Alejandro Fredy Salgado Cardona on August 17, 1998 (File of attachments to the State's response, page 5062); Obdulio Roberto Cruz Navarro on August 24, 1998 (File of attachments to the State's response, page 5075); Oscar Orlando Palacios Moya on February 17, 2000 (File of attachments to the State's response, page 5315); Silvia Gonzales on August 10, 2009 (File of attachments to the State's response, page 6315) and report on the official removal of the body on May 19, 1998 (File of attachments to the State's response, page 6601).

⁶⁴ Cf. Statements rendered before the Criminal Investigation Division by: Álvaro Danilo Zapata Lara on May 19 and June 26, 1998 (File of attachments to the final written arguments, pages 9348, 9368 and 9369); Oscar Orlando Palacios Moya on May 19, 1998 (File of attachments to the final written arguments, page 9382); Obdulio Roberto Cruz Navarro on June 9, 1998 (File of attachments to the final written arguments, page 9428); Fausto Paulino Rovelo Vargas on June 10, 1998 (File of attachments to the final written arguments, pages 9373 and 9374), and Alejandro Fredy Salgado Cardona on June 10, 1998 (File of attachments to the final written arguments, page 9392). Also, the statement of Álvaro Danilo Zapata Lara rendered on June 26, 1998 before the Catacamas Magisterial Criminal Court (File of attachments to the State's response, pages 5011 and 5012), and the statements rendered before the Catacamas Civil Court by: Alejandro Fredy Salgado Cardona on August 17, 1998 (File of attachments to the State's response, page 5062); Obdulio Roberto Cruz Navarro on August 24, 1998 (File of attachments to the State's response, page 5076) and José Moreno Cáceres on December 11, 1998 (File of attachments to the State's response, page 5215).

⁶⁵ Cf. Statements rendered before the Criminal Investigation Division by: Fausto Paulino Rovelo Vargas on June 10, 1998 (File of attachments to the final written arguments, page 9374) and Alejandro Fredy Salgado Cardona on June 10, 1998 (File of attachments to the final written arguments, pages 9393 and 9395). Also, the statements rendered before the Catacamas Civil Court by: Alejandro Fredy Salgado Cardona on August 17, 1998 (File of attachments to the State's response, pages 5062 and 5063) and Obdulio Roberto Cruz Navarro on August 24, 1998 (File of attachments to the State's response, page 5076).

⁶⁶ Cf. Statements rendered before the Criminal Investigation Division, specifically: testimony of Fausto Paulino Rovelo Vargas rendered on June 10, 1998 (File of attachments to the final written arguments, page 9375); testimony of Alejandro Fredy Salgado Cardona rendered on June 10, 1998 (File of attachments to the final written arguments, page 9396). Similarly, the statements rendered before Catacamas Civil Court by: Alejandro Fredy Salgado Cardona on August 17, 1998 (File of attachments to the State's response, pages 5062 and 5063) and Obdulio Roberto Cruz Navarro on August 24, 1998 (File of attachments to the State's response, pages 5076).

⁶⁷ Cf. Official report on the removal of the body, *supra*, and testimony of Fausto Paulino Rovelo Vargas rendered on June 10, 1998, before the Criminal Investigation Division (File of attachments to the final written arguments, page 9375).

45. Subsequently, Messrs. Ramón Everardo Calix Urtecho and Oscar Palacios, both City Council members, went to the “November 18 Institute” police station looking for police officials. There they contacted a National Police lieutenant and returned to the Catacamas Municipality in his company. When they arrived at the scene of the incident (without specifying the time), they collected the bullet shells (*infra* para. 51).⁶⁸

46. Finally, Mr. Luna López’s family arrived at the San Francisco Hospital in Juticalpa,⁶⁹ where they received his body and took it back to his mother’s house in a neighborhood in the Center of Catacamas to hold his wake.⁷⁰

B. 4. Preliminary investigation of the facts

47. On May 19, 1998, the Catacamas Magistrates Criminal Court (hereinafter, the “Magistrates Court”⁷¹), represented by Judge Juan Carlos Castillo Sermeno, ordered an inquiry into the offences committed.⁷² Based on the foregoing, at 9:00 am on the same day, the Judge himself visited the crime scene and conducted a visual inspection of the area, where he observed the presence of blood stains and supposed bullet holes.⁷³

48. Likewise, officials of the Criminal Investigations Division of the Public Prosecutor’s Office traveled from Tegucigalpa to Catacamas, passing through the city of Juticalpa to interview Mr. Luna López’s son, César Augusto Luna López, who provided them with what he regarded as “the motives for his father’s death.”⁷⁴

49. At 9:45 am on May 19, during the wake held for Mr. Luna López at his mother’s home, medical examiner Claudia Suyapa Martínez supervised the “removal of the body” of Mr. Luna López. According to her expert opinion, “a circular orifice was observed in the back of his right chest midline, at the level of the twelfth thoracic vertebra” and she determined that the “apparent cause of death [was] abdominal trauma caused by a gunshot, with probable damage to the large blood vessels.” In addition, the report confirmed that “no

⁶⁸ Cf. Statement of Ramón Everardo Calix Urtecho rendered on June 25, 1998, before the Criminal Investigation Division (File of attachments to the final written arguments, pages 9410 and 9411).

⁶⁹ Cf. Statements rendered before the Catacamas Civil Court by Obdulio Roberto Cruz Navarro on August 24, 1998 (File of attachments to the State’s response, page 5076); Daniel Valle Hernández on August 25, 1998 (File of attachments to the State’s response, page 5082); Carlos Antonio Luna Valle on August 26, 1998 (File of attachments to the State’s response, page 5092), and César Augusto Luna Valle on August 27, 1998 (File of attachments to the State’s response, page 5099).

⁷⁰ Cf. Statement of César Augusto Luna Valle rendered on August 27, 1998, before the Catacamas Civil Court (File of attachments to the State’s response, page 5099) and official report on the removal of the body, *supra*.

⁷¹ Code of Criminal Procedure of October, 1984. Decree No. 189-84, published in the Official Gazette of Honduras on February 27, 1985. Article 154 establishes that “[w]hether it is an indictment or a criminal inquiry into the prosecuting procedures to determine the *corpus delicti*, to discover those responsible for having participated, to shed light on their identity and establish their nature, the quantum of harm and the damages caused by the offence.” At the same time, Article 26 of the Law on the Organization and Powers of the Courts of 1906 stipulates that “Magistrates have the power to: [...] 3) Determine in first instance the causes of the crimes and offences and, together with the Criminal Judges, either on request or on its own initiative, institute legal proceedings for major serious crimes.”

⁷² Cf. Court order to initiate an investigation process of May 19, 1998, issued by the Magistrate’s Criminal Court (File of attachments to the State’s response, pages 6572 and 6573).

⁷³ Cf. Inspection Record of May 19, 1998, issued by Catacamas Magistrate’s Criminal Court (File of attachments to the State’s response, pages 6574 and 6575).

⁷⁴ Cf. Submission of the report on the preliminary investigation into the homicide case of May 21, 1998 (File of attachments to the final written arguments, page 9298).

specimens were collected during this procedure.”⁷⁵ The Court notes that no autopsy was conducted on Mr. Luna López.

50. Later that day, at 3:50 pm, agents of the Criminal Investigations Division, in the company of a Judge, a Prosecutor, a Lieutenant and a group of evidence collection technicians went to the crime scene to conduct the corresponding visual inspection. Upon arrival, they found that no one had been placed in charge of the crime scene and that the area had been contaminated by pedestrians and vehicles moving through it.⁷⁶ Accordingly they proceeded to “cordon off a large area, closing off and restricting the access of people to prevent further contamination of the scene [and] proceeded to photographically document the crime scene and prepare a ground plan in order to conduct the inspection.”⁷⁷ From their visual inspection they found evidence such as alleged bloodstains, holes supposedly caused by the impact of bullets, a misshapen bullet and five shells of undetermined caliber, which were delivered to the authorities by Mr. Daniel Valle, brother-in-law of Mr. Luna López.⁷⁸ During these procedures, evidence was photographed, marked on the ground plan, collected, packaged, labeled and forwarded to the Forensic Science Crime Analysis Laboratory.⁷⁹ It is important to point out that the Investigation Division recovered the bullet that had been removed from Mr. Luna López’s body by the doctor who pronounced him dead.⁸⁰

51. On May 21, 1998, officials from the Homicide Unit of the Criminal Investigation Division forwarded five shells, two misshapen bullets, two apparent bullet fragments and an additional cartridge to the Crime Analysis Laboratory to determine the caliber and type of weapon used in the crime. The corresponding report was issued on May 27, 1998.⁸¹ In addition, on June 9 and 15, 1998,⁸² two firearms belonging to José Ángel Rosa and Manuel Antonio Picado were submitted together with two additional shells for forensic ballistic tests. The respective reports were issued on June 16 and July 23, 1998.⁸³ The results of both reports determined that the shells submitted as evidence could not be linked to those weapons.⁸⁴

52. Furthermore, during the months of May and June, 1998, officials of the Criminal Investigation Division of the Public Prosecutor’s Office received the statements of 43 people, including family members, friends and Municipality colleagues of Mr. Luna López, eyewitnesses and those allegedly responsible for the events.⁸⁵

⁷⁵ Cf. Official report on the removal of the body, *supra*.

⁷⁶ Cf. Inspection Record of May 19, 1998, issued by the Criminal Investigation Division of the Public Prosecutor’s Office (File of attachments to the final written arguments, pages 9186).

⁷⁷ Narrative description of the inspection of May 19, 1998 (File of attachments to the final written arguments, page 9190).

⁷⁸ Cf. Narrative description of the inspection, *supra* (pages 9190 and 9191).

⁷⁹ Cf. Narrative description of the inspection, *supra* (pages 9190 and 9191).

⁸⁰ Cf. Submission of the preliminary investigation, *supra* (page 9299).

⁸¹ Cf. Report from the ballistic laboratory of May 27, 1998 (File of attachments to the final written arguments, page 9248).

⁸² Cf. Request addressed to the criminal analysis laboratory on June 9, 1998 (File of attachments to the final written arguments, page 9245), and report from the ballistic laboratory of July 23, 1998 (File of attachments to the final written arguments, page 9183).

⁸³ Cf. Report from the ballistic laboratory of June 16, 1998 (File of attachments to the final written arguments, page 9252), and report from the ballistic laboratory of July 23, 1998, *supra*.

⁸⁴ Cf. Report from the ballistic laboratory of June 16, 1998 (File of attachments to the final written arguments, page 9252), and report from the ballistic laboratory of July 23, 1998, *supra*.

⁸⁵ Cf. Statements of Álvaro Danilo Zapata Lara rendered on May 19, June 24 and 26, 1998 (File of attachments to the final written arguments, pages 9346, 9342 and 9359); statements of Oscar Orlando Palacios Moya rendered on

53. On July 23, 1998, investigation officers submitted the investigative report on the facts of this case⁸⁶ to Adrián Octavio Rosales, the Prosecutor in charge of the case (hereinafter, "Prosecutor Rosales"), which established Mr. Oscar Aurelio Rodríguez Molina as the supposed perpetrator of the acts committed.⁸⁷ This report was presented to the Catacamas Civil Court (hereinafter, the "Civil Court") on October 19, 1998.⁸⁸

May 19 and 22, June 9 and 25, 1998 (File of attachments to the final written arguments, pages 9380, 9552, 9384 and 9355); statement of José Santos Martínez rendered on May 19, 1998 (File of attachments to the final written arguments, page 9548); statements of Fausto Paulino Rovelo Vargas rendered on May 20, June 10 and 25, 1998 (File of attachments to the final written arguments, pages 9412, 9371 and 9378); testimony of Natividad Rodríguez Sánchez rendered on May 20, 1998 (File of attachments to the final written arguments , page 9546); statements of Doris Liliana Herrera Ascencio, rendered on May 21 and 22, 1998 (File of attachments to the final written arguments , pages 9541 and 9563); statement of Carlos Humberto Núñez rendered on May 22, 1998 (File of attachments to the final written arguments, page 9543); statement of José Donald Escobar rendered on May 22, 1998 (File of attachments to the final written arguments, page 9556); statement of Franklin David Núñez Cárcamo rendered on May 22, 1998 (File of attachments to the final written arguments, page 9558); statement of Eliseo Oviedo rendered on May 22, 1998 (File of attachments to the final written arguments, page 9561); statement of María Concepción Cárcamo rendered on May 23, 1998 (File of attachments to the final written arguments, page 9550); statement of Olvin Adolfo Núñez Cárcamo rendered on May 22, 1998 (File of attachments to the final written arguments, page 9552); statement of Olga Marisela Cárcamo Núñez rendered on May 23, 1998 (File of attachments to the final written arguments , page 9565); statement of Sandra Yamileth Valderramos Garcia rendered on June 9, 1998 (File of attachments to the final written arguments, page 9425); statement of Obdulio Roberto Cruz Navarro rendered on June 9, 1998 (File of attachments to the final written arguments, page 9429); statement of Juan Rosa Gonzales Salgado rendered on June 9, 1998 (File of attachments to the final written arguments, page 9500); statement of Manuel Antonio Pacheco rendered on June 9, 1998 (File of attachments to the final written arguments, page 9526); statement of Alejandro Fredy Salgado Cardona rendered on June 10, 1998 (File of attachments to the final written arguments, page 9388); statement of Gerardo Alfredo Espinal rendered on June 10, 1998 (File of attachments to the final written arguments, page 9498); statement of Justa Elizabeth Rivera Rodríguez rendered on June 11, 1998 (File of attachments to the final written arguments , page 9487); statements of Santos Eugenio Ramírez rendered on June 11 and 23, (File of attachments to the final written arguments, pages 9490 and 9467); statement of José Ángel Rosa Hernández rendered on June 11, 1998 (File of attachments to the final written arguments , page 9492); statement of Rony Neftalí Meza Becerra rendered on June 11, 1998 (File of attachments to the final written arguments , page 9518); statements of Douglas Edgardo Antúnez rendered on June 11 and 23, 1998 (File of attachments to the final written arguments , pages 9520 and 9465); statement of Santos Dario Rivera Rodríguez rendered on June 11, 1998 (File of attachments to the final written arguments , page 9523); statement of Santos Gil Isidro Bustillo rendered on June 12, 1998 (File of attachments to the final written arguments, page 9511); statement of Elvin Pastor Murillo rendered on June 12, 1998 (File of attachments to the final written arguments , page 9516); statement of César Augusto Luna Valle rendered on June 12, 1998 (File of attachments to the final written arguments, page 9530); statement of Rosa Margarita Valle Hernández rendered on June 12, 1998 (File of attachments to the final written arguments, page 9538); statement of Rafael Antonio Casco Murillo rendered on June 23, 1998 (File of attachments to the final written arguments , page 9460); statement of Melvin Atilio Casco Zapata (File of attachments to the final written arguments, page 9462); statement of Fredy Noel Salgado Mejía rendered on June 24, 1998 (File of attachments to the final written arguments, page 9434); statement of Erwin Pascual Casco Zapata rendered on June 24, 1998 (File of attachments to the final written arguments, page 9458); statement of Ramón Everardo Calix Urtecho rendered on June 25, 1998 (File of attachments to the final written arguments, page 9408); statement of Marco Tulio Salgado Gómez rendered on June 25, 1998 (File of attachments to the final written arguments, page 9438); statement of Carlos Alirio Mejía Álvarez rendered on June 25, 1998 (File of attachments to the final written arguments, page 9442); statement of Onexa Dinorah Echeverría Hernández rendered on June 25, 1998 (File of attachments to the final written arguments, page 9446); statement of Francisco Humberto Alemán Sierra rendered on June 26, 1998 (File of attachments to the final written arguments, page 9471); statement of Armando Alemán Moya rendered on June 26, 1998 (File of attachments to the final written arguments, page 9477); statement of Salvador de Jesús Ortiz Medina rendered in June, 1998 (File of attachments to the final written arguments, page 9454); statement of José Gonzalo Oser Rodríguez rendered in June, 1998 (File of attachments to the final written arguments, page 9456); statement of Procedis Obdulio Rojas rendered in June, 1998 (File of attachments to the final written arguments, page 9504), and statement of Celedonio Muñoz rendered in June, 1998 (File of attachments to the final written arguments , page 9444).

⁸⁶ Cf. Investigation Report of June 23, 1998, prepared by the Criminal Investigations Division (File of attachments to the final written arguments, pages 9158 and 9180).

⁸⁷ Cf. Investigation Report of June 23, 1998, *supra* (page 9178).

⁸⁸ Cf. Ruling of the Catacamas Magistrates Court of October 19, 1998 (File of attachments to the State's response, page 6781).

B. 5. Criminal proceedings against those allegedly responsible

54. By means of criminal proceedings 1128-98, 1316-99, 035-02 and 043-04, an investigation was opened into the presumed involvement of the accused Oscar Aurelio Rodríguez Molina, Jorge Adolfo Chávez, Jose Ángel Rosa, Ítalo Iván Lemus, Marcos Morales and Wilfredo Pérez for the crimes of murder and attempted murder to the detriment of Carlos Luna López and Silvia Gonzales, respectively.

55. During the months between May and July 1998, the Magistrates Court received statements from 12 individuals.⁸⁹

56. After the conclusion of the investigative proceedings in the Magistrates Court, on July 15, 1998, the case was referred to the Civil Court for consideration.⁹⁰

57. On July 17, 1998, the Civil Court received a firearm forwarded by Prosecutor Rosales, and ordered an expert inspection to be conducted;⁹¹ this was carried out on July 22, 1998 by a commercial expert, certified accountant and commercial secretary. The expert opinion consisted of a description of the basic characteristics of the firearm.⁹² According to the memo accompanying the evidence, the weapon belonged to Mr. Luna López; nevertheless, Mr. Carlos Antonio Luna Valle stated that Mr. Ramón Peralta was really the owner of the firearm.⁹³

58. Between the months of July and October, 1998, the Civil Court received statements from 28 people.⁹⁴ Likewise, on October 22, 1998, the court received the statement of the

⁸⁹ Cf. Statements rendered before the Magistrates Criminal Court by: Doris Liliana Herrera Asencio on May 22, 1998 (File of attachments to the State's response, page 6583); Eliseo Oviedo on May 22, 1998 (File of attachments to the State's response, page 6587); Oscar Orlando Palacios Moya on May 25, 1998 (File of attachments to the State's response, page 6591); Fausto Paulino Rovelo Vargas on May 25, 1998 (File of attachments to the State's response, page 6593); Alejandro Fredy Salgado Cardona on May 25, 1998 (File of attachments to the State's response, page 6595); Adrián Betancourt Lezama on June 12, 1998 (File of attachments to the State's response, page 6611); José Ángel Rosa Hernández on June 16, 1998 (File of attachments to the State's response, page 6615); Santos Eugenio Ramírez on June 23, 1998 (File of attachments to the State's response, page 6622); Douglas Edgardo Antúnez Lara on June 24, 1998 (File of attachments to the State's response, page 6625); Salvador de Jesús Ortiz Medina on June 25, 1998 (File of attachments to the State's response, page 6633); Álvaro Danilo Zapata Lara on June 26, 1998 (File of attachments to the State's response, page 6635); and Jorge Chávez Hernández on July 7, 1998 (File of attachments to the State's response, page 6642).

⁹⁰ Cf. Ruling of July 15, 1998, issued by the Catacamas Magistrates Criminal Court (File of attachments to the State's response, pages 6650 and 6651). According to Article 252 of the Code of Criminal Procedures of 1984, "[w]hen the Investigating Judge is a Magistrate, having concluded the investigative procedures without a ordering a dismissal of the case, will refer his court records, the pieces of evidence and the defendant, if he is not granted provisional release, to the respective Civil Judge, who, if he finds inconsistencies in the indictment, will rectify them or order their rectification. Having rectified the inconsistencies, if dismissal is not applicable, the Civil Judge will then open a trial."

⁹¹ Cf. Ruling of June 20, 1998, issued by the Catacamas Civil Court (File of attachments to the State's response, page 6658).

⁹² Cf. Expert opinion of July 22, 1998 (File of attachments to the State's response, page 6659).

⁹³ Cf. Ruling of July 22, 1998, issued by the Catacamas Civil Court (File of attachments to the State's response, pages 6663, 6664 and 6665).

⁹⁴ Cf. Statements rendered before the Catacamas Civil Court by: Inés Verónica Mejía Herrera on July 16, 1998 (File of attachments to the State's response, page 6652); Mariana Lubina López Martínez on July 17 and October 15, 1998 (File of attachments to the State's response, pages 6655 and 6771); Deira Idhelín Rodríguez Cruz on July 29, 1998 (File of attachments to the State's response, page 6669); Henry Guillermo Bustillo Rosales on August 6, 1998 (File of attachments to the State's response, page 6673); Henry Yobany Rodríguez Euceda on August 17, 1998 (File of attachments to the State's response, page 6679); Alejandro Fredy Salgado Cardona on August 17, 1998 (File of attachments to the State's response, page 6682); Ramón Antonio Hernández on August 19, 1998 (File of attachments to the State's response, page 6687); Sandra Yamileth Valderramos on August 19 and October 19, 1998 (File of

accused Oscar Aurelio Rodríguez Molina, in which he stated that he had not shot Mr. Luna López and that no one had contracted him to commit such act.⁹⁵ On the same day, following this statement, he was placed under arrest.⁹⁶

59. On October 26, 1998, a confrontation proceeding was conducted between Mr. Álvaro Danilo Zapata Lara, a security guard in the area around the Catacamas Municipality at the time of the events, and the accused Oscar Aurelio Rodríguez Molina, in which he identified Mr. Rodríguez Molina as one of the individuals who shot Mr. Luna López on May 18, 1998.⁹⁷ On October 27, 1998, a warrant was issued for the arrest of Oscar Aurelio Rodríguez Molina.⁹⁸

60. Between November 1998 and February 1999, five witnesses made statements before the Civil Court.⁹⁹

B.5.1. Regarding Oscar Aurelio Rodríguez Molina¹⁰⁰

61. On February 10, 1999, the Prosecutor Gia Firense Leoni Jiménez (hereinafter, "Prosecutor Leoni") asked the Civil Court to proceed separately against Mr. Oscar Aurelio Rodríguez and bring the case to the plenary phase.¹⁰¹

attachments to the State's response, pages 6688 and 6784); José Alfredo Moradel Zavala on August 24, 1998 (File of attachments to the State's response, page 6695); Obdulio Roberto Cruz Navarro on August 24, 1998 (File of attachments to the State's response, page 6696); Rosa Margarita Valle Hernández on August 24, 1998 (File of attachments to the State's response, page 6698); Daniel Valle Hernández on August 25, 1998 (File of attachments to the State's response, page 6703); Esteban Andrade on August 26, 1998 (File of attachments to the State's response, page 6710); Carlos Antonio Luna Valle on August 26, 1998 (File of attachments to the State's response, page 6712); César Augusto Luna Valle on August 27 and September 8, 1998 (File of attachments to the State's response, pages 6717 and 6728); Fredy Noel Salgado Mejía on September 24, 1998 (File of attachments to the State's response, page 6744); Osmel Efrain Salgado Velásquez on September 25, 1998 (File of attachments to the State's response, page 6746); Esperanza Urbina Murillo on September 28, 1998 (File of attachments to the State's response, page 6748); Edith Guillermina Guifarro Soleno on September 28, 1998 (File of attachments to the State's response, page 6750); Oscar Bayardo Mejia Cardoza on September 29, 1998 (File of attachments to the State's response, page 6752); Rafael Antonio Casco Murillo on September 29, 1998 (File of attachments to the State's response, page 6755); José Gonzalo Oset Rodríguez on September 30, 1998 (File of attachments to the State's response, page 6759); Silvia Gonzales on September 30, 1998 (File of attachments to the State's response, page 6761); Ángel Estanislao Martínez on October 19, 1998 (File of attachments to the State's response, page 6782); Gonzalo Zúñiga on October 19, 1998 (File of attachments to the State's response, page 6783); Melvin Atilio Casco Zapata on October 20, 1998 (File of attachments to the State's response, page 6793); Erwin Pascual Casco Zapata on October 20, 1998 (File of attachments to the State's response, page 6794) and Oscar Orlando Palacios Moya on October 20, 1998 (File of attachments to the State's response, page 6795).

⁹⁵ Cf. Statement of Oscar Aurelio Rodríguez Molina rendered on October 22, 1998, before the Civil Court (File of attachments to the State's response, page 6800).

⁹⁶ Cf. Notification of October 22, 1998, issued by the Civil Court (File of attachments to the State's response, pages 6807 to 6808).

⁹⁷ Cf. Record of the confrontation proceeding of October 26, 1998 (File of attachments to the State's response, pages 6811 to 6812).

⁹⁸ Cf. Warrant for arrest of October 27, 1998, issued by the Civil Court (File of attachments to the State's response, page 6814).

⁹⁹ Cf. Statements rendered before the Civil Court by: Luis Felipe Rosales López on November 19, 1998 (File of attachments to the State's response, page 6823); José Guillermo Peralta on November 30, 1998 (File of attachments to the State's response, page 6833); María Teodora Ruiz Escoto on November 30, 1998 (File of attachments to the State's response, page 6835); José Alejandro Moreno Cáceres on December 11, 1998 (File of attachments to the State's response, page 6837) and Karol Banesa Padilla rendered on February 24, 1999 (File of attachments to the State's response, page 6848).

¹⁰⁰ The proceeding against Oscar Aurelio Rodríguez Molina was conducted under file 1128-98 (File of attachments to the State's response 6571).

¹⁰¹ Cf. Brief requesting testimony for the judicial proceedings of February 10, 1999 (File of attachments to the brief of pleadings and motions, page 4329).

62. During May and June 1999, the Civil Court¹⁰² received the statements of two people and one face-to-face meeting was held.¹⁰³

63. On July 6, 1999, the Criminal Investigation Division asked Prosecutor Leoni to take the necessary steps to provide protection to the witness Danilo Zapata because of the threats made against him.¹⁰⁴ The Court has no information regarding the outcome of this request.

64. On October 4, 1999, Marco Ramiro Lobo Rosales, the attorney for Mrs. Mariana Lubina López de Luna, mother of Mr. Luna López, formalized the charges against the accused Mr. Oscar Aurelio Rodríguez Molina before the Civil Court.¹⁰⁵ Likewise, on October 25, 1999, the defense presented a response to the charges made against their client.¹⁰⁶

65. On February 10, 2000, the Civil Court conducted a confrontation meeting between Messrs. Douglas Edgardo Antúnez Lara and the accused Oscar Aurelio Rodríguez Molina.¹⁰⁷ Likewise, on February 17, 2000, a reconstruction of the events was carried out.¹⁰⁸

66. On February 19, 2001, a second statement of the accused Mr. Oscar Aurelio Rodríguez Molina (*supra* para. 58) was received before the Civil Court, in which he indicated that Messrs. Ítalo Iván Lemus, Marcos Morales, Wilfredo Pérez and Jorge Chávez were responsible for the death of Mr. Luna López. He claimed this murder was committed because Mr. Luna López had confiscated lumber from Jorge Chávez.¹⁰⁹ Given Mr. Rodríguez Molina's statement, on February 20, Prosecutor Leoni asked the Civil Court to send notification to the Director of the Juticalpa Prison, "in order to [...] provide the greatest security possible given the death threats that he had received and the fact that Mr. Rodríguez [Molina was] a key witness in the current proceedings and [it was] their responsibility to provide the security necessary for his physical integrity."¹¹⁰ Moreover, on June 18, 2001, a face-to-face meeting was arranged between Messrs. Jorge Chávez and the accused Oscar Aurelio Rodríguez Molina.¹¹¹

¹⁰² Cf. Statements rendered before the Civil Court by: Josué Eli Zúñiga rendered on May 13 and 26, 1999 (File of attachments to the State's response, pages 6863 and 6881) and Antolin Vásquez Medina on June 23, 1999 (File of attachments to the State's response, page 6914).

¹⁰³ Cf. Confrontation meeting between Messrs. Álvaro Danilo Zapata Lara and Oscar Aurelio Rodríguez Molina conducted on May 25, 1999 (File of attachments to the State's response, page 6871) and confrontation meetings between Messrs. Santos Eugenio Ramírez and Oscar Aurelio Rodríguez Molina conducted on May 25, 1999 (File of attachments to the State's response, page 6874). Also, on June 21, 1999, a medical opinion was rendered on the state of health of Mrs. Silvia Gonzales. This opinion concluded that the injury she suffered produced risk of death, a scar and a permanent disfigurement of her face, and that Mrs. Gonzales had undergone several surgeries to recover from the consequences, *inter alia*. Cf. Medical examination of June 21, 1999, performed on Mrs. Silvia Gonzales (File of attachments to the State's response, page 5252).

¹⁰⁴ Cf. Brief of July 6, 1999, of the Criminal Investigation Division (File of attachments to the State's response, page 7004).

¹⁰⁵ Cf. Brief of indictment of October 4, 1999 (File of attachments to the State's response, pages 6961 to 6964).

¹⁰⁶ Cf. Brief of defense of October 25, 1999 (File of attachments to the State's response, page 6969).

¹⁰⁷ Cf. Confrontation meeting between Messrs. Douglas Edgardo Antunez Lara and Oscar Aurelio Rodríguez Molina conducted on February 10, 2000 (File of attachments to the State's response, page 7035).

¹⁰⁸ Cf. Record of reconstruction of the events of February 17, 2000 (File of attachments to the State's response, page 7062).

¹⁰⁹ Cf. Statement of the accused Oscar Aurelio Rodríguez Molina of February 19, 2001, before the Civil Court (File of attachments to the State's response, page 7244).

¹¹⁰ Cf. Brief of the Public Prosecutor of February 20, 2001 (File of attachments to the State's response, page 5440).

¹¹¹ Cf. Face-to-face meeting between Messrs. Jorge Chávez and Oscar Aurelio Rodríguez Molina held on July 18, 2001 (File of attachments to the State's response, page 7250).

67. On May 24, 2001, Prosecutor Omar Menjívar Rosales (hereinafter, "Prosecutor Menjívar") presented his brief of conclusions.¹¹² Similarly, on June 11 and August 15, 2001, the legal representative of Mrs. Mariana Lubina López de Luna and the defense presented their respective conclusions.¹¹³

68. Through briefs of September 12 and 27, October 9 and 24, November 8, 2001; January 23, April 1 and 25, May 29, 2002, Prosecutor Menjívar asked the Civil Court to deliver a judgment without further delay.¹¹⁴

69. On December 11, 2002, the Civil Court issued a judgment of first instance, whereby it sentenced Oscar Aurelio Rodríguez Molina to 20 years imprisonment for the murder of Mr. Carlos Luna López and imposed a term of 6 years imprisonment for the crime of serious injuries to the detriment of Mrs. Silvia Gonzales.¹¹⁵

70. On June 15, 2004, the Civil Court received a third statement from the convict Oscar Aurelio Rodríguez Molina, affirming that José Ángel Rosa and Fredy Salgado, "son" of Mayor Salgado, had hired Alberto Isidoro Calix and Ítalo Iván Lemus to kill Mr. Luna López and that Mr. Jorge Chávez was not involved in the crime. He explained that he was reporting this matter because he knew they were going to kill him.¹¹⁶ On June 19, 2004, Oscar Aurelio Rodríguez Molina was transferred from the Comayagua Prison to the National Penitentiary and was assigned to Casa Blanca Module. Nevertheless, "[o]n the following day he was moved to the Diagnostic Module after threats were made against his life, given that while he was in Juticalpa Prison he had been general coordinator, and for this reason he had problems in the Casa Blanca module."¹¹⁷

71. On September 20, 2004, the Civil Court received a new statement from Oscar Aurelio Rodríguez Molina, in which he confirmed his previous statement of June 15, 2004, and pointed out that José Ángel Rosa and Fredy Salgado "son" were interested in killing him.¹¹⁸ Based on the statement of Mr. Rodríguez Molina, on September 27, 2004, the attorney for Mariana Lubina López de Luna asked the Civil Judge to issue a warrant for the arrest of Alberto Isidoro Calix, Fredy Noel Salgado "Guifarro," Alejandro Fredy Salgado Cardona and

¹¹² Cf. Brief of conclusions of the Public Prosecutor of May 24, 2001 (File of attachments to the State's response, page 7190).

¹¹³ Cf. Brief of conclusions of Mrs. Mariana Lubina López de Luna's attorney of June 11, 2001 (File of attachments to the State's response, page 7200) and brief of conclusions of the attorney for Mr. Oscar Aurelio Rodríguez Molina of August 15, 2001 (File of attachments to the State's response, page 7211).

¹¹⁴ Cf. Briefs requesting issue of the judgment of September 12, 2001 (File of attachments to the State's response, page 7217); September 27, 2001 (File of attachments to the State's response, page 7219); October 9, 2001 (File of attachments to the State's response, page 7221); October 24, 2001 (File of attachments to the State's response, page 7223); November 8, 2001 (File of attachments to the State's response, page 7226); January 23, 2002 (File of attachments to the State's response, page 7231); April 1, 2002 (File of attachments to the State's response, page 7233); April 25, 2002 (File of attachments to the State's response, page 7237), and May 29, 2002 (File of attachments to the State's response, page 7253).

¹¹⁵ Cf. Judgment of Catacamas Civil Court of Olancho Province of December 11, 2002 (File of attachments to the State's response, page 7270).

¹¹⁶ Cf. Statement of Oscar Aurelio Rodríguez Molina rendered on June 15, 2004, before the Civil Court (File of attachments to the Report on Merits, pages 537 and 538).

¹¹⁷ Cf. Decree of March 8, 2006 issued by the Legal Section of the Court of Enforcement, Tegucigalpa, Francisco Morazán Province (Merits file, page 1174).

¹¹⁸ Cf. Statement of Oscar Aurelio Rodríguez Molina rendered on September 20, 2004, before the Catacamas Civil Court (File of attachments to the State's response, page 5970).

Adán Orellana.¹¹⁹ However, in a ruling on December 15, 2004, the Civil Court stated that it could not establish a logical and consistent link regarding the presumed involvement of these persons, and therefore rejected the request for an arrest warrant.¹²⁰

72. In accordance with an administrative decision by the National Penitentiary of June 15, 2006, Mr. Oscar Aurelio Rodríguez Molina was internally transferred (with no date indicated) from the Diagnostic Module to the “Escorpión” Maximum Security Cells.¹²¹ On June 28, 2006, he was murdered by gunfire while serving his term in cell number 25 of the “Escorpión” Unit.¹²² Regarding the investigation of this act, the State indicated that, “to date it has not been possible to identify the murderers of Mr. Oscar Aurelio Rodríguez Molina.”¹²³

B.5.2. Regarding Jorge Adolfo Chávez¹²⁴

73. On March 28, 2000, Prosecutor Leoni forwarded the report of the investigation sent by the Criminal Investigations Division to the Civil Court, attesting to the involvement of Jorge Adolfo Chávez and other persons in the illegal exploitation of forest land,¹²⁵ the same activities which Mr. Luna López reported on from his public position (*supra* paras. 27 and 31).

74. During the months of February to July, 2000, statements were received from ten people¹²⁶ and two face-to-face hearings were held.¹²⁷

¹¹⁹ Cf. Request for arrest warrant of September 27, 2004 (File of attachments to the State’s response, pages 5977 and 5978).

¹²⁰ Cf. Ruling of the Civil Court on December 15, 2004 (File of attachments to the State’s response, page 5984). This ruling refers to Mr. Fredy Salgado “son,” whose full name is Fredy Noel Salgado Mejía, as Fredy Noel Salgado “Guifarro.”

¹²¹ Cf. Internal Administrative Ruling No. 035-2006 PNMA-06, entitled “Transfer of two prisoners from one module to another,” issued by the National Penitentiary on June 15, 2006, operative paragraph (file on Merit, page 1208). This transfer was made due to the fact that “on June 15, 2006, an intelligence network inform[ed] the competent Penitentiary authority that [...] the murder of four prisoners [was] planned [...] and it had reliable information that the person direct[ing] this illicit action [was] Oscar Aurelio Rodríguez Molina, in company of three other prisoners confined in the aforementioned module. [Because of this and] considering the degree of danger [observed], the antecedents of murders [...] and the frequent escapes within the Penitentiary [...] is why they decided to make the transfers)” (Merits file, page 1207).

¹²² Cf. Prosecution Injunction of June 28, 2006 (File of attachments to the Report on Merit, page 699), and Notification DGSEP-DPN-108-2006, entitled Report on “Deceased Inmate,” issued by the National Penitentiary on June 28, 2006 (file on Merit, pages 1156 to 1157).

¹²³ Cf. State Communication of September 12, 2013, regarding the information required by the Inter-American Court as evidence to facilitate adjudication on September 5, 2013 (Merits file, page 1114). The State indicated that “a criminal investigation process had begun through the Special Human Rights Prosecutor who conducted various proceedings to determine those responsible, but without being able to identify the authors.” Cf. Notification DGSEP-DPN-108-2006, *supra* (Merits file, pages 1156 to 1158).

¹²⁴ According to the representatives, the case against Jorge Chávez was conducted under the file 035-02. However, some of the initial investigation proceedings are contained in the files 1128-98 and 1316-99 (Merits file, page 136, footnote 86).

¹²⁵ Cf. Report on the investigation of June 11, 1998, prepared by the Criminal Investigation Division (File of attachments to the State’s response, pages 5340 to 5358).

¹²⁶ Cf. Statements rendered before the Catacamas Civil Court by: Fausto Paulino Rovelo Vargas on February 17, 2000 (File of attachments to the State’s response, page 5307); Alejandro Fredy Salgado on February 17, 2000 (File of attachments to the State’s response, page 5309); Orlando Palacios Moya on February 17, 2000 (File of attachments to the State’s response, page 5314); Lincoln Alejandro Figueroa on March 7, 2000 (File of attachments to the State’s response, page 5332); Eracles Javier Escobar on March 8, 2000 (File of attachments to the State’s response, page 5335); Adrián Octavio Rosales on April 9, 2000 (File of attachments to the State’s response, page 5378); Manuel Antonio Pacheco on April 5, 2000 (File of attachments to the State’s response, page 5381); Julio César Castro on April 5, 2000 (File of attachments to the State’s response, page 5383); Jorge Alberto Núñez Cárcamo on April 26,

75. On February 21, 2001, the Civil Court asked the Head of Division and Migration Policy to issue an immigration alert against the accused Jorge Chávez, Ítalo Iván Lemus, Marcos Morales and Wilfredo de Jesús Pérez, in order to prevent their departure from the country and thereby avoid the legal process against them.¹²⁸ On the same day, the Civil Court issued an arrest warrant against the accused Ítalo Iván Lemus, Marcos Morales and Wilfredo de Jesús Pérez.¹²⁹

76. On March 21, 2001, a warrant was issued for the arrest of Jorge Chávez.¹³⁰ However, the accused made a voluntary appearance before the Civil Court on May 7, 2001,¹³¹ and rendered a preliminary statement.¹³² Given the Civil Court's inability to determine the culpability or involvement of the accused, the Court ordered his conditional release.¹³³ In response, Prosecutor Menjívar filed applications of reconsideration and appeal¹³⁴ as a result of which on June 26, the Third Court of Appeals revoked the ruling of May 7.¹³⁵ Thus, on August 2, the Civil Court issued a new warrant for the arrest of Jorge Chávez,¹³⁶ who was subsequently detained on November 5, 2001,¹³⁷ through a new voluntary appearance and an extension of his preliminary statement.¹³⁸

77. On April 20, 2001, the Special Prosecutor for the Environment submitted to the Civil Court the transcript of the complaint 068-98 of February 28, 1998, filed by Mr. Luna López against the companies, "PROFOFI," "IMARA" and "La Fosforera" for illegal forest exploitation.¹³⁹ According to the press report, the Court noted that the then-Congressman Lincoln Figueroa and Mr. José Ángel Rosa were owners of the company "PROFOFI"¹⁴⁰ (*supra* paras. 27 and 29).

2000 (File of attachments to the State's response, page 5385) and Miguel Ángel Cruz Pacheco on July 5, 2000 (File of attachments to the State's response, page 5413).

¹²⁷ Cf. Face-to-face hearing on May 4, 2000 held between Messrs. Eliseo Oviedo and Jorge Núñez (File of attachments to the State's response, page 5390) and face-to-face hearing of May 17, 2000 conducted between Doris Liliana Herrera Asencio and Jorge Núñez (File of attachments to the State's response, page 5410).

¹²⁸ Cf. Request for immigration alert of February 21, 2001 (File of attachments to the State's response, page 5400).

¹²⁹ Cf. Arrest warrant issued on February 21, 2001 (File of attachments to the State's response, pages 5402 and 5403).

¹³⁰ Cf. Arrest warrant issued on March 21, 2001 (File of attachments to the State's response, page 5453).

¹³¹ Cf. Investigation statement of Jorge Chávez rendered on May 7, 2001 (File of attachments to the State's response, page 5535).

¹³² Cf. Ruling of the Catacamas Civil Court of May 7, 2001 (File of attachments to the State's response, page 5547).

¹³³ Cf. Ruling of the Catacamas Civil Court of May 7, 2001 (File of attachments to the State's response, page 5548).

¹³⁴ Cf. Application for reconsideration and subsidiary appeal of May 8, 2001 (File of attachments to the State's response, page 5562).

¹³⁵ Cf. Ruling of the Third Court of Appeals of June 26, 2001 (File of attachments to the State's response, page 5618).

¹³⁶ Cf. Ruling of the Catacamas Civil Court of August 2, 2001 (File of attachments to the State's response, page 5621).

¹³⁷ Cf. Ruling of the Catacamas Civil Court of November 5, 2001 (File of attachments to the State's response, page 5701).

¹³⁸ Cf. Investigation statement of Jorge Chávez rendered on November 5, 2001, before the Catacamas Civil Court (File of attachments to the State's response, page 5699).

¹³⁹ Cf. Transcript of Complaint 068-98 of February 28, 1998, filed by Mr. Luna López (File of attachments to the State's response, page 5487).

¹⁴⁰ Cf. Article published in the newspaper *El Heraldo* on March 7, 1998, *supra*.

78. During the months of April and May 2001, the Civil Court¹⁴¹ received the statements of six people and three face-to-face hearings took place.¹⁴²

79. On July 30, 2001, the Civil Court conducted an inspection of judicial file 1095-98, regarding the crimes of theft of lumber, damages and concealment against Messrs. Gilberto Maldonado Izaguirre and Jorge Alberto Núñez.¹⁴³

80. On November 15, 2001, a judicial inspection was carried out at the regional offices of the Honduran Corporation of Forest Development (COHDEFOR) in Juticalpa, for the purpose of reviewing the record of hearings and visits to said institution.¹⁴⁴

81. On November 21, 2001, the Judge Mario Alberto Amaya Oliva, "taking into consideration that several comments were [made] in the local press, [referring to] the fact that [he] personally [had] a direct interest in the case under investigation regarding the death of Mr. Carlos Antonio Luna and the a[ttempted] [murder] of Silvia Gonzales, [he made] the decision to [e]xcuse [himself] from presiding this case, in addition to his having received [d]eath threats, without knowing w[here] these came from."¹⁴⁵ Thus, on November 29, the Supreme Court of Justice approved his request for recusal. Consequently, these proceedings were reassigned to the Catacamas Magistrate's Criminal Court. This approval was notified the following day.¹⁴⁶

82. On November 30, 2001, the Magistrates Criminal Court revoked the order of imprisonment issued against Jorge Chávez considering that "one by one, all the pieces of evidence that pointed to the probability of [his] possible participation had b [een] dispelled."¹⁴⁷ Nevertheless, on March 21, 2002, the Third Court of Appeals revoked the ruling of November 30, 2001, and noted that, "given the numerous irregularities committed in the processing of this case, particularly after a prior judgment issued by this Court on an earlier appeal that was not complied with by the Examining Judge [...] until three months after he had the [c]ertification of the aforesaid ruling in his power, it is appropriate to refer this matter to the Inspector General of the Courts."¹⁴⁸ Mr. Jorge Chávez was sent to the

¹⁴¹ Cf. Statements rendered before the Civil Court by: Fredy Noel Salgado Mejía on April 23, 2001 (File of attachments to the State's response, page 5480); Fidel Domingo Ortega on April 24, 2001 (File of attachments to the State's response, page 5508); the defendant Jorge Chávez on May 7, 2001 (File of attachments to the State's response, page 5537); Miguel Rafael Madrid López on May 9, 2001 (File of attachments to the State's response, page 5575); Gloria Isabel Caballero on May 25, 2001 (File of attachments to the State's response, page 5611) and Francisco Armando Alemán on May 25, 2001 (File of attachments to the State's response, page 5613).

¹⁴² Cf. Face-to-face hearing of April 23, 2001, conducted between Eracles Javier Escobar and Fredy Noel Salgado Mejía (File of attachments to the State's response, page 5483); face-to-face hearing of May 25, 2001, conducted between Jorge Chávez and Karol Vanessa Padilla (File of attachments to the State's response, page 5605), and face-to-face hearing of May 25, 2001, conducted between Jorge Chávez and Tito Ambrosio Velásquez (File of attachments to the State's response, page 5607).

¹⁴³ Cf. Record of Inspection of June 30, 2001, issued by the Catacamas Civil Court (File of attachments to the State's response, page 5670).

¹⁴⁴ Cf. Record of Inspection of November 15, 2001, issued by the First Criminal Court of Juticalpa (File of attachments to the State's response, pages 5723 and 5724).

¹⁴⁵ Brief of November 21, 2001, addressed to the Supreme Court of Justice (File of attachments to the State's response, page 5763).

¹⁴⁶ Cf. Notification No. 3481-SCSJ-2001 of November 29, 2001, issued by the Secretary of the Supreme Court of Justice (File of attachments to the State's response, pages 5764 and 5765).

¹⁴⁷ Ruling of the Magistrates Criminal Court of November 30, 2001 (File of attachments to the State's response, pages 5769 and 5770).

¹⁴⁸ Cf. Ruling of the Third Court of Appeals on March 21, 2002 (File of attachments to the State's response, pages 5791 and 5798).

National Penitentiary, and upon finding Mr. José Ángel Rosa detained there, he asked the prison Director "to be separated from those convicted to avoid difficult situations."¹⁴⁹

83. On February 5, 2002, Judge José Hildebrán Pérez signed an order stating that "[t]aking into account that the media has made comments that [he was] pressured to rule in favor of Mr. Jorge Chávez and given that the Supreme Court of Justice has not offered protection to *ex officio* judges, he abstain[ed] from hearing [the case] concerning the death of Mr. Carlos Antonio Luna and the attempted murder to the detriment of Silvia Gonzales."¹⁵⁰

84. On December 16, 2003, Judge Hilda Rosario Lobo Díaz, representing the Civil Court, ruled that "finding that the suspects Ítalo Iván Lemus, Marcos Morales, Wilfredo Pérez and José Ángel Rosa have not given [testimony], the current proceedings continue separately against Mr. Jorge Adolfo Chávez, who was imprisoned and [had] legal representation to continue the proceedings."¹⁵¹

85. On September 10, 2004, the Civil Court issued a first instance judgment in which it absolved Mr. Jorge Adolfo Chávez of responsibility for the murder of Mr. Luna López and the crime of attempted murder to the detriment of Silvia Gonzales, considering that neither "the representative of the Public Prosecutor nor the Private Prosecutor at any time during the trial provided or investigated evidence that would prove with certainty that [...] Jorge Adolfo Chávez [had] acted as organizer [paying] the amounts of fifty thousand or ten thousand *lempiras* to murder the now deceased Carlos Antonio Luna López."¹⁵²

86. Following an appeal filed on April 25, 2005, the Third Court of Appeals of Tegucigalpa decided to sentence Jorge Adolfo Chávez to 17 years in prison for the murder of Carlos Luna and seven years and two months for the attempted murder of Silvia Gonzales,¹⁵³ having concluded that:

"although it is true that there is no direct evidence indicating the defendant Jorge Adolfo Chávez [as] guilty of the acts attributed to him, it is no less true that there are sufficient facts or indications which, examined together, allow the Court, through a reasoned mental process and following the rules of sound criticism, to arrive with certainty at the conclusion that [...] the accused Jorge Adolfo Chávez was the person who, together with others planned the murder of Carlos Luna, sending Oscar Aurelio Rodríguez (*El Machetío*) with others to carry out the act."¹⁵⁴

¹⁴⁹ Notification by the Magistrates Criminal Court addressed to the Director of the National Penitentiary dated June 15, 2002 (File of attachments to the State's response, page 5848).

¹⁵⁰ Order of the Magistrates Criminal Court of May 5, 2002 (File of attachments to the State's response, page 5780).

¹⁵¹ Ruling of the Catacamas Civil Court of December 16, 2003 (File of attachments to the State's response, page 5944). The Court notes that on September 24, 2003, the defense requested the provisional release of Mr. Jorge Chávez. Nevertheless, in a decision issued on October 21, 2003, the Civil Court ruled the application inadmissible. After a revocation request with a subsidiary appeal filed by the defense, on March 25, 2004, the Third Court of Appeals ratified the ruling of October 21, 2003. *Cf.* Brief requesting provisional release dated September 24, 2003 (File of attachments to the State's response, pages 5917 to 5921); Ruling of the Catacamas Civil Court of October 21, 2003 (File of attachments to the State's response, page 5923), and Ruling of the Third Court of Appeals of March 25, 2004 (File of attachments to the State's response, pages 5956 and 5958).

¹⁵² Judgment of the Catacamas Civil Court of September 10, 2004 (Attachments to the Report on Merits, page 671).

¹⁵³ *Cf.* Judgment of the Third Court of Appeals of April 25, 2005 (File of attachments to the final written arguments, pages 9121 to 9132). From the evidence provided in the file, the Court is unable to confirm the date on which the appeal was filed.

¹⁵⁴ Judgment of the Third Court of Appeals of April 25, 2005, *supra* (pages 9127 and 9129).

87. Subsequently, on June 16, 2006, by a unanimous vote, the Criminal Chamber of the Supreme Court upheld an appeal in favor of Jorge Chávez, absolving him of all charges¹⁵⁵ having concluded that:

“the judgment [of the Third Court of Appeals] lack[ed] a factual framework that described the events or omissions committed by Jorge Chávez, which [would provide] the evidentiary basis for considering him as intellectual author or accessory to the death of Carlos Luna, [since] the evidence which convict[ed] him lack[ed] the time, place and the method of payment or reward for committing the crime.¹⁵⁶ [Moreover,] the evidence provided to demonstrate the guilt of the accused was not sufficient to weaken the constitutionally guaranteed presumption of innocence. [This] proof [was] sufficient to issue a detention order, where probability, not certainty, is required, but not sufficient to convict the accused. Since certainty beyond a reasonable doubt on the involvement of the accused in the crime committed is lacking, the prevailing doubt works in his favor and the appropriate action is to hand down an acquittal.”¹⁵⁷

B.5.3. Regarding José Ángel Rosa¹⁵⁸

88. On October 24, 2001, the Prosecutor responsible for the case asked the Civil Court to issue a warrant for the arrest of José Ángel Rosa, “considering that there was sufficient [evidence] against him to presume that he was the intellectual author of the murder and attempted murder [being investigated].”¹⁵⁹ Accordingly, on October 31, 2001, the Civil Court issued the warrant requested.¹⁶⁰

89. On October 1, 2002, the Civil Criminal Court of the Judicial District of Tegucigalpa received the statement of the accused José Ángel Rosa.¹⁶¹

90. Based on the brief of May 14, 2003 presented by José Ángel Rosa,¹⁶² on May 26, 2003, the Civil Court ordered his provisional release after concluding that there was no evidence incriminating him as a participant in the murder of Carlos Luna López.¹⁶³

¹⁵⁵ Cf. Judgment of the Criminal Chamber of the Supreme Court of Justice, Appeal for Dismissal of June 16, 2006 (File of attachments to the final written arguments, pages 9133 to 9143).

¹⁵⁶ Judgment of the Criminal Chamber of the Supreme Court of Justice, Appeal for Dismissal, *supra* (page 9138).

¹⁵⁷ Judgment of the Criminal Chamber of the Supreme Court of Justice, Appeal for Dismissal, *supra* (pages 9142 and 9143).

¹⁵⁸ According to the representatives, the process against Ángel Rosa was conducted under file 043-04. However, the records of several initial investigative procedures are contained in files 1128-98 and 035-02 (Merits file, page 140, footnote 120).

¹⁵⁹ Request for arrest warrant of October 24, 2001 (File of attachments to the State’s response, page 5687).

¹⁶⁰ Cf. Ruling of the Catacamas Civil Court of October 31, 2001 (File of attachments to the State’s response, page 5693). The Court notes that on November 20, 2001, the Prosecutor in charge of the case asked the Civil Court to issue an order to enter and search the private home of José Ángel Rosa Hernández in order to execute the warrant for his arrest. On February 4, 2002, the Magistrate’s Court granted this request and ordered the respective proceedings. Cf. Ruling of the Magistrates Criminal Court of February 4, 2001 (File of attachments to the State’s response, page 5774).

¹⁶¹ Cf. Statement of the accused José Ángel Rosa rendered on October 1, 2002, before the Civil Criminal Court of the Judicial District of Tegucigalpa (File of attachments to the State’s response, page 5871).

¹⁶² Cf. Brief of application for release on bail of May 14, 2003 (File of attachments to the State’s response, pages 5889 to 5892).

¹⁶³ Cf. Ruling of the Catacamas Civil Court of May 26, 2003 (File of attachments to the State’s response, page 5894).

91. On January 11, 2006, the defense filed a challenge in respect of the blood relationship existing between Judge Luis Antonio Lobo and Marco Ramiro Lobo, the legal representative of Mariana Lubina.¹⁶⁴ In response, the Judge admitted the challenge filed and transferred the case to Judge Lidia Marlene Martínez Amador.¹⁶⁵

92. In light of the application presented by Prosecutor Karen Alicia Montaña Valerio,¹⁶⁶ on August 14, 2006, the Civil Court decided to reissue the arrest warrant against José Ángel Rosa.¹⁶⁷ Subsequently, on September 18, 2006, the Civil Court ordered the imposition of precautionary measures alternative to imprisonment.¹⁶⁸

93. On March 26, 2007, after concluding that there was no link between the threats made by Mr. José Ángel Rosa and the death of Mr. Carlos Luna López, the Civil Court agreed to rescind the provisional detention order, revoke the precautionary measures alternative to imprisonment and dismiss the case against the defendant José Ángel Rosa.¹⁶⁹ In response, the Prosecutor in charge of the case¹⁷⁰ filed an application for reconsideration and subsidiary appeal.¹⁷¹

94. On November 1, 2007, the Third Court of Appeals, upon considering that there was sufficient evidence to reasonably conclude that Mr. José Ángel Rosa had probably participated in the punishable acts, upheld the appeal filed and again ordered his provisional detention for the crimes he was accused of.¹⁷² There is no record in the file indicating compliance with said provisional detention order.

95. Based on the foregoing, on December 12, 2007, the defense filed an appeal for legal protection before the Constitutional Chamber, alleging violation of his procedural guarantees.

96. On June 30, 2008, Mr. José Ángel Rosa was murdered outside his home in Catacamas as part of an alleged "settling of scores."¹⁷³

97. However, despite the death of José Ángel Rosa, on September 28, 2008, the Constitutional Chamber rejected the appeal filed because "the violation alleged by the

¹⁶⁴ Cf. Application for Recusal of January 11, 2006 (File of attachments to the State's response, page 5988).

¹⁶⁵ Cf. Ruling of the Catacamas Civil Court of January 12, 2006 (File of attachments to the State's response, page 5990). On January 12, 2006 the defense requested the final dismissal of the proceedings against the defendant after concluding there was not sufficient evidence to doubt his innocence. However, in a ruling issued on April 25, 2006, the Court denied the motion for dismissal. Cf. Application for dismissal of January 12, 2006 (File of attachments to the State's response, pages 5991 to 5994).

¹⁶⁶ Cf. Application for arrest warrant of August 9, 2006 (File of attachments to the State's response, page 6007).

¹⁶⁷ Cf. Ruling of the Catacamas Civil Court of August 14, 2006 (File of attachments to the State's response, page 6009).

¹⁶⁸ Cf. Ruling of the Catacamas Civil Court of September 18, 2006 (File of attachments to the State's response, pages 6027 to 6029).

¹⁶⁹ Cf. Ruling of the Catacamas Civil Court of March 27, 2007 (File of attachments to the State's response, pages 6051 to 6055).

¹⁷⁰ Prosecutor Montaña was replaced by Prosecutor Adalgacia Chinchilla Suazo, who was duly notified on the proceedings, on March 28, 2007 (File of attachments to the State's response, pages 6056 and 6058).

¹⁷¹ Cf. Application for reconsideration and subsidiary appeal of March 29, 2007 (File of attachments to the State's response, page 6064).

¹⁷² Cf. Ruling of the Third Court of Appeals of November 1, 2007 (File of attachments to the State's response, pages 6070 and 6074).

¹⁷³ Cf. Article published in the newspaper *La Tribuna* on June 2, 2008, *supra* (File of attachments to the Merits Report, page 704).

petitioner was not found in the court records”¹⁷⁴ the matter was referred back to the Court of its provenance for the appropriate action. After this, no further legal action took place.

B.5.4. Regarding Ítalo Iván Lemus Santos¹⁷⁵

98. On April 29, 2008, the suspect Ítalo Iván Lemus was detained and placed in the custody of the Civil Court to be processed for the crimes of homicide and attempted homicide to the detriment of Mr. Luna López and Silvia Gonzales. Lemus was arrested in the Toncontin International Airport as a deportee from the United States of America.¹⁷⁶ Thus, on April 30 of that same year, he gave his first preliminary statement.¹⁷⁷ Subsequently, on May 5, the Civil Court ordered his provisional detention.¹⁷⁸

99. On October 14, 2008, the defense counsel of Ítalo Lemus requested that the court-ordered imprisonment be revoked due to lack of merit.¹⁷⁹ However, this petition was denied in a ruling on October 21, 2008.¹⁸⁰ In light of the foregoing, the defense filed an application for reconsideration, which was rejected on November 12, 2008.¹⁸¹

100. On March 10, 2009, Prosecutor Adalgicia Silvana Chinchilla Suazo (hereinafter, “Prosecutor Chinchilla”) formalized the charges against Mr. Ítalo Lemus.¹⁸² On August 10, 11 and 13, 2009, the relevant hearings were conducted for the examination of the evidence.¹⁸³

101. On October 13 and 27, 2009, Prosecutor Chinchilla and the defense formulated their conclusions, respectively.¹⁸⁴

¹⁷⁴ Cf. Ruling of the Constitutional Chamber of the Supreme Court of Justice of September 23, 2008 (File of attachments to the State’s response, pages 6087 to 6092).

¹⁷⁵ According to the representatives, the initial investigative proceedings regarding Ítalo Iván Lemus are found in file 1128-98. Subsequently, file 1316-99 was opened to investigate the participation of Ítalo Iván Lemus, Marcos Morales and Wilfredo Pérez. Finally, some of the proceedings conducted appear in file 035-02 (Merits file, page 144, footnote 152).

¹⁷⁶ Cf. Brief of April 29, 2008, of the Criminal Investigation Division (File of attachments to the State’s response, page 6112).

¹⁷⁷ Cf. Statement of the accused Ítalo Iván Lemus Santos rendered on April 30, 2008 (File of attachments to the State’s response, page 6117).

¹⁷⁸ Cf. Ruling of the Catacamas Civil Court on May 5, 2008 (File of attachments to the State’s response, page 6126). On September 25, 2008, a judicial inspection was conducted on the premises of the Human Resources Department of Corporative Security Company S.A. to determine the employment status of Ítalo Iván Lemus at the time when Mr. Luna López was murdered. In reference to this, on October 1, 2008, the witness statement of Francisco Reinaldo Rivera Ramos was received (File of attachments to the State’s response, page 6180).

¹⁷⁹ Cf. Application to revoke the detention order of October 14, 2008 (File of attachments to the State’s response, page 6184 to 6191).

¹⁸⁰ Cf. Ruling of the Catacamas Civil Court on October 21, 2008 (File of attachments to the State’s response, pages 6197 to 6201).

¹⁸¹ Cf. Ruling of the Catacamas Civil Court of November 12, 2008 (File of attachments to the State’s response, page 6203).

¹⁸² Cf. Brief for the Formalization of the Indictment against Ítalo Iván Lemus Santos of March 10, 2009 (File of attachments to the State’s response, pages 6225 to 6229).

¹⁸³ Cf. Ruling of the Catacamas Civil Court of June 30, 2009 (File of attachments to the State’s response, page 6308); statement of Silvia Gonzales rendered on August 10, 2009 (File of attachments to the State’s response, page 6315) and confrontation hearing between Josefa Dolores Navarro Hernández and Álvaro Danilo Zapata of August 11, 2009 (File of attachments to the State’s response, page 6320).

¹⁸⁴ Cf. Judgment of the Catacamas Civil Court of Olancho Province of November 12, 2009 (File of attachments to the State’s response, page 6370).

102. On November 12, 2009, the Civil Court issued its judgment of first instance, acquitting Mr. Ítalo Lemus and ordering his provisional release.¹⁸⁵ In response to this decision, Prosecutor Chinchilla filed an appeal¹⁸⁶ and requested precautionary measures against the defendant,¹⁸⁷ which were ordered by the Court on November 13, 2009.¹⁸⁸

103. In light of the appeal filed, on June 4, 2010, the Third Court of Appeals of Francisco Morazán Province decided to sentence Ítalo Lemus to 18 years of imprisonment for the murder of Carlos Luna López and to eight years and eight months for the attempted murder of Silvia Gonzales.¹⁸⁹

104. Finally, on January 10, 2013, the Criminal Chamber of the Supreme Court of Justice ruled “inadmissible”¹⁹⁰ the appeal for the dismissal of the conviction handed down by the Third Court of Appeals. The ruling was notified to Prosecutor Miriam Emilda García Pérez on February 8, and to the attorney for Mr. Lemus Santos on February 13. Thus, given the fact that Mr. Ítalo Iván Lemus had been released, on February 20, 2013, the Civil Court issued a warrant for his arrest.¹⁹¹ However, to date he has not been captured.¹⁹²

B.5.5. Regarding Marcos Morales and Wilfredo Pérez

105. With respect to the investigations related to Marcos Morales and Wilfredo Pérez, who were named by Oscar Aurelio Rodríguez Molina as being responsible for the death of Mr. Luna López (*supra* para. 66), the Court notes that in February, 2001, the Civil Court issued warrants for their arrest (*supra* para. 75). Likewise, in a subsequent statement of June 15, 2004, Mr. Oscar Aurelio Rodríguez Molina stated that “Messrs. Marcos Morales and Wilfredo Pérez [...] do not exist.”¹⁹³ In this regard, the Court finds no additional judicial proceedings with respect to the aforesaid defendants.

B.5.6. Regarding Lincoln Figueroa, Alejandro Fredy Salgado Cardona and Fredy Noel Salgado Mejía

106. The Court notes that during the investigations conducted, various testimonies referred to the alleged participation of Congressman Lincoln Figueroa in the death of Mr. Luna López.¹⁹⁴ In this regard, on September 6, 1999, Prosecutor Leoni submitted a report

¹⁸⁵ Cf. Judgment of the Catacamas Civil Court of Olancho Province of November 12, 2009 (File of attachments to the State’s response, page 6370).

¹⁸⁶ Cf. Notification of Judgment of November 12, 2009, in which an appeal was filed (File of attachments to the State’s response, page 6372).

¹⁸⁷ Cf. Brief requesting Precautionary Measures of November 12, 2009 (File of attachments to the State’s response, page 6373).

¹⁸⁸ Cf. Hearing of November 13, 2009 (File of attachments to the State’s response, pages 6384 and 6385).

¹⁸⁹ Cf. Judgment of the Third Court of Appeals of June 4, 2010 (File of attachments to the final written arguments, page 9081).

¹⁹⁰ Cf. Judgment of the Criminal Chamber of January 10, 2013 (File of attachments to the final written arguments, page 9104).

¹⁹¹ Cf. Warrant for the arrest Ítalo Iván Lemus Santos of February 20, 2013 (File of attachments to the final written arguments, page 8988).

¹⁹² Cf. State Communication of September 12, 2013, *supra* (Merits file, page 1114). According to the State’s information, the last action was taken on March 14, 2013, with the application for an entry and search order for Mr. Lemus’ home (Merits file, pages 1134 to 1135).

¹⁹³ Statement of Oscar Aurelio Rodríguez Molina rendered on June 15, 2004, before the Catacamas Civil Court (File of attachments to the State’s response, page 5982).

¹⁹⁴ Cf. Statement of Eliseo Oviedo rendered on May 22, 1998 before the Criminal Investigation Division (File of attachments to the final written arguments, page 9561); statement of Inés Verónica Mejía Herrera rendered on July 16, 1998, before the Catacamas Civil Court (File of attachments to the State’s response, page 5029); statement of

for the Deputy Director of Prosecutors of the Public Prosecutor's Office on the inquiries carried into the murder of Mr. Luna where Mr. Lincoln Figueroa was mentioned as one of the presumed intellectual authors.¹⁹⁵ On March 7, 2000, Mr. Lincoln Figueroa gave his statement and claimed they wanted to incriminate him to undermine his political career.¹⁹⁶

107. Moreover, several witnesses alleged that Mayor Salgado "had offered ten thousand *lempiras* [to Mr. Luna López] to [...] stop delving into the mischief that went on in the Municipality."¹⁹⁷ Mayor Salgado made statements regarding this on June 10,¹⁹⁸ and August 17, 1998,¹⁹⁹ as well as on February 17, 2000,²⁰⁰ denying the aforementioned accusations.

108. In addition, according to some statements, Fredy Noel Salgado Mejía supposedly had knowledge of the plans to murder Mr. Luna López.²⁰¹ A face-to-face hearing took place to corroborate this information.²⁰² Likewise, Mr. Fredy Salgado "son" was accused by Oscar Aurelio Rodríguez Molina of allegedly contracting Alberto Isidoro Calix and Ítalo Iván Lemus to kill Mr. Luna López.²⁰³ This accusation was ratified in another statement by Oscar Aurelio Rodríguez on September 20, 2004.²⁰⁴ Based on Mr. Rodríguez Molina's testimony, on September 27, 2004, warrants were requested for the arrest of Messrs. Alberto Isidoro Calix, Fredy Noel Salgado "Guifarro", Alejandro Fredy Salgado Cardona and Adán Orellana;²⁰⁵ however, the Civil Court denied the request.²⁰⁶ (*supra* para. 71).

109. Finally, the Court notes that in the course of the aforementioned judicial proceedings, there were 10 changes of prosecutors²⁰⁷ and 14 changes of first instance judges.²⁰⁸

Gonzalo Zúñiga rendered on October 19, 1998, before the Catacamas Civil Court (File of attachments to the State's response, page 6783) and statement of María Teodora Ruiz Escoto rendered on November 30, 1998, before the Catacamas Civil Court (File of attachments to the State's response, page 5214).

¹⁹⁵ Cf. Record of investigative activities of September 6, 1999 (File of attachments to the brief of pleadings and motions, page 4603).

¹⁹⁶ Cf. Witness statement of Lincoln Alejandro Figueroa rendered on March 7, 2000, before the Catacamas Civil Court (File of attachments to the State's response, page 7681).

¹⁹⁷ Statement of Rosa Margarita Valle Hernández rendered on August 24, 1998, before the Catacamas Civil Court (File of attachments to the State's response, page 6701). Cf. Statements rendered before the Catacamas Civil Court by: Inés Verónica Mejía Herrera on July 16, 1998 (File of attachments to the State's response, page 5029); César Augusto Luna Valle on August 27, 1998 (File of attachments to the State's response, page 5098) and María Teodora Ruiz Escoto on November 30, 1998 (File of attachments to the State's response, page 5214).

¹⁹⁸ Cf. Statement of Alejandro Fredy Salgado Cardona rendered on June 10, 1998, before the Criminal Investigation Division (File of attachments to the final written arguments, page 9388).

¹⁹⁹ Cf. Statement of Alejandro Fredy Salgado Cardona rendered on August 17, 1998, before the Catacamas Civil Court (File of attachments to the State's response, page 5061).

²⁰⁰ Cf. Statement of Alejandro Fredy Salgado Cardona rendered on February 17, 2000, before the Catacamas Civil Court (File of attachments to the State's response, page 5309).

²⁰¹ Cf. Statement of Eracles Javier Escobar of March 8, 2000, rendered before the Catacamas Civil Court (File of attachments to the State's response, page 5335) and statement of Fredy Noel Salgado Mejía rendered on April 23, 2001, before the Catacamas Civil Court (File of attachments to the State's response, page 5480).

²⁰² Cf. Face-to-face hearing between Messrs. Eracles Javier Escobar and Fredy Noel Salgado Mejía (File of attachments to the State's response, page 5483).

²⁰³ Cf. Statement of Oscar Aurelio Rodríguez Molina on June 15, 2004, before the Catacamas Civil Court (File of attachments to the State's response, page 5980).

²⁰⁴ Cf. Statement of Oscar Aurelio Rodríguez Molina rendered on September 20, 2004, before the Catacamas Civil Court (File of attachments to the State's response, page 5970).

²⁰⁵ Cf. Application for arrest warrant of September 27, 2004 (File of attachments to the State's response, pages 5977 and 5978). This application refers to Mr. Fredy Noel Salgado Mejía, as Fredy Noel Salgado "Guifarro."

²⁰⁶ Cf. Ruling of Catacamas Civil Court of December 15, 2004 (File of attachments to the State's response, page 5984).

²⁰⁷ Namely: Adrián Octavio Rosales Núñez from the start of the investigations, on May 21, 1998; Gia Firenze Leoni Jiménez from January 20, 1998; Javier Enrique Umanzor Silva from May 4, 2000; Karla Yaneth Zavala Mendoza

VI RIGHT TO LIFE AND POLITICAL RIGHTS

A. *Arguments of the parties and the Commission*

110. The *Commission* pointed out that the States have a positive obligation to adopt specific measures to protect an individual whose life is in danger due to criminal acts by private persons, provided that the State is aware of or has knowledge of this danger. In this regard, the *Commission* indicated that the State of Honduras was aware, at the time of events of this case, of a pattern of violations and impunity against the defenders of the environment. Consequently, the position held by Carlos Luna López as an environmentalist and City Councilman, placed him in a situation of particular risk that meant the State had an increased responsibility to protect him. In addition, the State knew of the specific death threats received by Carlos Luna López because he had publically complained and had informed the Public Prosecutor and the Catacamas Municipality about them. Despite being aware of the situation, the State did not adopt any specific measure to counter the death threats received by Mr. Luna López. Specifically, the Public Prosecutor conducted a conciliation meeting without consulting Mr. Carlos Luna López on the choice of this alternative measure or the reasons for selecting conciliation as a sufficient and effective measure of protection for addressing the death threat. The *Commission* noted that conciliation was not an appropriate response given the threats made; on the contrary, no record or complaint was issued, no allegations were investigated and no monitoring took place, all in breach of the State's responsibility for prevention, thus making it internationally responsible for the violation of the right to life to the detriment of Carlos Luna López.

111. Regarding the presumed violation of Article 23 of the American Convention, the Commission argued that the States have the obligation to "undertake positive actions that result in the elimination of hostile or dangerous environments for the protection of human rights." Given that Carlos Luna López was defending human rights from the public position to which he had been elected, the Commission considered that this case has specific features, entailing the analysis of the right to participate in government in relation to the work of defending and promoting human rights. Given that the threats and subsequent murder of Mr. Luna López occurred in response to his work in defense of human rights through his public position, the Commission emphasized the negative impact this would have on other human rights defenders because of the fear it caused. This could directly impair their possibilities of exercising their right to defend human rights through legal complaints. For this reason, the threats and the murder violated Carlos Luna López's right to participate in government because they sought to prevent him from performing the job

from June 21, 2000; Omar Menjivar Rosales from April 17, 2001; Pedro Rodríguez from June 6, 2003; José Cruz Mejía from January 21, 2004; Karen Alicia Montaña from June 22, 2006; Adalgicia Silvana Chinchilla Suazo from March 28, 2007, and José Ismael Ordóñez Reyes from June 23, 2008 (File of attachments to the State's response, pages 6576, 5220, 5392, 7123, 7174, 8209, 8260, 6000, 6056 and 6141, respectively).

²⁰⁸ Namely: Carlos Castillo Sermenon from the start of the investigations; Iveth Merary López Gonzales from July 15, 1998; Jaime Vásquez del Arca from August 17, 1998; Mario Amaya Oliva from September 24, 1998; Isis Linares Mendoza from January 28, 2000; José Hildebrán Pérez from November 30, 2001; Julio Adán Posada Villalta from April 20, 2002; Enma Daniela Turcios Castellanos from June 13, 2002; Hilda Rosario Lobo Díaz from September 24, 2002; Antonio José García Molina from June 23, 2004; Lidia Marlene Martínez Amador from September 24, 2004; Luis Antonio Lobo Vásquez from January 12, 2006; Josefa Dolores Navarro Hernández from April 28, 2008, and Alfredo Yobani Moradel Ramos from August 11, 2008 (File of attachments to the State's response, pages 6573, 6651, 6680, 6744 and 6745, 7021, 5767 and 5768, 7241, 5824, 5868, 5962, 5972, 5990, 6111 and 6152, respectively).

for which he was elected and to intimidate other human rights defenders. Given that the State of Honduras “failed to assess the existing danger, to adopt reasonable measures of protection, to investigate the allegations, and where appropriate, to prosecute and punish those responsible,” the State violated the right of Carlos Luna López to participate in government, in contravention of Article 23 of the American Convention.

112. The *representatives* agreed with the Commission and argued that the State had breached its obligation to guarantee the right to life by not taking into account other factors of structural risk in this case. Furthermore, they noted that the State was aware of the situation of risk affecting Carlos Luna López at the time of his death due to the complaints he had filed. The State authorities who were aware of the situation of risk facing Carlos Luna López “took no action in spite of their obligations as State officials, particularly under the Code of Criminal Procedure in force at the time of the events. Even more serious is the fact that the Public Prosecutor’s Office adopted an unlawful measure.” They also pointed out that the obligation to provide security was exacerbated by indications that State officials had participated in and covered up his murder. The representatives also alleged that the State violated the right of Carlos Luna López to humane treatment since “despite the seriousness of the situation and the obvious risk in which Mr. Luna found himself, the authorities failed to adopt any measures to avoid having his right to life and humane treatment irreparably damaged.” The State’s negligence and the lack of an investigation into the threats received by Mr. Luna resulted in “the anxiety, stress, frustration and fear” that he experienced in the months prior to his death and resulted, in turn, in a violation of his right to humane treatment, enshrined in Article 5 of the American Convention.

113. As to the alleged violation of Article 23 of the Convention, the *representatives* argued that the right to participate in government comprises two aspects: the right to exercise power and the right to elect those who are to exercise it. They stated that Carlos Luna knew that his efforts to defend human rights would be strengthened by his exercise of the political position to which he had been elected. In this regard, they agreed with the Commission’s statements regarding the violation of Mr. Luna López’s right to participate in government in view of the threats he received in the exercise of his work as an elected official and through the intimidating effects that his death would have on other human rights defenders. Given that the State of Honduras did not guarantee Mr. Luna López’s political participation, the representatives concluded that the State had failed to meet its international obligation to safeguard his political rights. According to the representatives, the State had failed in its “obligation to create the conditions for Carlos Luna and the other defenders of human rights and the environment to freely carry out their activities in a setting free of violence.”

114. For its part, the *State* alleged that the situation of risk facing Mr. Luna López was not reported to the appropriate authorities so that they could take action, resulting in Honduras’ failure to meet its obligation of prevention under Article 4 of the American Convention. Moreover, it questioned the truth of the presumed threats carried out by State officials against Mr. Luna López, given that these claims did not arise from the statements of witnesses and the victim’s family. Accordingly, the State denied any violation of its duty to protect Mr. Luna’s right to life. Similarly, the State did not comment on the violation of the personal integrity of Carlos Luna López.

115. Also, the *State* argued that it had not impaired the political aspirations of Mr. Luna López nor the expectations of the voters who elected him. The State attributed the death of Carlos Luna López while he served as City Councilman to third parties outside the State and argued that this act was carried out as a consequence of his work and that it could be equally dangerous for any other task carried out by citizens who performed public work.

This work did not require specific or particular protection for Mr. Luna's life. Furthermore, the State insisted that at no time did it deny or undermine his political participation. Finally, it argued that in this case the violation of the right to participate in government stems from the violation of the right to life, and considering that there was no violation of Article 4 of the American Convention, there was also no violation of Article 23 of the Convention.

B. Considerations of the Court

116. The Court shall proceed to analyze the facts of the case in light of its constant jurisprudence regarding the obligation to guarantee of the right to life and the presumed violation of Carlos Luna López's right to participate in government, in order to rule on the alleged violations of the aforementioned rights.

B. 1. Right to life of Carlos Luna López

B.1.1. Obligation to guarantee rights

117. The Court has stated that the right to life plays a fundamental role in the American Convention given its essential nature for the protection of all the other rights enshrined therein.²⁰⁹ The States have the obligation to guarantee the creation of the conditions required to prevent violations of this inalienable right. The observance of Article 4, in relation to Article 1(1) of the American Convention, not only presupposes that no person may be arbitrarily deprived of life (negative obligation), but also requires the State to adopt all appropriate measures to protect and preserve the right to life (positive obligation),²¹⁰ in accordance with the obligation to guarantee the full and free exercise of the rights of all persons under its jurisdiction.²¹¹

118. The obligation to guarantee the right to life also presupposes the duty of the State to prevent violations of said right. This obligation of prevention encompasses all measures of a legal, political, administrative and cultural nature that ensure the safeguard of human rights and ensure that any possible violation of these rights is considered and treated as an unlawful act which, as such, may result in the punishment of the person who commits it, as well as the obligation to compensate the victims for the harmful consequences. It is also clear that the obligation to prevent is one of means or conduct,²¹² and failure to comply with it is not proved merely because the right has been violated.²¹³

119. According to this Court's jurisprudence, in order to establish that a violation of the right to life has occurred, it is not necessary to determine the guilt of its authors or their intentions. Nor is it necessary to individually identify the agents to whom the violations are attributed;²¹³ rather, it is sufficient to demonstrate the documented actions or omissions

²⁰⁹ Cf. *Case of Villagrán Morales et al. (Street Children) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C, No. 63, para. 144 and *Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merit and Reparations*. Judgment of November 30, 2012. Series C, No. 259, para. 190.

²¹⁰ Cf. *Case of Villagrán Morales et al. (Street Children)*, *supra*, para. 144 and *Case of Castillo González et al. v. Venezuela. Merits*. Judgment of November 27, 2012. Series C, No. 256, para. 122.

²¹¹ Cf. *Case of Villagrán Morales et al. (Street Children)*, *supra*, para. 99, and *Case of the Santo Domingo Massacre*, *supra*, para. 189.

²¹² Cf. *Case of Velásquez Rodríguez. Merits*, *supra*, para. 166 and *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C, No. 205, para. 252.

²¹³ Cf. *Case of Velásquez Rodríguez. Merits*, *supra*, para. 173 and *Case of the Santo Domingo Massacre*, *supra*, para. 162.

that have allowed these violations to be perpetrated or that the State has an obligation that it has not complied with.²¹⁴

120. The State's obligation to guarantee rights goes beyond the relationship between its agents and the persons under its jurisdiction; it also encompasses the obligation to prevent, within the private sphere, third parties from violating protected juridical rights.²¹⁵ However, according to the Court's jurisprudence it is clear that "a State cannot be held responsible for all the human rights violations committed between individuals within its jurisdiction. Indeed, the nature of the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds between individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or a group of individuals and by the reasonable possibilities of preventing or avoiding that danger. In other words, even though an act, omission or deed by an individual has the legal consequence of violating the specific human rights of another individual, this is not automatically attributable to the State, because the specific circumstances of the case and the execution of these guarantee obligations must be considered."²¹⁶ Accordingly, the Court must determine whether it is appropriate to attribute responsibility to the State in this case.

B.1.2. Obligation of prevention in situations of real and immediate risk

121. From the evidence provided in this case, it is clear that at the time of events a situation of conflict and risk existed in Honduras against people working to protect the environment, a situation that deteriorated in the years following the death of Mr. Luna López (*supra* paras. 17 to 23). Moreover, the Court recalls the State's affirmations to the United Nations, in which it stated that "Carlos Luna [was] another martyr who lost his life defending the forest resources of Olancho" (*supra* para. 17).

122. The Court notes that, as a public servant, Carlos Luna López actively participated in the protection of the environment between January 25 and May 18, 1998, the date of his death. The Court also takes note of Carlos Luna López's work during his life as a defender of human rights in Honduras. In this sense, the Court considers that the definition of a human rights defender lies in the work carried out, regardless of whether the individual acts as a private individual or as a public servant.²¹⁷ For the purposes of analyzing this case, the

²¹⁴ Cf. *Case of Velásquez Rodríguez. Merits, supra*, paras. 73, 134 and 172 and *Case of the Santo Domingo Massacre, supra*, para. 162.

²¹⁵ Cf. *Case of the Mapiripán Massacre v. Colombia. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C, No. 134, para. 111 and Case of Suárez Peralta, supra*, para. 129.

²¹⁶ Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C, No. 140, para. 123 and Case of Suárez Peralta, supra*, para. 129.

²¹⁷ Cf. Office of the United Nations High Commissioner for Refugees (UNHCR), Information Bulletin No. 29, *The Defenders of Human Rights: Protection of the Right to Defend Rights*, Geneva 2004, page 7, available at: <http://www.ohchr.org/Documents/Publications/FactSheet29sp.pdf>, and Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OAS/Ser.L./V/II/Doc.66, December 31, 2011, page 4. Cf. UN, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Resolution approved by the UN General Assembly on December 9, 1998, UN Doc. A/RES/53/144, March 8, 1999, Article 8(1): "everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs; Article 8(2): This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms."

Court notes that after he was elected City Councilman in 1998, Mr. Luna López continued working in defense of the environment, this time in the discharge of his public duties as Municipal Commissioner for the Environment and Head of the Catacamas Environmental Unit. Accordingly, Carlos Luna denounced acts of corruption, illegal felling of trees and the use of “phantom cooperatives” for illegal forestry activities (*supra* para. 27).

123. The Court recalls that there is an undeniable link between the protection of the environment and the protection of other human rights²¹⁸ and that the “recognition of work undertaken in defense of the environment and its relationship to human rights is even greater in the countries of the region, where a growing number of threats, acts of violence and murders of environmentalists have been denounced.”²¹⁹ In this regard, the Court considers that States have the obligation to adopt all necessary and reasonable measures to guarantee the right to life of those persons who find themselves in situations of special vulnerability,²²⁰ particularly as a consequence of their work,²²¹ whenever the State is “aware of a situation of real and imminent danger for a specific individual or a group of individuals and has reasonable possibilities of preventing or avoiding that danger.”²²² Furthermore, States should provide the necessary means for persons who are defenders of human rights, or who perform a public function, so that when they encounter threats or situations of risk or report violations of human rights, they can “freely carry out their activities; protect them when they receive threats so as to prevent attacks on their lives and integrity; create the conditions to eradicate violations by State agents or other individuals; refrain from hindering their work and seriously and effectively investigating violations committed against them, combating impunity.”²²³

²¹⁸ Cf. *Case of the Mayagna Community (Sumo) Awas Tingni v. Nicaragua. Merits, Reparations and Costs.* Judgment of August 31, 2001. Series C, No. 79, paras. 144 and 149 and *Case of Kawas Fernández, supra*, para. 148. Cf. Organization of American States, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador), Article 11. Similarly, the European Court of Human Rights has recognized the link existing between the protection of the environment and the fulfillment of human rights. Cf., European Court of Human Rights (ECHR), *Case of Guerra et al. v. Italy.* No. 116/1996/735/932. Judgment of February 19, 1998, para. 60; *Case of López Ostra v. Spain.* No. 16798/90. Judgment of December 9, 1994, para. 51 and *Case of Fadeyeva v. Russia.* No. 55723/00. First Section. Judgment of June 9, 2005, paras. 68 to 79.

²¹⁹ Cf. *Case of Kawas Fernández, supra*, para. 149.

²²⁰ Cf. *Case of the Pueblo Bello Massacre, supra*, para. 123 and *Case of Castillo González et al., supra*, para. 128. Similarly, Cf. ECHR, *Case of Kiliç v. Turkey*, No. 22492/93. Judgment of March 28, 2000, paras. 62 and 63, and *Case of Osman v. United Kingdom*, No. 87/1997/871/1038. Judgment of October 28, 1998, paras. 115 and 116; UN, Committee on Human Rights, *Case of Delgado Páez v. Colombia*, Communication No. 195/1985, UN Doc. CCPR/C/39/D/195/1985(1990), July 12, 1990, paras. 5(5) and 5(6).

²²¹ Cf. UN, Committee on Human Rights, *Case of Orly Marcellana and Daniel Gumanoy, representing Eden Marcellana and Eddie Gumanoy v. Phillipines*, Communication No. 1560/2007, UN Doc. CCPR/C/94/D/1560/2007, October 30, 2008, paras. 7(6) and 7(7). Also, 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 García and Family v. Guatemala. Merits, Reparations and Costs.* Judgment of November 29, 2012. Series C, No. 258, para. 179.

²²² *Case of the Pueblo Bello Massacre, supra*, para. 123 and *Case of Castillo González et al., supra*, para. 128.

²²³ Cf. *Case of Nogueira de Cavalho, supra*, para. 77 and *Case of García and Family, supra*, para. 179. Cf. United Nations working group on Arbitrary Detention, *Opinion No. 39/2012 (Belarus)*, UN Doc. A/HRC/WGAD/2012/39, August 31, 2012, para. 45. Cf. UN, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Supra, Article 12(2)*: “The State shall take all necessary measures to ensure the protection by competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration;” and Resolutions 1818/01 and 1842/02 of the General Assembly of the Organization of American States, *Human Rights Defenders in the Americas: Support for the Work of Individuals, Groups and Civil Society Organizations for the Promotion and Protection of Human Rights in the Americas*, of June 4, 2010, which resolved, “To exhort Member States to intensify their efforts to adopt the necessary measures to guarantee life, humane treatment and freedom of

124. Based on the foregoing, the Court will consider whether in this case the requirements were met to determine that the State had a positive obligation to prevent human rights violations. Thus, it is necessary to confirm whether, at the time of the events, a situation of real or imminent danger existed for the life of a specific individual or a group of individuals, whether the authorities were aware or should have been aware of this, and whether necessary measures were adopted within the scope of their authority which could be reasonably expected to prevent or avoid such danger.²²⁴

125. As to the existence of a real and imminent danger, the Court notes that on February 26, 1998, Carlos Luna López was threatened with a weapon pointed to his head and a shot fired into the air by José Ángel Rosa, because of his complaints regarding problems with the extraction of timber. In relation to the State's awareness of this danger, the Court must analyze the State's presumed responsibility for preventing human rights violations in light of the complaints made to public institutions or officials, in order to verify whether or not the State had prior knowledge of the alleged specific risk to the life or personal integrity of Mr. Luna López. In this regard, it has been proven that the death threat made on February 26, 1998 was reported by Mr. Luna López to the Public Prosecutor on the same night he received it (*supra* para. 28).²²⁵ In addition, as a City Councilman and Head of the Catacamas Environmental Unit, on February 28, 1998, he reported presumed acts of corruption, illegal logging in the forest by the firms "PROFOFI," "IMARA" and "La Fosforera," as well as the use of "phantom cooperatives," known as the "Quebrada de Catacamas," to exploit the forests in the municipality, to the Public Prosecutor and to the media.²²⁶ Soon after, on March 6, 1998, Mr. Luna López reported the theft of timber in the municipality to the Catacamas Civil Court.²²⁷ In relation to the foregoing, on March 7, 1998, the Honduran press published a statement by Mr. Luna López, in which he referred to the same death threats made to him by José Ángel Rosa because of his complaint involving Mr. Rosa's business.

126. Additionally, during the investigation into the murder of Mr. Luna López, it was established that he notified the Mayor of Catacamas as well as members of the Catacamas City Council about the death threats he had received. Specifically, Mr. Luna López addressed the City Council and "stated to all [...] that he had had problems with [José Ángel] Rosa,"²²⁸ who had threatened him by firing shots into the air due to alleged problems because of his complaints about illegal felling of trees. In relation to this, the Court declares that it is

expression to themselves, according to the national legislation and in agreement with internationally recognized principles and standards."

²²⁴ Cf. *Case of the Pueblo Bello Massacre*, *supra*, para. 123 and *Case of Castillo González et al.*, *supra*, para. 128.

²²⁵ Moreover, the representatives alleged that on April 4, 1998, José Ángel Rosa telephoned the home of Mr. Luna López and told him he had the money, the weapons and the people to kill him and his family. That same day, Mr. Luna López would have called the Public Prosecutor to file a complaint for this second threat (*supra* para. 30). The Court points out there is no credible evidence in the file to corroborate the testimony of Carlos Luna López's family, who claim that Mr. Luna López had filed a complaint for the second death threat made against him (Merits file, pages 564 and 579; File of attachments to the State's response, pages 5049, 5078, 5091 and 5096).

²²⁶ Cf. Report filed by Carlos Antonio Luna López before the Public Prosecutor on February 28, 1998 (File of attachments to the Report on Merits, pages 494 and 495); press release published in the newspaper *El Heraldo* on March 7, 1998, *supra*; interview with Carlos Luna on the radio program *Estamos a Tiempo*, *supra*; interview on the program *Sucesos de la Voz de Olancho*, on April 17, 1998, *supra*; witness statement made before a notary public by Rosa Margarita Valle Hernández on January 21, 2013 (Merits file, page 563); by Carlos Antonio Luna Valle on January 21, 2013 (Merits file, page 578) and statement of Inés Verónica Mejía Herrera rendered on July 16, 1998 (File of attachments to the State's response, page 5029).

²²⁷ Cf. Press release published in the newspaper *El Heraldo* on March 7, 1998, *supra*.

²²⁸ Statement of Alejandro Fredy Salgado rendered on February 17, 2000 (Merits file, page 5311).

apparent from the proof provided in the file that a competent authority, such as the Public Prosecutor's Office, was aware of the matter and in this case should have adopted the appropriate measures.

127. Regarding the measures adopted by the State, the Court believes it necessary to recall that state authorities have a responsibility to be aware of a situation of special risk, to identify or determine whether the person being threatened or harassed requires protection measures or to refer the matter to the competent authority for that purpose and to offer the person at risk pertinent information on the measures available. The assessment of whether a person requires protection measures and what those measures should be is the State's obligation, and this must not be limited to requiring the victim to apply to "the competent authorities," without knowing which authority can best address the situation, since it is the State's responsibility to establish measures of coordination between its institutions and officials for this purpose.²²⁹ In this case, the Court notes that Mr. Luna López reported the death threat he received to the Public Prosecutor's Office, thereby fulfilling his obligation to activate the bodies responsible for providing a response to the risk he was facing.

128. In relation to the report filed before the Public Prosecutor's Office on February 26, 1998, the Court confirmed that during a meeting held at the Public Prosecutor's Office, Mr. Rosa had apologized to Mr. Luna López and had stated that he was intoxicated at the time of the threat (*supra* para. 28). In this regard, the Court has no specific information to establish, as a proven fact, that Mr. Luna López had accepted the apology or had asked the Public Prosecutor not to pursue the case. In fact, a few days later, Mr. Luna López told the press about the same threats he had previously reported (*supra* para. 29). Furthermore, it is worth noting that the Prosecutor did not bring charges of any kind because he believed that the existing legislation did not permit the recording of conciliatory proceedings (*supra* para. 28) and he did not adopt any additional measure to protect Carlos Luna or to assess the level of risk to which he was exposed. It is worth pointing out that the risk created by this threat subsequently materialized with Mr. Luna's violent death outside the Municipal Building. In other words, the Public Prosecutor's Office's action was neither prompt nor efficient in countering the risk to the life of Mr. Luna López, of which it had been notified.

129. As to the actions of the Public Prosecutor's Office in response to the reports of death threats and the danger to Mr. Luna López's life, the Court deems it necessary to refer to the arguments of the parties on this matter according to the domestic legislation in this specific case, that is to say, the holding of a meeting which, according to the authorities, was considered "conciliatory" and the alleged non-compliance with domestic laws in this respect.

130. In this regard, the Court notes that the Code of Criminal Procedure in force at the time of the events established that a criminal action for the offences contained in the Criminal Code could be initiated by the Public Prosecutor's Office or by the Judge,²³⁰ and that the complaint could be formulated either verbally or in writing.²³¹ A record of the

²²⁹ Cf. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C, No. 248, para. 201.

²³⁰ Code of Criminal Procedure, *supra*, "Article 152. – Criminal proceedings may be started: 1) By the Judge *ex officio* at the request of the Public Prosecutor's Office; 2) Through an accusation or complaint filed by an authority or by any other person and 3) By a complaint or indictment filed by the injured party or by one of his relatives."

²³¹ Code of Criminal Procedure, *supra*, "Artículo 153. – The complaint, indictment or report may be formulated verbally or in writing, containing:

- 1) The name of the plaintiff, the accuser or the complainant;
- 1) The name or identity of the accused;
- 2) A detailed description of the incident;

incident should have been kept, as required by the Code of Criminal Procedure, each time he made a verbal report to the Public Prosecutor's Office. Thus, the domestic regulations at the time of the events provided a process to follow and established the actions to be taken by the State to address the threats received by Mr. Luna López, through an investigation of the facts.

131. In this respect, Article 207 of the Honduran Code of Criminal Procedure in force at the time contemplated the crime of intimidation as an offence indictable by the Public Prosecutor's Office.²³² In particular, said article establishes the punishment of imprisonment for six months to two years for this crime and, in addition, the person convicted remains subject to any measures that the Judge may deem appropriate. For that reason, the Court considers that the Public Prosecutor's Office should have initiated the appropriate legal action against Mr. José Ángel Rosa based on the threat reported by Carlos Luna López. The complaint filed by Mr. Luna López before the Public Prosecutor should have been submitted to the Magistrates Court for the relevant action to be taken (*infra* para. 132). The decision on whether or not to continue this action would be then be taken by the Magistrate, and not exclusively by the Public Prosecutor's Office. In this sense, the legislation in force at the time of the events did not contemplate the recording of minutes on meetings of a conciliatory nature. For this reason, because threats constitute a crime "against freedom and security" under Title VI, Chapter V of the Honduran Penal Code, the process which should have been followed by the Public Prosecutor's Office was established in the Code of Criminal Procedure described above.

132. The Court will also consider a second claim made by the State, indicating that the Prosecutor who received the complaint could have considered the act as an "offence" (as contemplated in Article 397 of the Penal Code in force), and not as a crime.²³³ Under this assumption, Article 144 of the Code of Criminal Procedure established that such an offence would result in a proceeding and should be notified to the Magistrate, who would summon the parties to a hearing, keep a record of the proceedings and issue a judgment.²³⁴ Therefore, also considering this assumption indicated by the State, the Prosecutor had the obligation to notify the Judge about the matter, and he, in turn, should have opened a record in response to the threat and subsequent complaint. This legal responsibility, established by Honduran legislation, was further accentuated by the state's awareness of the nature of the threat and the fact that it was related to work carried out by a City Councilman in defense of the environment.

133. Moreover, the State argued that Article 33(3) of the Law of the Public Prosecutor's Office granted the Prosecution the authority to take no legal action when there is insufficient

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- 3) The place, time, day and year the offence was committed;
 - 4) The witnesses to the crime or acts related to it; and
 - 5) The signature of applicant and if he/she does not have a signature, a fingerprint, as well as those of others where requested. [...]"

²³² Criminal Code. Decree No. 144-83, published in the Official Gazette of Honduras on March 12, 1984, "Article 207. An individual who threatens to cause harm to another or to his family, to his person, honor or property, whether it constitutes a crime or not, shall be punished by imprisonment of six months to two years, together with any security measures that the Court may determine."

²³³ Criminal Code, *supra*, "Article 397. A person who speaks in anger, threatens to cause harm to another which constitutes a crime and whose subsequent actions demonstrate that he no longer persists in the idea conveyed with the threat."

²³⁴ Code of Criminal Procedure, *supra*, "Article 144. When the Magistrate finds that an offence has been committed that gives rise to a proceeding *ex officio* through an accusation or complaint, after the first procedures for establishing the facts of the case, he will summon the suspect and the accuser [...] to a hearing to be held with the parties, in which those interested will submit their claims, and will admit and examine the relevant evidence offered, adding the documents to the case file. The Judge will issue a ruling within three days."

evidence.²³⁵ In this regard, the Court points out that the same article referred to by the State contains the writ omitted by the State in its arguments, in the sense that if “the probatory evidence provides no basis for [legal action], [the Prosecutor] should inform the Director, who should take the appropriate decision.” Thus, if the Prosecutor had decided that he could not take up the complaint, he still had the obligation to inform his superior.

134. Based on the foregoing, the Court finds that in all the legal suppositions analyzed above, the meeting held as an attempt at conciliation by the Public Prosecutor’s Office could not be regarded as an appropriate mechanism for responding to a death threat and the risk facing Mr. Luna López.

135. In this sense, the Court understands that, after the Prosecutor’s Office received the complaint about the death threat made against Mr. Luna López, it did not conduct any assessment of the risk to his life from the threats linked to his public duties and his defense of human rights. Not only did the Prosecutor not open a preliminary investigation into the crime of intimidation, but it also failed to act with due diligence to protect Mr. Luna López’s life and, on the contrary, held an informal meeting not provided for under domestic law, without any type of record or supervision.

136. As to the meeting held between Carlos Luna López and José Ángel Rosa in the presence of the Prosecutor of the Public Prosecutor’s Office, the Court takes note of the expert opinion rendered by Luis Enrique Eguren Fernández, in which he stated that:

“a pardon or desire for conciliation on the part of a defender who has been attacked cannot detain the State’s proper action to provide protection, if it is determined that the risk is objective and linked to the activity of the [human rights defender] and related to the interests (direct or indirect) of the potential or *de facto* aggressor. Even in cases where the aggression does not constitute a crime (as sometimes occurs with threats), a policy of protection should initiate actions of protection based on a determination of the level of risk which, by its own rationale, is independent of an expression of conciliation by a potential perpetrator: if an aggression has been conceived by this perpetrator, his verbal expression of conciliation cannot be taken as a true guarantee that he will not subsequently act against the [defender of human rights].”²³⁶

137. In consideration of the criteria that define the State’s positive obligation to prevent human rights violations, the State had the obligation to act with due diligence in the face of Mr. Luna López’s situation of special risk, taking into account that in this specific case there were sufficient reasons to conclude that the motive of the threat against him was related to his actions as a public official defending the environment. The State did not discharge its responsibility to prevent the violation of his rights through the adoption of timely and necessary measures of protection.²³⁷ The Court emphasizes that, in response to the death

²³⁵ Law of the Public Prosecutor’s Office. Decree No. 228-93, published in the Official Gazette of Honduras on January 6, 1994 (File of attachments to the State’s response, pages 4828 to 4837). “Article 33. The Court officials of the Public Prosecutor’s Office shall have the obligations and duties assigned by the Civil Courts in criminal matters or those of the First Instance Military Court, as follows: [...] 3. On the basis of the new evidence collected and when there are sufficient elements for this, undertake a public legal action and when appropriate, a private one. In the event of not having sufficient evidence for that purpose, the Director should be informed, so that he can make the appropriate decision [...]”

²³⁶ Expert testimony of Mr. Luis Enrique Eguren Fernández rendered by affidavit on January 28, 2013 (Merits file, page 646).

²³⁷ Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C, No. 192, para. 105 and *Case of Vélez Restrepo and Family, supra*, para. 203. In this sense, the

threats received by Mr. Luna López, the State should have maximized its efforts and used all its available and relevant resources to save his life, *inter alia*, through the provision of security measures and personal protection to enable him to continue with his work, as well as taking the necessary steps to investigate immediately and effectively all other threats received.²³⁸ The foregoing demonstrates that the Public Prosecutor's Office was aware of a situation of real and imminent danger against the life of Mr. Luna López, and that it did not adopt the necessary measures within the scope of its authority to prevent or avoid this danger. The subsequent actions demonstrate the State's failings in terms of providing protection for his life.

B.1.3. Conclusion

138. Therefore, the Court considers that in this case, it can confirm the existence of a situation of special risk for defenders of the environment at the time of the events. Furthermore, in relation to Mr. Luna López, the State was aware of the real and imminent danger to his life because of the death threat he reported to the Public Prosecutor's Office, related to his work in defense of the environment as a City Councilman and as Head of the Catacamas Municipality Environmental Unit. In response to the foregoing, the State failed to adopt effective measures of protection to guarantee his right to life; shortly thereafter, these threats resulted in his death (*supra* paras. 125 to 137). Finally, the State failed to conduct a serious and exhaustive investigation into the reported death threat that preceded his death.

139. Based on the foregoing, the State did not act with the due diligence required to counter the threat against Carlos Luna López, thereby failing to fulfill its obligation to guarantee the right to life, enshrined in Article 4(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Carlos Luna López.

140. Finally, the Court notes that the representatives alleged the violation of the right to personal integrity (humane treatment) (Article 5 of the Convention) of Mr. Luna López for the death threats received prior to his death. In this regard, the Court deems it unnecessary to rule on other allegations related to the same facts in this case, which have already been analyzed in light of other treaty-based obligations.²³⁹

B. 2. Right of Carlos Luna López to participate in government

141. As it has done in other cases, the Court points out that a violation of the right to life attributable to the State can, in turn, result in violations of other rights enshrined in the American Convention.²⁴⁰ In this case, the violation of the right to life of Carlos Luna López

European Court of Human Rights has ruled on the State's positive obligation to protect persons in a vulnerable situation due to their work. *Cf. Case of Kilic, supra*, paras. 62 and 63, and *Case of Osman, supra*, paras. 115 and 116.

²³⁸ *Cf.* Regarding protection measures, UN General Assembly, *Report by the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya*. UN Doc. A/HRC/13/22/Add.3, March 1, 2012, paras. 102, 111, 114 and 115 and expert testimony of Mr. Luis Enrique Eguren Fernández, *supra* (Merits file, pages 628 to 670).

²³⁹ *Cf. Case of Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 30, 2010. Series C, No. 215, paras. 132, 150 and 202 and *Case of the Massacres of El Mozote and Surrounding Areas v. El Salvador. Merits, Reparations and Costs.* Judgment of October 25, 2012. Series C, No. 252, para. 196.

²⁴⁰ *Cf. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 10, 2007. Series C, No. 167, para. 147 and *Case of Manuel Cepeda Vargas v.*

occurred in the context of his responsibilities as a City Councilman in Catacamas, a post to which he was elected in 1997 and held as of 1998. Moreover, at the time of the events, Mr. Luna López served as a member of the Municipal Commission on the Environment and as Head of the Catacamas Environmental Unit, public posts to which he was appointed by the Mayor of the Municipality (*supra* para. 26). In this section the Court will analyze whether the murder of Carlos Luna López also translates into a violation of his right to participate in government.

142. The Court has considered that Article 23 of the Convention protects not only a person's right to be elected to public office, but also the right to have a real opportunity to serve in the position to which he was elected. To this end, the State has a responsibility to adopt measures that guarantee the necessary conditions for the full exercise of that right.²⁴¹ The right to participate in government specifically implies that citizens not only have the right, but also the opportunity, to participate in the conduct of public affairs.²⁴²

143. Article 23 of the American Convention establishes that rights-holders should have political rights, but also adds the term "opportunities," which implies that States should take positive steps to ensure that everyone who is a formal holder of political rights has a real opportunity to exercise them. Therefore, is it imperative that the State create optimum conditions and mechanisms for the effective exercise of political rights.²⁴³ The Court emphasizes, as it has on other occasions, that these general conditions of equality refer both to access to public office through popular election as well as through appointment or designation.²⁴⁴

144. From the facts of this case, the Court finds that, first of all, the responsibility of State agents for the death of Carlos Luna López was not established, which in any case led to the State's responsibility for the violation of the obligation to "guarantee" his right to life and not to the obligation to "respect" said right.²⁴⁵ In other words, in this case the State was not considered responsible for violating, through its agents, Mr. Luna López's right to life. Furthermore, in this case there was no proof of a direct, deliberate infringement by the State of his right to participate in government in relation to his work as a City Councilman and defender of the environment. On the contrary, the possible impairment of his political rights is an unfortunate consequence of his death, an impairment that cannot necessarily be attributed to the State for the purposes of this case. Therefore, the Court does not find proof of the State's violation of the right of Mr. Luna to participate in government as provided in Article 23 of the American Convention.

VII JUDICIAL GUARANTEES AND JUDICIAL PROTECTION

Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C, No. 213, para. 172.

²⁴¹ Cf. *Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs.* Judgment of June 23, 2005. Series C, No. 127, para. 201 and *Case of Manuel Cepeda Vargas, supra*, paras. 172 and 173.

²⁴² Cf. *Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 25, 2010. Series C, No. 212, para. 107.

²⁴³ Cf. *Case of Yatama, supra*, para. 195 and *Case of Castañeda Gutman v. United States of Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 6, 2008. Series C, No. 184, para. 145.

²⁴⁴ Cf. *Case of Yatama, supra*, para. 200 and *Case of Castañeda Gutman, supra*, para. 150.

²⁴⁵ Cf. Regarding the obligation to respect the right to life in relation to the right to participate in government (4 and 23) see the *Case of Chitay Nech, supra*, para. 113 and *Case of Cepeda Vargas, supra*, para. 125.

A. *Arguments of the parties and the Commission*

145. The *Commission* indicated that, “[i]n this case there were many errors in the collection of technical evidence from the first proceedings. For instance, the body of Carlos Luna was not officially removed until the day after his death, from the place where the wake was held. There is no evidence in the file that an autopsy or any other examination of the victim’s body was performed. There are no photographs of his body either [...], the inspection was conducted the day after his murder, [...] there is no evidence that the casings of the bullets fired were collected at the crime scene for subsequent scientific ballistic tests.” Similarly, the State failed to conduct tests and “follow investigation theories that [became] obvious from the collection of the first evidence during the early months of the investigation,” according to the international standards contained in the *UN Manual for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*. The *Commission* stressed that the investigations conducted by the State against the intellectual and material authors proved insufficient, adding that the indications of involvement by state officials were not properly investigated, and even less, there was no clarification of the link between Mr. Luna’s murder and his leadership role as a defender of the environment in his community.

146. Also, the *Commission* stated that the case was not complex and that a lack of due diligence was evident, a point that domestic authorities should have noted. Moreover, it pointed out that a complicated situation of insecurity existed for those involved in the criminal process, since “from the files it does not appear that the State had offered protection to the witnesses, including friends and family of Carlos Luna López, who reported having been threatened and harassed,” and “two judges were excused from hearing the case, one of them citing security reasons and the lack of State protection, [specifying that] [t]hese excuses coincid[ed] with the reopening of the investigation of those accused of being intellectual authors, [and that] there was no evidence in the file that the State had adopted security measures for the members of the judiciary involved in this case.

147. Finally, it indicated that the “investigation and the process [,] undertaken by the domestic criminal courts did not [represent] an effective remedy to guarantee, “within a reasonable period of time, the rights to a fair trial and judicial protection,” in breach of Articles 8 and 25 of the American Convention, which “creat[ed] a context of impunity for the acts of violence committed against the defenders of human rights and the environment in Honduras.”

148. The *representatives* agreed with the Commission’s arguments, and added that during the process the State did not act with due diligence since no basic actions were taken to determine who participated in the events investigated.²⁴⁶ Moreover, the case had some aggravating circumstances due to the lack of guarantees of independence and impartiality of the Judges. The *representatives* added that “several people, including relatives of Mr. Luna, judges, prosecutors, the accused and a key witness in the case [of] Oscar Rodríguez Molina, mentioned threats made against them [...]. However, no effective steps were taken to protect them or to investigate these acts. [Consequently] witness Oscar Rodríguez Molina was murdered in a maximum security unit of the National Penitentiary.” Moreover, they stated that, “Prosecutor Omar Menjívar had claimed that he was being threatened by Mr. [José Ángel] Rosa.” They concluded that the State did not act with due diligence,

²⁴⁶ Such as the inadequate management, lack of an [autopsy] on the body of Carlos Luna, failure to execute certain arrest warrants, and the lack of substantiation of possible lines of investigation from the existing evidence (File of the attachments to the Merits Report, pages 184 to 189).

attributing this to the judges who conducted the investigation into the murder to identify those responsible.²⁴⁷

149. Similarly, the *representatives* stated that after 14 years, “there are only two firm convictions to date, involving the material authors of the murder.” However, the files contain clear evidence that could lead to “investigations regarding the possible intellectual authors, [among them public officials, for whom] the few proceedings conducted were irregular and biased.” They added that the case was not complex, and therefore the unjustified delay in the investigation made the time period even more unreasonable.

150. The *State* argued that “to affirm the violation of due process and the protection of guarantees due to a lack of investigative actions, the omission of evidence, the failure to exhaust witness testimonies and to execute arrest warrants is implausible for the purposes of reinforcing the thesis of the State’s responsibility,” [since] there is evidence of [...] the efforts of the Public Prosecutor’s Office to pursue all of those individuals whom it considered were likely to be implicated.” The State also affirmed that, “from the moment of Carlos Luna’s death, the respective authorities acted diligently by ordering the criminal procedures to determine the crime committed and assign responsibility to those who committed it.” It indicated that the delivery of the body to the family before its official recovery was “a common practice, even today, particularly in violent crimes where the person [...] is transported to a hospital but later dies,” and added that “even if there was no [autopsy], it was still possible to determine the causes of death, adding that the lack of an autopsy was “not a limiting factor in the identification of those responsible [,] their subsequent prosecution and conviction.” It recalled that the procedures carried out “responded to a predominately inquisitorial system [that] among its most evident defects was its sluggishness, being a written procedure.”²⁴⁸

151. The *State* emphasized that, under the premise that the murder of Mr. Luna López was a common criminal act, it was clear that the investigative procedures were never paralyzed in the proceedings conducted against the two material authors. Similarly, it pointed out that “with regard to the supposed intellectual authors, no links were proven during the trial to consider them as the intellectual co-authors of the death of Carlos Luna.” Nevertheless, the *State* added that “[f]rom the evidence in the file, it is believed that Mr. [José Ángel] Rosa [...], was the intellectual author, given that in addition to the threats made on two occasions against Carlos Luna and the accused Oscar Aurelio Rodríguez, he went so far [as to] threaten one of the prosecutors working on the case, to the point that a new prosecutor had to be appointed from the capital city to avoid risks.”

152. The *State* also argued that the case was indeed complex and that the analysis should not be limited only to the “passage of time and delays in the proceedings.” It pointed out

²⁴⁷ In particular, they indicated that, “the importance of complying with the standard of due diligence in cases involving the violation of a person’s life or personal integrity [...] includes the correct application of autopsy procedures, securing the chain of custody of weapons and any other evidence, taking photographs and utilizing experts, and the gathering and protection of case documents, *inter alia*” (Merits file, page 206).

²⁴⁸ They added that “the bureaucratization, procedural rigidity, delegation and secrecy of the judicial proceedings” and the regulations “did not grant the possibility of prioritizing or classifying the offense since all the offenses were treated and resolved in accordance with the same procedure,” which were the main problems of the criminal system at the time of the events. Moreover, they stated that the *Manual for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* cited above “is not of mandatory observance in this case, but is not inapplicable either. This contemplates the same principles that should be applied in investigative proceedings followed in the prosecution of criminal acts committed under the 1984 Code of Criminal Procedures and were applicable in the period when Mr. Carlos Luna López lost his life” (File of attachments to the Report on Merits, pages 284 and 285). However, they stated that they did conduct all the procedures mentioned there.

that the right to effective judicial protection is not an absolute and unconditional right and that this right is not violated merely because of a ruling against the claims of the parties. It argued that, had been any indolence on the part of the State, it would never have executed the arrest warrants issued against the material authors, let alone accomplished the extradition of one of them.

B. General considerations of the Court

153. The obligation to investigate human rights violations is among the positive measures that States should adopt to guarantee the rights enshrined in the Convention. The Court has held that in order fulfill their obligation to guarantee rights, States should not only prevent, but also investigate violations of the human rights recognized in this instrument, such as those alleged in this case.²⁴⁹

154. The Court has repeatedly stated that the State Parties are required to provide effective judicial remedies for victims of human rights violations (Article 25), which can be implemented in compliance with the rules of due legal process (Article 8(1)), all of this within the States' general obligation to guarantee the free and full exercise of the rights recognized by the Convention for all people under their jurisdiction (Article 1(1)).²⁵⁰

155. This Court has indicated in its consistent case law that "the obligation to investigate is an obligation of means and not of results, which must be assumed by the State as its own legal duty and not as a mere formality preordained to be unsuccessful, or as a simple measure responding to private interests."²⁵¹ The investigation must be "serious, impartial, [...] effective [...] and [be] designed to determine the truth and to pursue, capture, prosecute and eventually punish the authors."²⁵² This obligation remains "regardless of the agent to whom the violation may eventually be attributed, even private individuals, because if their acts are not properly investigated, they would, to a certain extent, be supported by the public authorities, which would involve the international responsibility of the State."²⁵³

156. Similarly, the Court has stated that "the right to effective legal protection requires that the judges direct the proceeding in such a way as to avoid undue delays and obstructions that lead to impunity, thus frustrating due judicial protection of human rights," and that "the judges who are in charge of directing the proceeding have the duty to direct and channel the judicial proceeding with the aim of not sacrificing justice and due legal process in favor of formalism and impunity," which otherwise "leads to a violation of the international obligation of the State to prevent and protect human rights and it abridges the right of the victim and the next of kin to know the truth of what happened, for all those responsible to be identified and punished and to obtain the attendant reparations."²⁵⁴

157. Bearing in mind both the facts outlined and the case law cited, it is appropriate for the Court, within the framework of its jurisdiction and functions, to determine whether or

²⁴⁹ Cf. *Case of Velásquez Rodríguez. Merits*, paras. 166 and 176 and *Case of González Medina and Family v. Dominican Republic. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of February 27, 2012. Series C, No. 240, para. 127.

²⁵⁰ Cf. *Case of Velásquez Rodríguez. Preliminary Objections*, *supra*, para. 91 and *Case of Fleury et al. v. Haiti. Merits and Reparations*. Judgment of November 23, 2011. Series C, No. 236. para. 105.

²⁵¹ *Case of Velásquez Rodríguez*, *supra*, para. 177 and *Case of Castillo González et al.*, *supra*, para. 151.

²⁵² *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 7, 2003. Series C, No. 99, para. 127 and *Case of Castillo González et al.*, *supra*, para. 151.

²⁵³ *Case of Velásquez Rodríguez*, *supra*, para. 177 and *Case of Castillo González et al.*, *supra*, para. 151.

²⁵⁴ Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C, No. 101, para. 211 and *Case of Suárez Peralta*, *supra*, para. 93.

not the State's actions in the course of the investigation, considered as a whole, adhered to the standards of due diligence required to satisfy the right to have access to justice. In other words, "it for the Court to determine whether or not the actions of a State organ, such as those in charge of the investigations, constitute a wrongful act [the international responsibility of the State] in light of the provisions of the Convention."²⁵⁵

158. The Court will now proceed to analyze the effectiveness and due diligence of the domestic processes, taking into account: a) the different stages of the investigation of the facts; b) the criminal proceedings against the alleged perpetrators, and c) a reasonable time frame for the proceedings. All this is in light of the rights to a fair trial and judicial protection, provided for in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) thereof.

B. 1. Due diligence in the investigation and clarification of the facts

B.1.1. Preliminary judicial proceedings

159. In this regard, the Court has stated that, in the context of an investigation into a violent death, efficiency should be evident from the first procedures carried out with full diligence.²⁵⁶ The domestic legislation in force in Honduras at the time of the events also established guidelines on the procedures to be followed in the investigation of a homicide.²⁵⁷ The Court notes that the State failed to carry out certain procedures, as indicated by the Division of Visual Inspections, inasmuch as it did not protect the crime scene, which was contaminated by pedestrians and vehicles moving through it. (*supra* para. 50).

160. With respect to the crime scene and the collection of evidence, the judicial investigation of the facts was initiated by the Catacamas Magistrate's Civil Court on the day after the death of Mr. Luna López, May 19, 1998. At 9:00 am, the Magistrate conducted an inspection at the crime scene (*supra* para. 47). Later, at approximately 4:00 pm, court officials visited the site in the company of the Prosecutor and agents of the Visual

²⁵⁵ *Case of Castillo González et al., supra*, para. 160.

²⁵⁶ *Cf. Case of Juan Humberto Sánchez, supra*, para. 127 and *Case of Castillo González et al., supra*, para. 152. In this regard, the Court has specified the guiding principles that must be observed in an investigation of a violent death. The state authorities conducting this type of investigation must attempt, at the very least: i) to identify the victim; ii) to recover and preserve evidence related to the death, for the purpose of assisting in any potential criminal investigation of those responsible; iii) identify possible witnesses and obtain their statements concerning the death being investigated; iv) establish the cause, manner, place and time of death, as well as any pattern or practice that could have caused the death, and v) draw a distinction between natural death, accidental death, suicide and homicide. In addition, it is necessary to conduct a thorough investigation of the crime scene. Autopsies and analyses of human remains should be rigorously carried out by competent professionals applying the most appropriate procedures. *Cf. UN Manual for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (Protocol of Minnesota), Doc.E/ST/CSDHA/12 (1991).

²⁵⁷ *Cf. Law of the Public Prosecutor's Office, supra*, "Article 33... The following are obligations and functions of the Agents [...] of the Public Prosecutor's Office, assigned to the Magistrates Court of Criminal Matters [...]: 1. Present themselves immediately at the place where a crime has been committed [...] in order to find out at the crime scene who could have committed the offense, who could have witnessed it, and all the elements that could help to establish the facts and to identify those responsible [...], and Article 43. The Division [of Criminal Investigation] shall have the following attributes: 1. [...] to identify and apprehend those presumed responsible; and, to gather, ensure and organize evidence, background information and elements necessary to accurately, objectively and efficiently establish the facts. 2. Conserve all items related to the punishable act and the state of evidence untouched until the competent authority arrives at the scene [...]." *Cf. Code of Criminal Procedures, supra*, "Article 182. The investigating judge should conduct all the investigations conducive to establishing the *corpus delicti*, taking advantage of the first moments to collect evidence and prevent its disappearance or prevent the perpetrators or those involved in the crime from going into hiding or entering into agreements to prepare statements that result in impunity. Therefore, the practice of all investigations aimed at clarifying the truth of material facts of the process should be undertaken immediately [...]."

Inspections Division of the Public Prosecutor's Office, who came from Tegucigalpa to investigate the case. They prepared an investigative report at the crime scene, indicating that "no one was in charge of the scene, which [...] was contaminated by pedestrians and vehicles moving through the area where the incident occurred." It is not clear whether the area had been cordoned off.

161. Similarly, the Court has confirmed that during their inspection of the crime scene, the investigators gathered some evidence and sent it to the Crime Laboratory of Forensic Science (*supra* para. 50). For his part, the doctor who confirmed the death of Mr. Luna López gave the bullet extracted from his body to his son, César Augusto Luna Valle (*supra* para. 44). Subsequently, the staff of the Public Prosecutor's Office received: a) from Daniel Valle, the victim's brother-in-law, five bullet casings of unknown caliber, yellow in color, which was supposedly found near the place where Mr. Luna's body fell, and b) from the agent Adán del Cid, a "bullet," yellow in color of unknown caliber, a deformed projectile, silver in color, of unknown caliber; shrapnel, silver in color, of unknown caliber; a deformed projectile of unknown caliber, which was supposedly recovered from Mr. Carlos Luna López's body,²⁵⁸ among other items. Based on the foregoing, some of the evidence was collected and later delivered to the investigating authority by third parties.

162. In addition, the Court notes that several preliminary investigations were carried out to clarify the facts, including: a photographic record of the crime scene and of the evidence found; the removal of samples from various blood stains which were tested for blood type; the confiscation of two firearms to conduct the corresponding ballistic tests; the preparation of a ballistic report on the bullet shells sent to the investigating agents; the confiscation and inspection of a facsimile; the investigation of the complaint filed by Mr. Luna López on illegal logging in the forest by the companies "PROFOFI," "IMARA" and "La Fosforera," and the receipt of 42 witness statements in the first two months by the Public Prosecutor's Office, including family members, friends and municipal work colleagues of Mr. Luna López, eyewitnesses and the presumed authors of the crime (*supra* para. 52). Similarly, the Magistrates Court received another 29 statements during the first four months of the investigation (*supra* para. 58).

163. Regarding the official removal of the body and the autopsy, from the proven facts it is clear that Mr. Luna López was wounded at 10:45 pm on May 18, 1998, outside the Catacamas Municipal Building (*supra* para. 390). He was later transferred, still alive, in the Mayor's vehicle to the Campos Clinic in Catacamas, but according to witness statements, it was closed (*supra* para. 43). They continued to the city of Juticalpa, approximately 45 minutes away, transporting the wounded in the back of a pick-up truck. Upon arrival at the San Francisco Hospital in Juticalpa, two doctors confirmed that Mr. Carlos Luna López was dead, without specifying the exact time of his death (*supra* para. 44). His body was later delivered to his family and taken to Catacamas. The procedure for the "removal of the corpse" was carried out the following day (May 19, 1998) during his wake at his mother's home. The expert in charge of this procedure concluded that the "apparent cause of death" was an "abdominal trauma caused by a bullet fired from a weapon, with probable damage to the large blood vessels." No evidence was collected during this procedure, and no autopsy was performed on the body (*supra* para. 49). The State indicated that "in the context of the circumstances at that time, it did not have specialized technical staff in the area where the incident occurred."

²⁵⁸ Witness statement of Fausto Paulino Roveló Vargas rendered on June 10, 1998 (File of attachments to the final written arguments, page 9375).

164. As regards the management of the crime scene and the handling of the victim's body, this Court has held that certain basic and essential procedures must be carried out to preserve elements of proof and that which could contribute to the success of the investigation,²⁵⁹ such as the autopsy²⁶⁰ and official removal of the corpse.²⁶¹

165. With respect to the foregoing, the Court notes that in the actions taken immediately after the incident there were certain omissions as regards cordoning off the area, the collection of evidence, the procedure to remove the body and the respective autopsy. Nevertheless, the Court reiterates that the investigation should be assessed as a whole, considering that it is an obligation of means and not of results (*supra* para. 155) and "bearing in mind that it is not up to the Court, in principle, to decide on the admissibility of investigative measures. Likewise, it is necessary to consider whether the occurrence of certain omissions or delays is sufficient to constitute international responsibility by the State. This must also be assessed in light of the matter that must be investigated, given that, in this case, the State's role in the murder of [Carlos Luna López] has not been proven."²⁶²

166. The investigation of the facts allowed for the recovery and preservation of material evidence and the determination of the manner, place and time of the attack. The State carried out several procedures during the initial investigation to identify those presumably responsible for the crime, especially through the collection of several testimonies that led to the identification of the presumed material authors of the crime. In particular, by July 1998, Mr. Oscar Aurelio Rodríguez had been identified as the presumed material author of the crime, had made a statement before the Magistrates Court on October 22, 1998, and was then arrested (*supra* para. 58). Furthermore, following the statements received in February, 2001, which identified Mr. Ítalo Lemus as the alleged perpetrator, on February 21, 2001, the Magistrates Court issued the corresponding arrest warrant. However, he had evaded justice.

²⁵⁹ *Case of González et al. ("Cotton Field")*, *supra*, para. 301 and *Cf. Manual for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, *supra*.

²⁶⁰ *Cf. Case of González et al. ("Cotton Field")*, *supra*, para. 310, which indicates that "the purpose of an autopsy is, at the very least, to gather information to identify the dead person, and hour, date, cause and form of death. An autopsy must respect certain basic formal procedures, such as indicating the date and time it starts and ends as well as the place where it is performed and the name of the official who performs it. Furthermore, *inter alia*, it is necessary to photograph the body comprehensively; to x-ray the body, the bag or the covering, and then undress it and record any injuries." *Cf. Manual for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, *supra*. Likewise, Article 52 of the Law of the Public Prosecutor's Office, *supra*, in force at the time of the facts, established that "the Division of Forensic Medicine is responsible for conducting autopsies in accordance with the law; and carrying out examinations of a physical, clinical, physiological, psychiatric, psychological or any other nature, within the field of forensic medicine, as required by the Republic's Prosecutor General's Office, or any other of the divisions, department or agencies of the Public Prosecutor's Office and the judicial bodies." Similarly, Article 88 of the Code of Criminal Procedure states "[w]henver it is considered appropriate and practicable to perform, the Judge should order an autopsy and the corresponding exhumation. [...] [T]he Judge shall request cooperation from those in charge of State hospitals when the person has died or arrives there deceased." Regarding the lack of the autopsy, the Court notes that in his statement César Luna Valle, son of Mr. Luna López, states that "my father was in the back of the pick-up truck; I only observed [...] blood where [his] body was. I asked if they were able to perform an autopsy, but they told me that the autopsy is done for the bullet [...] We then took my father to the city [of Catacamas and] Doctor Adalid Hernández prepared [...] my father [for the wake]" (File of attachments to the State's response, page 6721).

²⁶¹ With respect to the removal of the body, Article 188 of the Code of Criminal Procedures, in force at the time of the events, indicated that "[t]he body shall not be removed until a judicial inspection has been carried out to examine it thoroughly, [specifying] the condition in which it was [found] and any injuries, bruises and other signs of violence that might be present."

²⁶² *Case of Castillo González et al.*, *supra*, para. 161.

167. Therefore, the Court considers that it was not demonstrated that the failings of the initial investigative proceedings, in relation to the overall efforts carried out by the State, had a decisive impact on the clarification of the facts or on the final outcome of the processes followed with respect to the material authors.

B.1.2. Criminal Proceedings

168. The Court will now analyze the alleged irregularities in certain procedures followed in the criminal trials, the alleged obstructions and threats made in the case, as well as the proceedings conducted against those presumed responsible.

B.1.2.1 Inquiries in the proceedings

169. The Court emphasizes that, at the request of the presumed victims, a specialized Prosecutor (*ad hoc*) was appointed to focus exclusively on the investigation of the case (1128-98). Likewise, the Court notes that the Prosecutor carried out various inquiries in the different proceedings. Nevertheless, it should be pointed out that there were several changes of judges and prosecutors in the course of the proceedings (*supra* para. 109).

170. Furthermore, the Court notes that although the procedural momentum was the responsibility of the Public Prosecutor's Office,²⁶³ the judges, based on the principle of effective judicial protection,²⁶⁴ should have acted with due diligence, ensuring prompt trial proceedings. In this regard, the Court notes that during the various criminal proceedings, there were several delays²⁶⁵ and omissions,²⁶⁶ particularly by the judges of the First

²⁶³ Cf. Law of the Public Prosecutor's Office, *supra*, "Article 1. The Public Prosecutor's Office is a professional and specialized body, free of all political sectarian interference, functioning independently of the powers and organs of the State, which is responsible for accomplishing the following goals and objectives: 2. Collaborate with and safeguard the prompt, proper and efficient administration, especially in criminal matters, conducting the investigation of the crimes until discovering those responsible and prosecuting them before competent law courts, through the exercise of public criminal proceedings."

²⁶⁴ Cf. *Case of Myrna Mack Chang*, *supra*, para. 210 and *Case of Suárez Peralta*, *supra*, para. 93. Cf. Code of Criminal Procedure, *supra*, "Article 182. The investigative judge should conduct all the investigations conducive to establishing the *corpus delicti*, taking advantage of the first moments to collect evidence and prevent its disappearance or prevent the perpetrators or those involved in the crime from going into hiding or entering into agreements to prepare statements that result in impunity. Therefore, the practice of all investigations aimed at clarifying the truth of material facts of the process should be undertaken immediately."

²⁶⁵ In this respect, based on domestic legislation, several delays in the proceedings of the case can be pointed out, specifically: a) excessive prolongation of the indictment proceeding: for example, the criminal inquiry against one of the presumed intellectual authors remained at the preliminary stage for four years (File of attachments to the State's response, page 5849), contrary to the provisions of Article 174 of the Code of Criminal Procedure which established that "preliminary proceedings shall be public except for those which must remain secret in the interests of justice and shall not last more than one month; the release order or the detention order shall be issued within six days according to the merits of the case; b) the gathering of evidence within the procedural times established by law for procedures requested by the Prosecutor of the examining judges: for example, almost 16 months after the citation to hear the judgment in case 1128-98, against Oscar Aurelio Rodríguez, on August 20, 2001 (File of attachments to the State's response, page 7214), to the issuance thereof, on December 11, 2002 (File of attachments to the State's response, pages 7256 to 7270), contrary to the provisions of paragraph 381 of the Code of Criminal Procedure in force at the time, which required that the Judge hand down a judgment within the period of the 10 days following the citation. It is worth mentioning that the Prosecutor in charge requested the judgment on ten occasions (File of attachments to the State's response, pages 7217, 7219, 7221, 7223, 7226, 7229, 7231, 7233, 7237 and 7253). Similarly, almost four months passed between April 25, 2006, when the motion for dismissal of José Ángel Rosa was rejected (File of attachments to the State's response, page 5996) and the reissuing of the arrest warrant for him, on August 14, 2006 (File of attachments to the State's response, page 6009), in contravention of Article 105 of the Code of Criminal Procedure, which states that, "[...] when the terms are not defined [for conducting a judicial proceeding], it is understood that it should be done without delay" (File of attachments to the State's response, page 4928); c) delays in the execution of arrest warrants: for example, approximately one month and a half after the court of first instance received the decision of the Third Court of Appeals to order the arrest warrant for José Ángel Rosa (File of attachments to the State's response, pages 5956 to

Instance. However, it also finds that the Third Court of Appeals of Francisco of Morazán took corrective actions on several occasions, hearing appeals and reversing irregularities in various proceedings.²⁶⁷ This will be assessed together with the overall process in order to determine whether or not these failures played a decisive role in the proceedings.

B.1.2.2. Obstacles and threats in the case

171. The Court has confirmed that during the proceedings, two judges stopped hearing the case owing to their presumed partiality and fear. With respect to the first judge, this was due to media reports claiming he had a direct interest in the case related to the death of Carlos Luna López and alleged threats (*supra* para. 81); regarding the second judge, the case was referred to him on November 30, 2001, and on that same day he decided to revoke the order of imprisonment issued against Jorge Adolfo Chávez Hernández. Nevertheless, on February 5, 2002, he presented a brief before the Civil Court excusing himself from the case, stating that comments had been made that he had been pressured to rule in favor of Mr. Jorge Adolfo Chávez. In addition, he said he feared for his life and believed that José Ángel Rosa, one of the accused, was a dangerous person and that the Supreme Court of Justice did not offer any protection to judges hearing cases (*supra* para. 83). There is no record that this judge had carried out any other substantive proceeding in the case.

5958), on May 4, 2004 (File of attachments to the State's response, page 5961), to June 23, 2004, when it issued the respective order (File of attachments to the State's response, pages 5962 and 5963), contrary to the provisions of Article 105; d) the submission of evidence and its reception by the judges: for example, more than 16 months elapsed between November 5, 1999, when the evidence proceeding was opened (File of attachments to the State's response, page 6975), and the close of the second evidentiary period, on March 28, 2001 (File of attachments to the State's response, page 7172), whereas Article 262 of the Code of Criminal Procedure established that the parties have ten days to offer evidence and 30 days for examination (File of attachments to the State's response, page 4936) and e) the resolution of appeals presented by the parties: for example, more than nine months elapsed between December 12, 2007, when the *amparo* appeal was filed before the Supreme Court in favor of José Ángel Rosas, the presumed intellectual author (File of attachments to the State's response, pages 759 to 762) and the respective ruling on September 23, 2008 (File of attachments to the State's response, pages 6087 to 6092). In this regard, the Court points out that the Magistrates Court issued the order to "execute" on January 26, 2009 (File of attachments to the State's response, page 6094), after the appellant's death on June 30, 2008. In addition, more than 28 months passed between the filing of the cassation appeal for Ítalo Iván Lemus, on August 23, 2010 (File of attachments to the State's response, pages 6564 and 6565) and its resolution on January 10, 2013 (File of attachments to the State's response, page 9083). Similarly, two months elapsed between December 4, 2001, the date on which the State filed an application for reconsideration and subsidiary appeal against the decision to revoke the remand order issued for Jorge Chávez as intellectual author (File of attachments to the State's response, page 5771) and February 4, 2002 (File of attachments to the State's response, page 5773), the when the ruling was made on the admissibility of the appeal, in contravention of Article 105 of the Code of Criminal Procedure mentioned above (File of attachments to the State's response, page 4928).

²⁶⁶ For example, the failure to examine some substantial evidence requested by the parties or even the Prosecutor, specifically: the Catacamas Civil Judge failed to investigate telephone calls made between those presumed responsible. It is worth mentioning that on March 9, 2001, Prosecutor Gia Firenze Leoni asked the Catacamas Magistrate to release communications of the Honduran Telecommunications Company to investigate the telephone number of José Ángel Rosa in order to make a report on the conversations he had with the accused Oscar Aurelio Rodríguez. However, the files contain no record of the outcome of this request. (Judicial file 1128/98: File of attachments to the brief of pleadings and motions, page 4462).

²⁶⁷ Cf. Judgment issued by the Third Court of Appeals of Tegucigalpa in file No. 30-2002 on March 21, 2002, hearing an appeal against the decision revoking the commitment order issued for Jorge Adolfo Chávez Hernández. This judgment stated that "the case [of] May 19, 1998, [remained] at the preliminary stage for four years, which exceed[ed] all legal limits, since at the time they [were] involved in a process which as a rule should be expeditious, thereby providing a prompt response to the population's demand for justice; it is appropriate that once the case is returned to the Examining Judge, it proceeds in accordance with the provisions of Article 5 of the Transition Law [...] and that given the many irregularities committed in the processing of this case, [...] it is appropriate to inform the Inspectorate-General of the Courts of this matter for the corresponding purposes." In this regard, there is no evidence in the file to show that this act has been investigated and sanctioned (File of attachments to the State's response, pages 5791 to 5799).

172. Similarly, Prosecutor Omar Menjívar indicated that, “he directly receive[d] threats from José Ángel Rosa, [who was] implicated as the intellectual author, at the court itself in front of the Judge.”²⁶⁸ Prosecutor Adalgicia Chinchilla Suazo also asked the Director of the Prosecutors to remove her from the case, arguing that she had been threatened. Moreover, Oscar Aurelio Rodríguez, the material author and main witness, stated that while in jail he had received death threats from the presumed perpetrators of the murder of Carlos Luna. As a result, he was transferred to another prison. Subsequently he was murdered in a maximum security cell in that prison. Furthermore, César Luna, son of Carlos Luna, stated that “[when] the family became involved in the proceedings [,] they [were] also harassed and threatened by [...] the intellectual authors of the crime.”²⁶⁹ During the proceedings other witnesses also stated that they had received threats.”²⁷⁰

173. Regarding the obstructions in the process, this Court has stated that to ensure due process, the State must provide all necessary measures to protect the legal operators, investigators, witnesses and families of the victims from harassment and threats aimed at obstructing the proceeding and preventing elucidation of the facts, as well as covering up those responsible.²⁷¹ Otherwise this would have an intimidating and discouraging effect on those in charge of investigations and on potential witnesses, seriously affecting the effectiveness of the investigation.²⁷²

174. In this regard, the Court considers that, even though the presumed threats were partially reported to the competent domestic judicial authorities and could have created a climate of insecurity among the legal operators and witnesses (*infra* paras. 209 to 212), it was not demonstrated that such incidents impeded the normal course of the criminal process in this case.

B.1.2.3. Regarding the proceedings against the alleged perpetrators

175. The investigations against the presumed perpetrators began on May 19, 1998, under file 1128-98 which was processed in the Catacamas Magistrates Criminal Court (*supra* para. 47). The process concluded with a judgment issued on December 11, 2002, against Oscar Aurelio Rodríguez, who was sentenced to 20 years imprisonment for the murder of Mr. Luna López and 6 years imprisonment for serious injuries against Mrs. Silvia Gonzales (*supra* para. 69). As for the other likely perpetrators, on February 12, 1999, in response to a request from the Public Prosecutor’s Office, an order was given to divide the investigation

²⁶⁸ Statement of Prosecutor Omar Menjívar in the public hearing before the Court, *supra*.

²⁶⁹ Statement of César Luna Valle at the public hearing before the Court, *supra*. In this statement César Luna Valle stated that “the greatest threat, which was about to be consummated, was that José Ángel Rosa had hired killers and they put his money together with others to kill [him, and he became] aware of this while in Tegucigalpa and he never return[ed] to having a normal life” (Public hearing before the Court, *supra*, pages 6 and 7).

²⁷⁰ Cf. Statements of: Danilo Zapata rendered on October 26, 1998 (File of attachments to the Report on Merits, page 583); Teodora Ruiz Escoto on November 30, 1998 (File of attachments to the Report on Merits, page 446); of Berta Oliva on April 22, 2002 (File of attachments to the Report on Merits, page 430); Luis Felipe Rosales López on November 19, 1998 (File of attachments to the Report on Merits, page 441); and Rosa Margarita Valle Hernández on August 24, 1998 (File of attachments to the Report on Merits, page 418) (File of attachments to the Report on Merits, page 1019).

²⁷¹ Cf. *Case of Myrna Mack Chang*, *supra*, para. 199 and *Case of Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011. Series C, No.221, para. 255.

²⁷² Cf. *Case of Kawas Fernández*, *supra*, para. 106. In this respect, Article 222 of the Code of Criminal Procedure, in force at the time of the events, indicated that “[t]he statement will be taken without oaths or coercion. Furthermore, Article 368(5) of the same body of laws indicated that within the legal assessment of the evidence, the Court should take into account, *inter alia*, “[t]hat the witness has not been forced, by coercion or fear, nor led by deception, error or bribery or any other circumstance inhibiting him from testifying freely.”

for the purpose of "proceeding separately against Mr. Oscar Aurelio Rodríguez and refer them to the plenary stage." The second investigation, opened on May 4, 2000, was recorded in file no. 1316-99, and was conducted against Ítalo Iván Lemus, Marcos Morales, Jorge Chávez Hernández, Wilfrido Pérez and José Ángel Rosa, for subsequent referral to the plenary stage. However, given the absence of certain proceedings, on August 29, 2002, the investigation against Jorge Chávez, who was in custody awaiting trial, was once again separated, under file 043-2004, for the purpose of referring the charges against him to the plenary.

176. It is worth recalling that it is not up to the Court to analyze the hypotheses developed about perpetrators during the investigation of the facts or to determine individual responsibilities, since this task corresponds to the domestic criminal courts, but rather to evaluate the actions and omissions of State agents in accordance with the evidence presented by the parties.²⁷³ Accordingly, the Court will first analyze the proceedings conducted against the material authors, and subsequently against the intellectual authors and others mentioned during the proceedings.

a) *Presumed material authors*

177. Oscar Aurelio Rodríguez was identified as alleged perpetrator and arrested on October 22, 1998. A Judgment was handed down against him on December 11, 2002, sentencing him to 20 years imprisonment for the murder of Mr. Luna López and six years for serious injuries to Mrs. Silvia Gonzales (*supra* para. 69). On June 28, 2006 (*supra* para. 72), Oscar Aurelio Rodríguez Molina was murdered while detained in the National Penitentiary.

178. With regard to the other defendant, Ítalo Iván Lemus, the Court records indicate that on February 21, 2001, a warrant was issued for his arrest. However, he managed to evade justice. Subsequently he was deported from the United States of America and arrested on April 29, 2008, at the Toncontin International Airport. On November 12, 2009, he was acquitted.²⁷⁴ On June 4, 2010, in consideration of the appeal presented by the Prosecutor's Office, the Third Court of Appeals revoked that ruling and sentenced him to 18 years' imprisonment for the murder of Carlos Luna and eight years and eight months' imprisonment for the attempted murder of Mrs. Silvia Gonzales.²⁷⁵ Subsequently, on January 10, 2013, the Supreme Court ruled inadmissible the appeal for dismissal filed against this judgment and confirmed the sentence imposed. On February 20, 2013, an order was issued for the arrest of Mr. Ítalo Lemus, who had benefited from measures alternative to imprisonment and to date there is no record of his capture.

b) *Presumed intellectual authors*

²⁷³ Cf. *Case of Kawas*, *supra*, para. 79 and *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C, No. 226, para. 93.

²⁷⁴ Cf. Judgment issued by the Catacamas Civil Court in file No. 035-2002 on November 12, 2009. This acquittal was issued after citing the existence of "reasonable doubts regarding the participation of the accused in the events [...] since he was not fully identified as the person who accompanied Oscar Aurelio Rodríguez Molina on the day of the events" (File of attachments to the State's response, pages 6364 to 6370).

²⁷⁵ Cf. Judgment issued by the Third Court of Appeals of Tegucigalpa in file No. 20-2010 of June 4, 2010, concluding that: "the elements of evidence that sustain [the] judgment, duly proven, are many and are consistent with the circumstances, which [...] suggests that the accused Ítalo Iván Lemus Santos participated in the facts as an author; without this evidence being discredited by others who reach different conclusions" (File of attachments to the State's response, page 6472).

179. This Court has noted that in the separate investigation against Jorge Chávez, a judgment was handed down on September 10, 2004, absolving him of all charges.²⁷⁶ On April 25, 2005, the Third Court of Appeals revoked this judgment and sentenced Mr. Chávez to 17 years' imprisonment for the murder of Mr. Luna López and the punishment of seven years and two months for the crime of attempted murder against Mrs. Silvia Gonzales.²⁷⁷ Subsequently, on June 16, 2006, the Criminal Chamber of the Supreme Court unanimously upheld the appeal in favor of Jorge Chávez, absolving him of all charges,²⁷⁸ concluding that:

"the evidence provided to demonstrate the guilt of the accused [was] not sufficient to undermine his constitutionally guaranteed innocence. This evidence [was] sufficient to issue a remand order where probability, not certainty, was required, but it is not sufficient to hand down a conviction, since this requires certainty beyond a reasonable doubt of the defendant's involvement in the crime. If doubt prevails, it should be interpreted to his benefit, for which it is appropriate to rule on an acquittal in his favor."

180. With respect to the acquittal ruling, neither the Commission nor the representatives alleged the existence of evident irregularities, serious defects or fraudulent *res judicata*.²⁷⁹

181. As to the accused José Ángel Rosa, on March 26, 2007, a final acquittal was ruled in his favor.²⁸⁰ This decision was overturned by the Third Court of Appeals on November 1, 2007, and a new remand order was issued given the existence of evidence against him in this case.²⁸¹ On September 23, 2008, an appeal against that decision was dismissed. On July 30, 2008, the Catacamas Civil Court was asked to issue a final acquittal in the case against José Ángel Rosa, given that he was murdered in front of his house on Monday, June 30, 2008. For this reason, the Court confirms that it was not possible for the State to establish the possible responsibility of this defendant, who had threatened Mr. Luna López and was identified by the State in its final written brief as the main perpetrator of the crime (*supra* para. 151).

c) Other presumed perpetrators

²⁷⁶ Cf. Acquittal of Jorge Chávez issued by Catacamas Civil Court on September 10, 2004, which indicated that "the Prosecutor [r]epresenting the Public Prosecutor's Office, [as] well as the Private Prosecutor, at no time during the trial proposed or voided the evidence through which it could be demonstrated with certainty that [...] Jorge [...] Chávez [had] acted as organizer [paying] the amounts of [fifty or ten] thousand *lempiras* to take the life of the now deceased Carlos Antonio Luna López" (File of attachments to the Report on Merits, page 671).

²⁷⁷ Cf. Judgment of the Third Court of Appeals of April 25, 2005, which ruled that "even though it is certain that the case pending has not produced evidence indicating the accused Jorge [...] Chávez [as] author of the acts attributed to him, it is no less certain that if there are sufficient deeds or indications that, examined together, permit the Court, through a reasoned thought process and following the rules of sound judgment, to arrive with certainty at the conclusion that [...] the accused Jorge Adolfo Chávez was the person who, together with others planned the murder of Carlos Luna, sending Oscar Aurelio Rodríguez (*El Machetío*) with others to carry out the act" (File of attachments to the final written arguments, pages 9127 to 9129).

²⁷⁸ Cf. Judgment of Criminal Chamber of the Supreme Court of Justice, Appeal for Dismissal No. 152-2005 of June 16, 2006 (File of attachments to the final written arguments, pages 9142 and 9143).

²⁷⁹ Cf. *Case of Carpio Nicolle et al. v. Guatemala. Merits, Reparations and Costs*. Judgment of November 22, 2004. Series C, No. 117, para. 131 and *Case of Nadege Dorzema et al.*, para. 194.

²⁸⁰ Cf. Ruling on final dismissal of case issued by the Catacamas Civil Court on March 26, 2007, which ruled that "the defendant Oscar Aurelio Rodríguez, even though he assured that he had been hired to commit the unlawful crime, never provided credible evidence to support his claim [and that] no link between the threats made by José Ángel Rosa Hernández and the death of Mr. Carlos Antonio Luna López exist[ed]" (File of attachments to the State's response, pages 6053 and 6054).

²⁸¹ Cf. Ruling issued by the Third Court of Appeals on November 1, 2007, which decreed that at "at this procedural stage no degree of certainty was [required] regarding the participation of the accused, the probability of his involvement in the criminal event being sufficient," (File of attachments to the final written arguments, page 6073) and a new remand order was issued (File of attachments to the final written arguments, page 6074).

182. Regarding the investigations conducted against Marcos Morales and Wilfredo Pérez, the Civil Court issued warrants for their arrest (*supra* para. 105) in November 2001. Also, in a statement on June 15, 2004, Mr. Oscar Aurelio Rodríguez Molina stated that, “Marcos Morales and Wilfredo Pérez [...] did not exist.” The Court notes that there are no further actions against these accused nor an order for the final dismissal of the proceedings.

183. Similarly, both the Commission and the representatives noted the lack of an investigation of those directly accused by witnesses and by one of the material authors in the case regarding the involvement of State officials in the unlawful act. In particular, regarding then-Congressman Lincoln Figueroa (owner of a company involved in timber exploitation and partner of José Ángel Rosa), and then-Mayor of Catacamas, Freddy Salgado (*supra* paras. 29, 36, 70 and 106); as well as related third parties, such as Fredy Noel Salgado “Guifarro”, son of the then-Mayor, Alberto Isidoro Calix and Adán Orellana and the businesses mentioned in the complaints of alleged corruption filed by Carlos Luna López.

184. In this regard, according to the statement of Berta Oliva, before his death Mr. Luna López had reported to COFADEH the individuals who had a “plan to murder him” (*supra* para. 33). Moreover, on June 15, 2004, the Civil Court received a statement from the convict Oscar Aurelio Rodríguez Molina, affirming that José Ángel Rosa and Fredy Noel Salgado “son” of Mayor Salgado,²⁸² had hired Alberto Isidoro Calix and Ítalo Iván Lemus to kill Mr. Luna López. Subsequently, in his final statement on September 20, 2004, Mr. Rodríguez Molina confirmed what he had stated earlier and pointed out that José Ángel Rosa and Fredy Salgado “son” were interested in killing him. Based on Mr. Rodríguez Molina’s testimony, on September 27, 2004, the legal representative of Mariana Lubina López de Luna asked the Civil Court Judge to issue warrants for the arrest of Alberto Isidoro Calix, Fredy Noel Salgado “Guifarro”, Alejandro Fredy Salgado Cardona and Adán Orellana. However, in a ruling issued on December 15, 2004, the Civil Court decided that:

“after an exhaustive analysis of the merits of the case, [...] based on the evidence presented and included in court documents, no logical and concatenated link can be established to indicate that a close relationship [...] of participation can be attributed to them,” by virtue of which the request for an arrest warrant against them is denied.

185. Regarding the accusations against Mr. Lincoln Figueroa, the Court notes that the Criminal Investigation Division and the Public Prosecutor’s Office investigated his connection with the timber company “PROFOFI,” denounced by Mr. Luna López, and he rendered a witness statement before the Civil Court. Similarly, regarding the alleged crimes of Mayor Salgado, the Court notes that he rendered three statements before the Criminal Investigation Division and the Civil Court, in which he denied the charges (*supra* para. 107). Also, with respect to the allegations against Mr. Fredy Noel Salgado Mejía, he also rendered at least three statements before the Civil Court and participated in a face-to-face hearing (*supra* para. 108). There is no other information to show that other proceedings were conducted against Messrs. Alberto Isidoro Calix and Adán Orellana, who were named by Oscar Aurelio Rodríguez (*supra* paras. 71 and 108).

186. From the foregoing it is clear that the different criminal proceedings undertaken to investigate the fact of this case produced the following results: i) two material authors were sentenced to prison terms; ii) a presumed intellectual author was acquitted following the ruling of the Criminal Chamber of the Supreme Court; iii) one of the accused, who was being criminally charge as an intellectual author, was murdered and consequently the

²⁸² Cf. (File of attachments to the Report on Merits, pages 537 and 538).

proceeding was closed. As to the other presumed perpetrators, the Court confirms that in the competent authority determined that there were insufficient elements to establish the involvement of the other persons investigated in this case.

187. In view of the general assessment of the process, the Court finds that the State conducted several proceedings to elucidate the facts and punish those responsible. Regarding the final decision to acquit the presumed intellectual author, this decision was not questioned before this Court, either on grounds of breaching essential requirements, procedural fraud or fraudulent *res judicata* (*supra* para. 180). Therefore, in accordance with the particular circumstances of the case, it is evident that the State's judicial system operated through the investigation of the facts and the determination of specific responsibilities, and was unable to conclude other responsibilities due to the deaths of two of the accused. However, should further evidentiary elements arise, this does not prevent the competent domestic authorities from deciding to continue with the investigation and establish the corresponding responsibility in accordance with domestic legislation.

B.2. Reasonable time period

188. The concept of a reasonable period of time contemplated in Article 8 of the American Convention is closely linked to the notion of an effective, simple and prompt remedy envisaged in Article 25.²⁸³ This Court has indicated that the right to have access to justice is not exhausted by the processing of domestic proceedings, but must also ensure, within a reasonable period of time, the right of victims or their families to learn the truth about what happened and to sanction those responsible.²⁸⁴ The Court has also held that a reasonable period of time should be determined in relation to the duration of the entire procedure, from the first action until the final judgment is handed down, including any appeals that may be filed.²⁸⁵

189. At the same time, in its consistent case law the Court has established that four elements must be considered in order to determine whether this rule is fulfilled in each case: the complexity of the case; the conduct of the judicial authorities; the procedural activity of the interested party;²⁸⁶ and the "adverse effect of the duration of the proceedings on the judicial situation of the person involved."²⁸⁷

190. In relation to the first element, this Court has taken into account several criteria for determining the complexity of a process. These include the complexity of the evidence, the number of parties or the number of victims involved in the proceedings, the time that has elapsed since the violation, the nature of the remedies embodied in the domestic legislation and the context in which the violation occurred.²⁸⁸ Similarly, the European Court has ruled

²⁸³ Cf. *Case of Baldeón García v. Peru. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C, No. 147, para. 155 and *Case of Suárez Peralta, supra*, para. 122.

²⁸⁴ Cf. *Case of the 19 Tradesmen v. Colombia. Preliminary Objection*. Judgment of June 12, 2002. Series C, No. 93, para. 188 and *Case of García Lucero et al. v. Chile. Preliminary Objections Merits, Reparations and Costs*. Judgment of August 28, 2013. Series C, No. 267, para. 121.

²⁸⁵ Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C, No. 35, para. The concept 71 and *Case of López Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C, No. 141, para. 130.

²⁸⁶ Cf. *Case of Suárez Rosero, supra*, para. 72 and *Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2012. Series C, No. 246, para. 152.

²⁸⁷ Cf. *Case of Valle Jaramillo et al., supra*, para. 155 and *Case of the Santo Domingo Massacre, supra*, para. 164.

²⁸⁸ Cf. *Case of Genie Lacayo v. Nicaragua. Preliminary Objections*. Judgment of January 27, 1995. Series C, No. 21, para. 78 and *Case of Furlan and Family, supra*, para. 156.

that complexity should be determined by the nature of the charges, the number of accused and the political and social situation prevailing in the place and at the time when the events occurred.²⁸⁹

191. Accordingly, based on the criteria taken into account by this Court in determining the complexity of the case, it notes that: i) the motive for the murder of Mr. Luna López is related to his work in defense of the environment and the complaints he made; ii) the incident occurred in a public place and therefore in the presence of witnesses; iii) in terms of the number of accused, this Court considers that the full number of alleged perpetrators was established in the different statements rendered in the proceeding; iv) the material authors acted as hired gunmen, which indicates the involvement of intellectual authors; v) the participation of at least 10 alleged material and intellectual authors was investigated; vi) two judges withdrew from the case due to alleged partiality and fear; vii) two prosecutors were allegedly threatened by the accused; viii) one of the material authors was a fugitive from February 21, 2001, when the warrant for his arrest warrant was issued, until April 29, 2008, when he was deported from the United States of America and detained at the Toncontin Airport. This indicates that the case was complex.

192. With respect to the conduct of the judicial authorities, several failings, omissions and delays in the proceeding have been documented, mainly attributable to actions by the judiciary (*supra* para. 170). Nevertheless, the Court notes that in the course of the judicial investigations: i) approximately 120 statements were taken from family members, friends, Mr. Luna López's colleagues from the Municipality, eyewitnesses and the alleged perpetrators; ii) approximately nine face-to-face hearings were held; iii) two inspections were conducted at the crime scene; iv) numerous arrest warrants and immigration alerts were issued against the presumed perpetrators; v) a judicial file regarding the crimes of theft of timber, damages and a cover-up that involved the alleged perpetrators of the murder of Mr. Luna López was investigated; vi) a judicial inspection was conducted in the regional offices of CODEFHOR in Juticalpa to examine the records of hearings and visits to this institution; vii) the material and intellectual authors were investigated, resulting in final court rulings.

193. As to the determination of responsibility,²⁹⁰ the Court considers that, taking into account the complexity of the case, the conviction of the first material author in 2002, and the final acquittal of Jorge Chávez before the Supreme Court in 2006, occurred within a reasonable period of time. On the other hand, the recent conviction of the second material author did involve greater delay, particularly since his arrest warrant has not yet been executed. Nevertheless, it is worth mentioning that in view of the fact that the accused was a fugitive from justice, he was deported in 2008 and convicted in 2013; therefore, taking these circumstances into account, the Court finds the time period reasonable. As to determining the responsibility of other persons mentioned in the case, the authorities conducted several proceedings, which concluded in 2004, due to the lack of evidence that would establish their participation.

²⁸⁹ Cf. ECHR, *Case of Milasi v. Italy*. Judgment of June 25, 1987, para. 16.

²⁹⁰ From the time of the events and as part of the investigations carried out in this case, one of the material authors was sentenced of three years and six months in prison (2002). He was later murdered while in the State's custody, after reporting on several occasions that he had received death threats because of his testimony and had requested protection (2006). Regarding the intellectual authorship, a process was opened against the two presumed perpetrators. One was acquitted seven years after the beginning of the trial against him (2006) and the other was murdered during his trial, which lasted more than 10 years (2008). In 2013, a second material author was convicted after a process lasting approximately 14 years and six months (2013), but has not been arrested to date.

194. In relation to the actions of the victim's family, even though in this case the investigation is an *ex officio* obligation of the State, the victims have assumed an active role in the investigations. In this regard, it is worth noting that from the outset of the investigation, they rendered their testimonies identifying the individuals who had previously threatened Mr. Luna López. They also brought to the proceeding persons who in turn had important information on the murder and those responsible.²⁹¹ From the evidence available, it is clear that they participated actively in the process, without hindering it or being denied access to the file. Furthermore, they helped to further the judicial proceedings through various briefs and requests formulated by the prosecutors working on the case, from the start of the investigations to the recent dates.

195. Finally, with respect to the fourth element, namely the adverse effect of the duration of the proceedings on the judicial situation of those involved, the Court considers, as it has done previously, that in this case it is not necessary to analyze this point to determine the reasonableness of the time taken by these investigations.²⁹²

196. Accordingly, the Court concludes that, having regard to the complexity and particular circumstances of this case, the State has not exceeded the reasonable time period in the investigation of the facts, in relation to Article 8 of the Convention.

B.3. General Conclusion

197. The Court concludes that, since the obligation to investigate is an obligation of means, there is no evidence in this case to show that the State failed to conduct a serious and exhaustive investigation to establish the facts, and within a reasonable period of time, according to the circumstances of the case. Consequently, the Court considers that the State is not internationally responsible for the violation of the rights established in Articles 8(1) and 25(1) of the American Convention.

VIII RIGHT TO PERSONAL INTEGRITY OF THE FAMILY MEMBERS

A. Arguments of the parties and the Commission

²⁹¹ Among other proceedings, file No. 1128-98 on concerning the action filed against Oscar Rodríguez Molina, contained information on the efforts made by the legal representative of the Luna family, specifically: a request for an expert opinion on Mr. Oscar Rodríguez to establish whether he suffered a physical impediment in his lower extremities, because several of the eyewitnesses indicated that the accused "did not walk normally" (Application of January 3, 2000, page 259 of file 1128/98). Additionally, an application to include evidence obtained in the preliminary phase (page 260 of file 1128/98) and request for the testimony of Mr. Álvaro Danilo Zapata (page 264 of file 1128/98) (Merits file, page 193, footnote 357). Likewise, the attorney Lobo who, referring to the statement rendered by the accused Oscar Rodríguez on June 15, 2004, incriminating Messrs. Alberto Isidoro Cáliz, Fredy Noel Salgado Guiffarro, Alejandro Fredy Salgado Carmona and Adán Orellana in the murder of Luna, requested the warrant for the arrest of these persons; however, his request was ruled inadmissible because it did not establish that "a logical and concatenated link [could] be established to indicate that a close relationship [...] attributed to them existed." Cf. Request for an arrest warrant of September 2004, and the response of the Civil Court on December 15, 2004, pages 587 and 591. Annexes 66 and 67 to the Report on Merits 100/11 of the ICHR (Merits file, page 193, footnote 358). Cf. Final pleadings of the representatives "Mr. César Luna has made efforts to secure the arrest warrant, that was signed on February 20, 2013, and consequently its execution" (File of attachments of the report on Merits, page 1045).

²⁹² Cf. *Case of Garibaldi*, *supra*, para. 138 and *Case of the Barrios Family*, *supra*, para. 284.

198. In its Report on Merits, the *Commission* indicated that the State of Honduras violated Article 5(1) of the Convention in relation to Article 1(1) thereof, given the suffering and anguish caused by a number of actions and omissions by the domestic authorities in response to the events that took place to the detriment of the family of Mr. Luna López. Indeed, the Commission considered that the loss of a loved one in a context such as the one described in this case, together with the absence of a complete and effective investigation, affected the psychological and moral integrity of Mr. Luna López's family, in addition to the suffering and anguish caused by not knowing the truth of what happened. Moreover, it considered that the family's suffering was exacerbated by having the body removed from the house where his wake was being held. Similarly, the Commission considered proven that members of Mr. Luna López's family were victims of intimidation and threats, both before and after his death, and that there was no evidence in the file showing that the State had adopted the necessary measures to protect them or to investigate these threats.

199. The *representatives* agreed with the Commission and pointed out that the family members of Mr. Luna López were victims of enormous suffering due to: a) threats made against them from both before and after the murder due to their active role in seeking justice in relation to the events and identifying the individuals responsible for the crime; b) the sudden and violent death of Mr. Luna López, and c) the suffering caused by the continued impunity in the case. Specifically, they stated that prior to the murder, the family members suffered enormous anguish, stress and frustration because they lived in a constant state of anxiety, insecurity, vulnerability and worry due to their knowledge of the threats made against Mr. Luna López and the lack of State protection. They added that family members of Mr. Luna López were witnesses in the domestic proceedings and were actively involved in them,²⁹³ which is why they received threats and intimidation. According to the representatives the anguish suffered by the family continues even today, with the knowledge that Mr. Ítalo Iván Lemus Santos, the material author sentenced to prison on January 10, 2013, is free.

200. For its part, the *State* argued that it is not internationally responsible for the violation of the right to personal integrity of the family members of Mr. Luna López given that "the family members have had access to justice in an expeditious manner; that those responsible for Mr. Luna López's death have been punished after being tried in the domestic courts; and that others involved have been taken to the highest judicial bodies [...]." The State indicated that the investigation had resulted in the truth being known about the facts, that the relevant judicial proceedings had been undertaken to reach the final decisions in the different trials conducted and that all the necessary steps were taken²⁹⁴ to avoid the impunity of the crime. The State pointed out that all deaths, particularly a violent death as in this case, cause psychological and moral suffering to the family, but that this suffering cannot be attributed to the State given that the death of Mr. Luna López was perpetrated by individuals and not by State officials. Finally, as regards the threats suffered by Mr. Luna López's family, the State argued that there is no information in the file regarding the filing of any complaints to counter the alleged threats and intimidation and that it is only recently,

²⁹³ An example of this is seen in the actions undertaken by Mr. César Luna Valle who, according to the representatives, after participating in the public hearing in this case, temporarily returned to Catacamas to secure the execution of the arrest warrant issued for Ítalo Iván Lemus, once the Supreme Court of Justice had ruled on the appeal filed by his defense, upholding the conviction of 26 years and 8 months of prison for his material involvement in the murder of Mr. Carlos Antonio Luna López (Merits file, pages 1044 and 1045).

²⁹⁴ In relation to the procedure for the removal of the body, the State indicated that it was conducted with the greatest respect for the victim's family and in compliance with the obligation to investigate and collect evidence from the body of the deceased. This proceeding, as is common practice, may be conducted in a hospital or during the wake, if the remains have been handed over to the family (Merits file, pages 290, 291 and 979).

at the international level, that threats are brought to light for the purpose of making these supposed actions fit into the State's presumed violation of the right to personal integrity.

B. Considerations of the Court

201. The Court has stated, on many occasions that the families of victims of human rights violations may, in turn, be victims.²⁹⁵ On this point the Court has considered that the right to psychological and moral integrity of the family members of victims has been violated owing to the additional suffering that they have endured as a result of the specific circumstances of the violations perpetrated against their loved ones and because of the subsequently actions and omissions by the State authorities in relation to the facts.²⁹⁶

202. In its case law, the Court has determined that certain human rights violations could cause the family members "suffering and anguish in addition to insecurity, frustration and impotence in the face of the failure of public authorities to investigate the facts"²⁹⁷ and has concluded that such suffering, to the detriment of the psychological and moral integrity of the family members, could constitute a violation of Article 5 of the Convention.²⁹⁸ Moreover, the Court has ruled that in certain cases of grave human rights violations, it is possible to presume the damage caused to the psychological and moral integrity of the closest family members, applying the presumption of *juris tantum* with respect to mothers and fathers, sons and daughters, husbands and wives, permanent partners, whenever this is appropriate to the specific circumstances of the case.²⁹⁹ In the case of these family members, it is up to the State to refute such presumption.

203. The family considered as victims in this case are the direct family members, namely: Mariana Lubina López (mother),³⁰⁰ Rosa Margarita Valle Hernández (spouse), Carlos Antonio Luna Valle (son), César Augusto Luna Valle (son), Lubina Mariana Luna Valle (daughter), Allan Miguel Luna Valle (son), José Fredy Luna Valle (son) and Roger Herminio Luna Valle (son). However, based on the circumstances of this case, the Court has considered that since it does not involve a grave violation of human rights in the terms of its case law, the violation of the family's personal integrity, as regards the pain and suffering that occurred, must be proven.³⁰¹

204. Therefore, the Court will assess the existence of a particularly close link between the family members and the victim in this case in order to determine if their right to personal integrity was affected and consequently if there was a violation of Article 5 of the Convention. It will also determine whether the presumed victims have experienced suffering resulting from the facts of the case or due to the subsequent actions or omissions of the State authorities in that regard.³⁰²

²⁹⁵ Cf. *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C, No. 34, Operative Paragraph Four and *Case of Suárez Peralta*, *supra*, para. 156.

²⁹⁶ Cf. *Case of the Mapiripán Massacre*, *supra*, paras. 144 and 146 and *Case of Suárez Peralta*, *supra*, para. 156.

²⁹⁷ Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C, No. 36, para. 114 and *Case of García Family*, paras. 162 and 164.

²⁹⁸ Cf. *Case of Blake*, *supra*, para. 116 and *Case of García and Family*, *supra*, paras. 162, 164 and 167.

²⁹⁹ Cf. *Case of Valle Jaramillo et al.*, *supra*, para. 119 and *Case of Suárez Peralta*, *supra*, para. 157.

³⁰⁰ Mrs. Mariana Lubina López died on May 8, 2005, according to Death Certificate No. 1520-2005-00014 (File of attachments to the brief of pleadings and motions, page 4115).

³⁰¹ Cf. *Case of Myrna Mack Chang*, *supra*, para. 232 and *Case of Suárez Peralta*, *supra*, para. 158.

³⁰² Cf. *Case of Blake*, *supra*, para. 114 and *Case of García and Family*, *supra*, paras. 161 and 162.

205. Accordingly, the Court takes note of the statements of the presumed victims³⁰³ as well as the psychological opinions prepared by the expert María Cecilia Kirby Villa³⁰⁴ and the statement of César Augusto Luna Valle, made during the public hearing before the Court. In this regard, the Court notes that a close connection between the family members and Mr. Luna López was demonstrated, given that, according to the statements, they were very united and close-knit family group. They regarded him as the pillar of the family, the provider and protector, the one who imparted discipline as well as wise guidance to his children.³⁰⁵ Rosa Margarita Valle Hernández, the wife of Mr. Luna López, described her emotional state as follows:

"I lost my life partner of 21 years and the person who offered financial and emotional stability to my home and my life. I made the decision to cling to my children and fight to educate them and make them good people, a purpose that [...] would not only help to honor the memory of my husband but would also realize the dreams we shared from our youth to make a home."³⁰⁶

206. From the statements rendered to substantiate this case, it is evident that the sudden and violent death of Mr. Luna López has caused consequences of a psychological, personal and emotional nature in the aforementioned persons and has given rise to deep pain, sadness and suffering.³⁰⁷ Similarly, the Court understands that the events caused the disintegration of the family³⁰⁸ and the assumption of new roles within it. In this regard, they stated that Mr. Carlos Luna Valle was forced to emigrate to the United States for a period of 10 years for economic reasons, discontinuing his studies;³⁰⁹ Mr. César Luna Valle took on the role of father to his younger siblings, who were unable to return to a normal childhood and adolescence given the restrictions placed on them by the constant fear of reprisals.³¹⁰ Mrs. Rosa Margarita Valle Hernández stated that she was emotionally affected by no longer being able to depend on the financial, moral and emotional support of her husband, and

³⁰³ Cf. Statements rendered by affidavit on January 21, 2013, by: Rosa Margarita Valle Hernández; Carlos Antonio Luna Valle; Allan Miguel Luna Valle; José Fredy Luna Valle; Roger Herminio Luna Valle and Lubina Mariana Luna Valle on January 23, 2013 (Merits file, pages 562 to 576; 577 to 587; 604 to 611; 612 to 619; 620 to 626 and 588 to 603, respectively).

³⁰⁴ Cf. Psychological Expert Report prepared by the psychologist María Cecilia Kirby Villa for Rosa Margarita Valle Hernández; Carlos Antonio Luna Valle; César Augusto Luna Valle; Lubina Mariana Luna Valle; Allan Miguel Luna Valle; José Fredy Luna Valle, and Roger Herminio Luna Valle, rendered before a notary public on January 29, 2013 (Merits file, pages 671 to 724).

³⁰⁵ Cf. Statements rendered by affidavit on January 21, 2013, by: Rosa Margarita Valle Hernández; Carlos Antonio Luna Valle; Allan Miguel Luna Valle; José Fredy Luna Valle; Roger Herminio Luna Valle, and Lubina Mariana Luna Valle on January 23, 2013 (Merits file, pages 571 and 574; 584 and 585; 608 and 609; 616; 623, and 596 and 597, respectively).

³⁰⁶ Cf. Statement rendered by affidavit by Rosa Margarita Valle Hernández on January 21, 2013 (Merits file, page 574).

³⁰⁷ Cf. Statements rendered by affidavit on January 21, 2012, by: Rosa Margarita Valle Hernández; Carlos Antonio Luna Valle; Allan Miguel Luna Valle; José Fredy Luna Valle; Roger Herminio Luna Valle, and Lubina Mariana Luna Valle on January 23, 2013 (Merits file, pages 571 and 574; 584 and 585; 608 and 609; 616 and 617; 623 and 624 and pages 594 to 598, respectively).

³⁰⁸ Cf. Statements rendered by affidavit on January 21, 2013, by: Rosa Margarita Valle Hernández; Carlos Antonio Luna Valle; Allan Miguel Luna Valle; Roger Herminio Luna Valle, and Lubina Mariana Luna Valle on January 23, 2013 (Merits file, pages 574, 585, 609, 624 and 599, respectively).

³⁰⁹ Cf. Statement rendered by affidavit by Rosa Margarita Valle Hernández on January 21, 2013 (Merits file, pages 565 and 567); testimony rendered by affidavit by Carlos Antonio Luna Valle on January 21, 2013 (Merits file, pages 579 and 580).

³¹⁰ Cf. Statements rendered by affidavit on January 21, 2013, by: Rosa Margarita Valle Hernández, Allan Miguel Luna Valle and Roger Herminio Luna Valle, pages 575, 610, and 624, respectively).

also having to raise six children alone, facing the economic costs this implied.³¹¹ As a result of the foregoing, the Court notes that the expert psychological assessment performed found that the family group suffers from chronic Post-Traumatic Stress Disorder (PTSD) derived from the sudden and violent death of Mr. Luna López and the resulting disintegration of the family.³¹²

207. The Court considers it important to point out that even though the State's non-compliance with the duty to respect the right to life of Mr. Luna López's family has not been demonstrated, the suffering his family has experienced is precisely due to his death, which resulted from the State's non-compliance with its obligation of prevention³¹³ (*supra* paras. 138 and 139).

208. Furthermore, the Court emphasizes that the entire family group has suffered the effects resulting from feelings of constant stress, anguish and fear caused by the alleged threats received following the death of Mr. Luna López.³¹⁴

209. In relation to the family group, prior to the death of Mr. Luna López, they indicated that on April 4, 1998, they received a telephone call from Mr. José Ángel Rosa threatening to kill him. (*supra* para. 30). Furthermore, in the days immediately following his death, the family received a telephone call from Mr. Jorge Chávez, who said he was "at their service for anything they needed," which the family interpreted as an act of intimidation so he could avoid being investigated. In an affidavit, Mr. Carlos Luna Valle stated that while he was living in the United States, the brother of José Ángel Rosa offered money for someone to kill him there.³¹⁵ In this regard, the Court notes that the expert psychological report also found that the family group suffered from chronic Post-Traumatic Stress Disorder (PTSD) due to, *inter alia*, the fear they still suffer today for the physical integrity of the family members.³¹⁶

210. Similarly, the Court takes note of the alleged fear and anguish suffered by Mr. César Luna Valle, who in his statement during the public hearing before the Court, stated that in 2005, he had knowledge of death threats made against him by Mr. José Ángel Rosa, who presumably had contracted hired killers to murder him.³¹⁷ According to information

³¹¹ Cf. Statement rendered by affidavit by Rosa Margarita Valle Hernández on January 21, 2013 (Merits file, pages 571 and 574).

³¹² In relation to the psychological reports on the children of Luna López, the expert concluded that the death of their father occurred at a time when they still depended on a father figure to reach the financial and emotional independence characteristic of an adult. Cf. Expert psychological report prepared by the psychologist María Cecilia Kirby Villa, *supra*, in respect of Rosa Margarita Valle Hernández; Carlos Antonio Luna Valle; César Augusto Luna Valle; Lubina Mariana Luna Valle; Allan Miguel Luna Valle; José Fredy Luna Valle and Roger Herminio Luna Valle (Merits file, pages 675, 683, 691, 699, 707, 714 to 715 and 722 to 723, respectively).

³¹³ Cf. *Case of the Indigenous Community Xákmok Kásek v. Paraguay. Merits, Reparations and Costs*. Judgment of August 24, 2010. Series C, No. 214, para. 244 and *Case of the Barrios Family, supra*, paras. 303 to 312.

³¹⁴ Cf. Statements rendered by affidavit on January 21, 2013, by: Rosa Margarita Valle Hernández; Carlos Antonio Luna Valle; Allan Miguel Luna Valle; José Fredy Luna Valle; Roger Herminio Luna Valle, and Lubina Mariana Luna Valle on January 23, 2013 (Merits file, pages 564 to 565 and 570; 578 to 580 and 583 to 584; 608; 616; 623 and 594 to 600, respectively).

³¹⁵ Cf. Statement rendered by affidavit by Carlos Antonio Luna Valle on January 21, 2013 (Merits file, page 580).

³¹⁶ Cf. Expert psychological report prepared by psychologist María Cecilia Kirby Villa, *supra*, in respect of Rosa Margarita Valle Hernández; Carlos Antonio Luna Valle; César Augusto Luna Valle; Lubina Mariana Luna Valle; Allan Miguel Luna Valle; José Fredy Luna Valle and Roger Herminio Luna Valle (Merits file, pages 675, 683, 691, 699, 707, 714 to 715 and 722 to 723, respectively).

³¹⁷ Mr. César Luna stated that: "the clearest threat, which was about to be consummated, was the fact that José Ángel Rosa contracted hired killers and, together with others, gave them money to murder me [...] we always had to be careful because there was no justice and they moved about freely and were able to do anything they

submitted by the representatives after the hearing on the case, the feelings of insecurity and fear experienced by the entire family were exacerbated by the threats against César Luna Valle, given that he was the main driving force behind the proceedings until now, and more recently, on the occasion of his temporary return to Catacamas for the purpose of securing the execution of the arrest warrant issued for Ítalo Iván Lemus.³¹⁸

211. In addition, the Court found that certain shortcomings in the proceedings carried out immediately after the death of Mr. Luna López could have caused disturbance in the family group. Regarding the manner in which the body was removed, the Court believes that the authorities' intrusion at the wake being conducted at the home of Mr. Luna López's mother represented an interference in the family's grieving process, particularly since this procedure should have been conducted before his body was released to the family³¹⁹ (*supra* paras. 49, 163 and 164).

212. For the aforementioned reasons, the Court finds that the State's lack of prevention in its duty to guarantee the right to life of Mr. Luna López, the psychological, personal and emotional trauma caused by his death, the situation of persistent risk in the case, aggravated by the threats suffered by his family members and certain irregularities which occurred during the initial proceedings of the investigation, have produced suffering and anguish for the family members of Mr. Luna López, in addition to feelings of insecurity, frustration and impotence, affecting their psychological and moral integrity. Consequently, the Court rules 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 Mariana Lubina López, Rosa Margarita Valle Hernández, Carlos Antonio Luna Valle, César Augusto Luna Valle, Lubina Mariana Luna Valle, Allan Miguel Luna Valle, José Fredy Luna Valle and Roger Herminio Luna Valle.

IX REPARATIONS (Application of Article 63(1) of the American Convention)

213. Under the provisions of Article 63(1) of the American Convention,³²⁰ the Court has indicated that any violation of an international obligation that may have resulted in damage

wanted against us [...] and [José Ángel Rosa] decided with others to kill me. He confessed this to a friend of mine in Juticalpa, Mr. Ulises Sarmiento, and this man is my friend and he interceded so they would not carry this out in spite of the fact that they had been looking for me for 10 days in places I frequented in Tegucigalpa. They even went to the cemetery believing that I would go there on All Souls' Day. This was very difficult for me because there were clear indications that he was wanted my life and wanted to kill me." Carlos Luna Valle also stated in his sworn testimony that his brother César Luna had told him that José Ángel Rosa had plans to murder him and that he had waited outside the cemetery on All Soul's Day. Cf. Statement of César Augusto Luna Valle rendered in the public hearing before the Court, *supra*, and statement rendered by affidavit by Carlos Antonio Luna Valle on January 21, 2013 (Merits file, page 580).

³¹⁸ According to the representatives, César Luna Valle temporarily returned to Catacamas for the purpose of securing the execution of the arrest warrant issued for Ítalo Iván Lemus after the Supreme Court had ruled on the cassation appeal filed by his defense, in an attempt to maintain the conviction of 26 years and 8 months of prison for his material responsibility in the murder of Mr. Carlos Antonio Luna López (Merits file, pages 1044 to 1045).

³¹⁹ Regarding the removal of the body, Article 188 of the Honduran Code of Criminal Proceedings, in force at the time of the events, established that "[t]he body shall not be removed until the judicial inspection has been conducted to thoroughly examine it, [specifying] the condition in which it was [found] and any injuries, contusions and other signs of violence it may have present[ed]."

³²⁰ Article 63(1) of the Convention provides that "[if] the Court decides there is a violation of a right or freedom protected by [this] Convention, it shall rule that the injured party 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

entails the obligation to make adequate reparation. This provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international Law on State responsibility.³²¹

214. In consideration of the violations of the Convention declared in the preceding chapters, the Court will proceed to analyze the claims submitted by the Commission and the representatives, in light of the criteria established in its case law in relation to the nature and scope of the obligation to make reparation, in order to decide on the measures intended to redress the damage caused to the victims.³²²

215. Given that the Court has established that reparations should have a causal nexus with the facts of the case, the violations declared, the damage proved and the measures requested to redress the respective damage, it must observe this correspondence in order to rule appropriately and according to law.³²³

A. Injured Party

216. The Court reiterates that, under Article 63(1) of the Convention, anyone who has been declared a victim of the violation of any rights established in the Convention shall be considered an injured party.³²⁴ Therefore, the Court considers as “injured party” Carlos Luna López and his family members Mariana Lubina López, Rosa Margarita Valle Hernández, Carlos Antonio Luna Valle, Lubina Mariana Luna Valle, César Augusto Luna Valle, Allan Miguel Luna Valle, José Fredy Luna Valle and Roger Herminio Luna Valle. As victims of the violations declared in this Judgment, they will be considered as the beneficiaries of the Court-ordered reparations.

B. Obligation to investigate the facts and identify, judge, and where appropriate, sanction those responsible

B. 1. Request for investigation, resolution, prosecution and possible punishment for all of those materially and intellectually responsible

217. Both the *Commission* and the *representatives* asked the Court to order the State to expeditiously undertake a complete, impartial and effective judicial investigation for the purpose of clarifying the circumstances that led to the murder of Mr. Luna López and to identify all the material and intellectual authors and other participants involved in order to judge and punish them. They also asked the Court to require the State to order, in a thorough and effective manner, the appropriate administrative, disciplinary or punitive measures in response to the actions or omissions of the state officials who contributed to the denial of justice and the partial impunity in this case. For its part, the *State* rejected the claims for reparation requested by the Commission and the representatives, considering there were no violations of Articles 4, 5(1), 8(1), 23 and 25 of the American Convention.

constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.”

³²¹ Cf. *Case of Velásquez Rodríguez. Reparations and Costs*. Judgment of July 21, 1989. Series C, No. 7, para. 25 and *Case of Suárez Peralta*, *supra*, para. 161.

³²² Cf. *Case of Velásquez Rodríguez. Reparations and Costs*, *supra*, paras. 25 to 27 and *Case of Suárez Peralta*, *supra*, para. 162.

³²³ Cf. *Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C, No. 191, para. 110 and *Case of Suárez Peralta*, *supra*, para. 163.

³²⁴ Cf. *Case of the Massacre of La Rochela*, *supra*, para. 233 and *Case of Suárez Peralta*, *supra*, para. 165.

218. Given that the Court has not established the State's international responsibility for the violation of the rights enshrined in Articles 8 and 25 of the American Convention (*supra* para. 197), the Court did not order the respective reparation. However, it reiterates that this does not prevent the competent domestic authorities from deciding to continue the investigation and identify those responsible, in compliance with its domestic legislation, under the terms of paragraph 187 of the Judgment.

B.2. Request for the creation of an unit for the investigation of crimes committed against human rights defenders

219. The *representatives* requested that the Court order the State to set up a unit to investigate crimes committed against human rights defenders, attached to the Office of the Special Prosecutor for Human Rights, and assign it the necessary staff and material resources to operate effectively. They also requested that this unit be responsible for investigating the facts related to the death of Mr. Luna López.

220. For their part, neither the *Commission* nor the *State* referred to this type of measure of reparation.

221. The Court considers that the measures established in paragraph 244 of this Judgment are sufficient and adequate to redress the violations suffered by the victims and achieve the objective indicated by the representatives.³²⁵ Therefore, the Court does not consider it appropriate to order said measure of reparation.

C. Measures of rehabilitation, satisfaction and guarantees of non-repetition

C. 1. Rehabilitation

222. The *representatives* stated that "there [i]s no question about the profound sadness that the death of Carlos Luna López caused his family." For this reason, they asked the Court to order the Honduran State to provide free and permanent psychological care for the family members Rosa Margarita Valle Hernández, Carlos Antonio Luna Valle, Lubina Mariana Luna Valle, César Augusto Luna Valle, Allan Miguel Luna Valle, José Fredy Luna Valle and Roger Herminio Luna Valle.

223. For their part, neither the *Commission* nor the *State* referred to this type of measure of reparation.

224. Therefore, the Court finds, as it has in other cases,³²⁶ that a measure of reparation is required to offer care for the psychological suffering experienced by the family of Mr. Luna López (*supra* para. 212) caused by the violations established in this Judgment. For the purposes of contributing to repair this damage, the Court orders the State to provide immediately and free of charge, the necessary psychological treatment to the victims for as long as needed, including the free provision of any medication required. Moreover, the respective treatments must be provided, to the extent possible, in the health centers closest

³²⁵ Cf. *Case of Fontevecchia and D'Amico v. Argentina. Merits, Reparations and Costs*. Judgment of November 29, 2011. Series C, No. 238, para. 110 and *Case of Suárez Peralta, supra*, para. 189.

³²⁶ Cf. *Case of Barrios Altos v. Peru. Reparations and Costs*. Judgment of November 30, 2001. Series C, No. 87, paras. 42 and 45 and *Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations*. Judgment of May 14, 2013. Series C, No. 260, para. 311.

to their places of residence.³²⁷ The victims have a period of six months from the notification of this Judgment to request the State to provide this treatment.

C. 2. Satisfaction

C.2.1. Acknowledgment of international responsibility and public apology

225. The *representatives* asked the Court to order the State to “[c]onduct a public act of acknowledgement of international responsibility, of apology and to offer a commitment of non-repetition [...and] as part [of this act], the Honduran State should offer a public apology to the family of Carlos Luna López, accepting its responsibility for the violations committed against the victims.”

226. For their part, neither the Commission nor the State referred to this type of reparation measure.

227. Bearing in mind the significance of the facts that resulted in the State’s international responsibility, the Court deems it necessary that the State conduct a public act acknowledging its international responsibility, making reference to the responsibility declared in the terms this Judgment and reaffirming the importance of preventing and protecting defenders of human rights, including defenders of the environment, from situations of risk, such as that which affected Mr. Luna López. Similarly, given the specific characteristics of this case, and in the interest of creating awareness of the consequences of such situations, state officials must be present at the public act of acknowledgment. The implementation and other aspects of this act must be agreed with the victims and their representatives within the six months of notification of this Judgment.³²⁸

C.2.2. Publication and dissemination of the Judgment

228. The *representatives* asked the Court to “order the State to publish, within a period of six months, the sections of the Judgment regarding the context and the proven facts, as well as the operative part of the Judgment in the Official Gazette of Honduras, in a daily newspaper with national circulation and in at least two daily newspapers with circulation in Olancho Province. This publication shall also appear on the websites of the Supreme Court of Justice, the Ministry of Foreign Affairs of Honduras and the Public Prosecutor’s Office and remain there until the State has fully complied with the Judgment.”

229. For their part, neither the *Commission* nor the *State* referred to this type of reparation measure.

230. As it has done in other cases,³²⁹ the Court considers it pertinent to order the State to publish, within a period of six months from notification of this Judgment: a) an official summary of this Judgment prepared by the Court, once, in the official gazette; b) an official summary of this Judgment prepared by the Court, once, in a newspaper with wide national circulation, and c) the Judgment in its entirety, available for a period of one year, on an appropriate official Honduran website.

³²⁷ Cf. *Case of the Massacre of Dos Erres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C, No. 211, para. 270 and *Case of Mendoza et al., supra*, para. 312.

³²⁸ Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C, No. 88, *supra*, para. 81 and *Case of the Massacre of Santo Domingo, supra*, paras. 301 and 302.

³²⁹ Cf. *Case of Cantoral Benavides, supra*, para. 79 and *Case of Suárez Peralta, supra*, para. 189.

C.2.3. Request for measures in memory of the victim

231. The *representatives* told the Court that “Mr. Carlos Luna López lost his life because of his struggle to protect the environment. [...] It is important to keep his memory alive so that present and future generations will know about the message of Carlos Luna, the reasons for his death and learn to protect the environment. This will contribute to prevent such regrettable events from occurring in the future. With these objectives in mind, as in the *Case of Kawas*, [regarding the Punta Sal National Park, now the Blanca Janeth Kawas Fernández National Park,] the representatives of the victims ask[ed] the [Court] to order the State of Honduras to rename the current Patuca National Park, which is mainly located in Catacamas, with the name of Carlos Luna López, an action that should be publicized in at least one printed publication and on television channel with national coverage.” Furthermore, they indicated to the Court that “[t]o honor [the] memory [of Mr. Luna López], his struggles and those of his family to obtain justice, [...] the State of Honduras be ordered to remodel the plaza located in front of the Catacamas Municipal building and construct a monument dedicated to Carlos Luna López. This measure should be carried out taking into account the criteria of Mr. Luna’s family.”

232. For their part, neither the *Commission* nor the *State* referred to this type of reparation measure.

233. Regarding the measures of reparation measures requested by the representatives, the Court considers that the provisions of paragraphs 227 and 230 of this Judgment are sufficient and appropriate to remedy, in part, the violations caused to the victims and fulfill the purpose indicated by the representatives.³³⁰ Accordingly, the Court does not consider it appropriate to order such measures.

C. 3. Guarantees of non-repetition

234. In cases such as this, guarantees of non-repetition take on a greater significance in ensuring that similar events are not repeated in future and to contribute to their prevention.³³¹ In this sense, the Court recalls that the State must prevent the reoccurrence of the human rights violations described in this case and adopt all legal, administrative and other measures necessary to protect human rights defenders in the exercise of their human rights, in compliance with the obligations to respect and guarantee rights enshrined in Article 1(1) and 2 of the Convention.³³²

C.3.1. Request for the development of protocols for the due diligence in the investigations of human rights violations

235. The *Commission* asked the Court to order the State to “[s]trengthen its institutional capacity to combat the pattern of impunity in cases involving threats and deaths of defenders, through the design of investigation protocols that take into account the risks inherent in the work of defending human rights, and in particular the right to a healthy

³³⁰ Cf. *Case of Fontevecchia and D’Amico*, *supra*, para. 110 and *Case of Suárez Peralta*, *supra*, para. 189.

³³¹ Cf. *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs*. Judgment of April 27, 2012. Series C, No. 241, para. 92. Also, Cf. “The guarantees of non-repetition [...] will also contribute to prevention.” *UN, Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Resolution approved by the UN General Assembly, UN Doc. A/Res/60/147, December 16, 2005, principle 23.

³³² Cf. *Case of Velásquez Rodríguez. Reparations and Costs*, *supra*, para. 166 and *Case of Suárez Peralta*, *supra*, para. 195.

environment, and that lead to sanctions for those responsible and appropriate redress for the victims.”

236. The *representatives* stated to the Court that “they consider that in order to prevent victims, as well as other persons in a similar situation, from becoming victims of impunity, there must be appropriate protocols for conducting investigations that are consistent with due process and with sensitivity for the victims.”

237. The *State* did not refer to this type of measure of reparation.

238. In this case, the Court did not find that that the domestic legislation was contrary to international standards (*supra* paras. 130 to 133, 159 and 164) as regards the investigation of the facts, nor was the possible infringement of Article 2 of the American Convention discussed. Therefore, the Court does not consider it appropriate to order a measure of reparation related to the creation of investigation protocols.

C.3.2. Design and implementation of a comprehensive public policy of protection for defenders of human rights and the environment

239. The *Commission* asked the Court to order the State to “[d]evelop appropriate and prompt measures for an institutional response that would ensure the effective protection of human rights defenders in situations of risk.”

240. The *representatives* asked the Court to order the State to “create and put into operation a comprehensive public policy aimed at protecting human rights defenders.”

241. For its part, the *State* argued that “[c]ontrary to the affirmations of the [Commission], Honduras has made determined efforts to implement a comprehensive policy that is conducive to the protection of environmental defenders.” In this regard, it pointed to the creation of a Special Prosecutor for the Environment; a Special Prosecutor for the Ethnic Affairs and Cultural Heritage; a Prosecutor for Human Rights; a National Commissioner for Human Rights and the Secretariat for the Development of Indigenous Peoples, Afro-Hondurans and Racial Equality Policies; the Secretariat for Justice and Human Rights; the drafting and approval of the “First Public Policy for Human Rights,” and the “National Action Plan for Human Rights,” and the dissemination of the Project for “the Law on Protection Mechanisms for Human Rights Defenders, Justice Operators, Journalists and Social Communicators.”

242. Similarly, the Court assesses positively the information submitted by the State in relation to the issuance and approval of the “First Public Policy for Human Rights”³³³ and the “National Action Plan for Human Rights,” approved through Executive Decree No. PCM-045-2012 of November 27, 2012,³³⁴ and the dissemination of the draft for “the Law on Protection Mechanisms for Human Rights Defenders, Justice Operators, Journalists and Social Communicators.”³³⁵

243. On this matter, the Court takes note of the comments made by the expert Luis Enrique Eguren in this regard, that “[w]hen a general context of risk exists for the defense

³³³ Cf. Executive Summary of the First Public Policy on Human Rights and the National Action Plan for Human Rights (Merits file, pages 763 to 809).

³³⁴ Cf. Executive Decree No. PCM-045-2012 of November 27, 2012 (Merits file, pages 730 to 736).

³³⁵ Cf. Law for Protection Mechanisms for Human Rights Defenders, Justice Operators and Journalists and Social Communicators (File of Merits, pages 739 to 760).

of human rights, it is time to develop a public policy to reduce that risk and promote and protect the right (and the duty) to defend human rights.”³³⁶ Furthermore, it notes that according to the expert, a public policy for the protection of human rights defenders, including defenders of the environment, should at least take into account the following requirements:

- a) The participation of human rights defenders, civil society organizations and experts in the formulation of the standards that could regulate protection for the collective in question;
- b) The protection program should address the problem in a comprehensive and inter-institutional manner, according to the risk of each situation; and adopt measures to immediately address the complaints made by defenders;
- c) The creation of a risk analysis model that allows for the effective assessment of the risk and protection needs of each defender or group;
- d) The creation of an information management system on the situation of prevention and protection of human rights defenders;
- e) The design of protection plans that respond to the specific risk faced by each defender and the characteristics of their work;
- f) The promotion of a culture that legitimates and protects the work of human rights defenders, and
- g) The allocation of sufficient human and financial resources to respond to the real needs for protection of human rights defenders.³³⁷

244. Therefore, the Court rules that, in view of the fact that some of the policies referred to by the State are still pending approval, and in the interest of ensuring that such policies are implemented in an effective and permanent manner, the State must implement these in a reasonable time period, taking into account the aforementioned criteria. Moreover, the State must present a report within one year on the actions it has taken to implement these policies.

D. Compensatory allowance

245. The Court considers that, in general terms, the *Commission* recommended “appropriate [r]eparation for the human rights violations declared in [its] Report [on Merits] in both the material and moral aspects.” For its part, the *State* did not refer to this measure of reparation.

D.1. Pecuniary Damage

246. In its case law the Court has developed the concept of pecuniary damage and has established that this implies “loss or detriment to the income of the victims, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.”³³⁸

D.1.1. Indirect damage and loss of income

247. The *representatives* stated that “[t]he death of Carlos Luna López brought unexpected expenses with it; the first was the need to provide him with a dignified burial. The corresponding funeral expenses were covered entirely by his family. The total amount requested for funeral expenses came to L 15,000 (fifteen thousand *lempiras*, which is

³³⁶ Expert testimony of Mr. Luis Enrique Eguren of January 28, 2013, *supra* (Merits file, page 665).

³³⁷ Cf. Expert testimony of Mr. Luis Enrique Eguren, *supra*, (Merits file, pages 663 to 660).

³³⁸ *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C, No. 91, para. 43 and *Case of Suárez Peralta*, *supra*, para. 212.

equivalent to US\$ 1,614.63 (one thousand six hundred and fourteen dollars of the United States of America and sixty-three cents) [...]. [G]iven that the family does not have receipts for this expense, they respectfully ask[ed] the Court to establish the amount of this expense in accordance with criteria of equity.”

248. Regarding the loss of earnings, the *representatives* stated that “Carlos Luna López was 42 at the time of his death. In accordance with available data, life expectancy in Honduras for the year 1998 was 68.4 years. Therefore, if he had not been murdered, Carlos Luna López had another 26.4 years to live. Mr. Luna had a bachelor’s degree in Agronomy and exercised his profession. [...] In total, the amount [...] that should be paid by the State of Honduras to the victim’s family for loss of earnings as a result of his death is US\$ 404,491.61 (four hundred and four thousand, four hundred and ninety-one dollars of the United States of America dollars and sixty-one cents).”³³⁹

249. In its final written arguments, the State indicated that it had not violated any provision of the American Convention and therefore it was not within the Court’s purview to order any measure of reparation.

250. As to the funeral expenses, the Court notes that no receipts were submitted. Nevertheless, the Court presumes, as it has in other cases,³⁴⁰ that the family incurred various expenses related to Mr. Luna’s death. In relation to lost earnings, the Court takes into account the victim’s age at the time of his death, life expectancy in Honduras and the minimum salary corresponding to Mr. Luna López’s profession.³⁴¹ Given that the State was found responsible for violations of the obligation to guarantee the right to life, the Court orders the State to pay an amount proportional to US\$ 200,000 (two hundred thousand dollars of the United States of America), to the family of Carlos Luna López as compensation for loss of earnings and funeral expenses, in accordance with paragraph 254 of this Judgment.

D.2. Non-pecuniary damage

251. In its case law, the Court has developed the concept of non-pecuniary damage and has established that this “may include both the suffering and affliction caused by the violation as well as the impairment of highly significant personal values and also changes of a non-pecuniary nature in the living conditions of the victims.”³⁴²

D.2.1. Non-pecuniary damage of Carlos Luna López

³³⁹ The representatives stated that the salaries that Mr. Luna failed to receive up to April 2012, amount to L 4,676,282.90 (four million six hundred and seventy-six thousand two hundred eighty-two *lempiras* and ninety cents), which is equivalent to US\$ 242,420.05 (two hundred and forty-two thousand four hundred and twenty dollars United States of America and five cents). Furthermore, they indicated that in order to calculate the remaining salaries, from May 2012, until he would have reached the life expectancy age (another 12.4 years), the final minimum salary for 2012 was considered. Moreover, they added the corresponding interest, which was 6% in other cases. Additionally, in his position as City Councilman, Mr. Luna López earned an allowance for his attendance at Municipal meetings. Had he remained in this post, Mr. Luna would have received the sum of L 290,000 (two hundred ninety thousand *lempiras*), the equivalent in US\$ 15,033 (fifteen thousand and thirty-three dollars of the United States of America) (Merits file, pages 220 to 222).

³⁴⁰ Cf. *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs*. Judgment of July 8, 2004. Series C, No. 110, para. 207 and *Case of the Barrios Family, supra*, para. 362.

³⁴¹ Cf. *Case of Bámaca Velásquez. Reparations and Costs, supra*, para. 43 and *Case of Gudiel Álvarez et al. (Military Journal) v. Guatemala. Merits, Reparations and Costs*. Judgment of November 20, 2012. Series C, No. 253, paras. 362 to 363.

³⁴² Cf. *Case of the “Street Children” (Villagrán Morales et al.)*, *supra*, para. 224 and *Case of Suárez Peralta, supra*, para. 212.

252. The *representatives* stated that “[t]he manner in which the murder of Carlos Luna López was carried out impli[ed] a situation of extreme violence for the victim. [...] In addition, Mr. Luna’s suffering [was] exacerbated because he was the victim of threats prior to his death and although the authorities were aware of this, they took no action to protect him. [...] Consequently, taking into account the circumstances and the Court’s case law in a similar case, [they asked the Court] to order the State to pay the sum of US\$ 80,000 (eighty thousand dollars of the United States of America) as non-pecuniary damage for the murder of Carlos Luna López.”

253. Having regard to its case law,³⁴³ and in consideration that in Chapter VI this Court determined that the State did not act with the due diligence required to counter the threat against Carlos Luna López and did not act as could reasonably be expected in the circumstances of the case to prevent his death (*supra* para. 138), the Court establishes, in equity, the sum of US\$ 50,000 (fifty thousand dollars of the United States of America) as compensation for non-pecuniary damage to Mr. Carlos Luna López.

254. Finally, the compensation granted in this chapter in favor of Carlos Luna López shall be distributed in equal parts between his wife and children. Should one or several of the children die before the respective compensation is paid, the corresponding amount shall be increased for his remaining children. Also, in light of the death of Mariana Lubina López (mother), the amount of the compensation awarded to her shall be divided among her beneficiaries in accordance with domestic law.

D.2.2. Non-pecuniary damage to the detriment of the family of Carlos Luna López

255. The *representatives* pointed out that “[i]n this case, the suffering is evident considering the threats faced by Mr. Luna prior to his death. As we know, the family members were aware of those threats and were also victims of them. Thus the suffering did not begin with the death of Mr. Luna, but rather months earlier, when they were already living with constant worry over the probable loss of a loved one, which in fact later occurred. In addition to the pain caused by a violent death, they also suffered because of the sequence of state negligence throughout the investigative process [...]. In this regard, they ask[ed] the Court to award compensation in equity and in accordance with its case law for US\$ 50,000 (fifty thousand dollars of the United States of America) for each of the closest family members of Carlos Luna López: Mariana Lubina López (mother), Rosa Margarita Valle Hernández (wife), Carlos Antonio Luna Valle (son), César Augusto Luna Valle (son), Lubina Mariana Luna Valle (daughter), Allan Miguel Luna Valle (and), José Fredy Luna Valle (son) and Roger Herminio Luna (son).”

256. In this regard, the Court decides to award the sum of US\$ 7,000 (seven thousand dollars of the United States of America) as compensation for non-pecuniary damage (*supra* Chapter VIII) in favor of Mariana Lubina López, Rosa Margarita Valle Hernández, César Luna Valle, Carlos Antonio Luna Valle, Lubina Mariana Luna Valle, Allan Miguel Luna Valle, José Fredy Luna Valle and Roger Herminio Luna.

E. Costs and expenses

³⁴³ Cf. *Case of the “Street Children” (Villagrán Morales et al.)*, *supra*, para. 84 and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2012. Series C, No. 257, para. 363.

257. With respect to the expenses incurred in the domestic investigation and judicial proceedings, the *representatives* argued that, “[f]rom the time of the death of Carlos Luna López [...] the family members took steps to obtain justice [...]. [T]he family members supported the investigative process by presenting witnesses, pressing for arrest warrants, arranging meetings with officials of the Public Prosecutor’s Office and the Supreme Court of Justice, marches to demand justice and pressure the authorities, etc. [...] Given that these expenses were incurred over a period of more than fourteen years, the family has not kept receipts for them. These [expenses] include professional fees, transportation, telephone calls, accommodation, copies and travel expenses, for which they ask[ed] the Court to establish in equity [the amount of] US\$ 10,000 (ten thousand dollars of the United States of America) to be paid to Mr. César Luna Valle.” They added that, with respect to the expenses incurred during the proceeding before the Commission and the Inter-American Court, the Analysis, Investigation and Communication Team (ERIC) expressed its desire to waive the payment for costs and expenses. For its part, the Center for Justice and International Law (CEJIL) “ask[ed] the Court to set the amount of US\$ 18,620.16 (eighteen thousand six hundred and twenty dollars of the United States of America and sixteen cents) [for] expenses.”³⁴⁴

258. The Court reiterates that, according to its case law,³⁴⁵ costs and expenses form part of the reparations, given that the efforts made by the victims to obtain justice, at both the national and international level, imply expenses that must be compensated when the State’s international responsibility is declared in a Judgment.

259. Similarly, the Court reiterates that it is not sufficient to provide evidentiary documents; both parties are required to present arguments that link the evidence with the facts represented, since these imply alleged economic expenses, the items of expenditure and their justification must be clearly established.³⁴⁶

260. In this case, the proof submitted by the representatives and the corresponding arguments do not fully justify the amounts requested. Taking this into account, the Court sets in equity the amount of US\$ 5,000 (five thousand dollars of the United States of America) to be paid to Cesar Luna Valle for the expenses incurred in the domestic proceedings, and US\$ 15,000 (fifteen thousand dollars of the United States of America) for the Center for Justice and International Law (CEJIL) for expenses related to processing the case before the Inter-American System of Human Rights. These amounts shall also be paid to the family members and the representatives, respectively, within a period of one year from notification of this Judgment. In the phase of monitoring compliance with the Judgment, the Court may request the State to reimburse the victims or their representatives for any subsequent expenses that are reasonable and duly verified.³⁴⁷

³⁴⁴ The representatives stated that they made five trips to Honduras to gather documentation for the case, with expenses equivalent to US\$ 2,300.89 (two thousand, three hundred dollars of the United States of America and eighty-seven cents); US\$ 171.42 (one hundred and seventy-one dollars of the United States of America and forty-two cents) for copies and administrative expenses; US\$ 16,147.95 (sixteen thousand, one hundred and forty-seven dollars of the United States of America and ninety-five cents) for an attorney’s fees: 5% of a monthly salary for nine years, 40% of the salary for the month of February and 80% of the salary during the months of March and April through April 21, 2012 (Merits file, pages 223 to 224).

³⁴⁵ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C, No. 39, para. 79 and *Case of Suárez Peralta*, *supra*, para. 217.

³⁴⁶ Cf. *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C, No. 189, para. 277 and *Case of the Massacre of Santo Domingo*, *supra*, para. 343.

³⁴⁷ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010. Series C, No. 217, para. 291 and *Case of Gudiel Álvarez et al. (Military Journal)*, *supra*, para. 383.

F. Method of compliance with the payments ordered

261. The State shall make payment of the indemnities for pecuniary and non-pecuniary damages and the reimbursement of costs and expenses established in this Judgment directly to the persons indicated herein, within one year from the date of notification of this Judgment, under the terms of the following paragraphs.

262. The State shall comply with its monetary obligations through payment in United States of America dollars. If, for reasons attributable to the beneficiaries of the compensation, or their dependents, it is not possible to pay the established amounts within the period indicated, the State shall deposit those amounts in a bank account or certificate of deposit in a solvent Honduran financial institution, in US dollars, and under the most favorable conditions permitted by the legislation and banking practices. If the corresponding compensation is not claimed within ten years, the amount shall be returned to the State with the accrued interest.

263. The amounts awarded in this Judgment as compensation and reimbursement of costs and expenses shall be paid to the aforementioned persons in full, as established in this Judgment, without reductions for any tax liability.

264. If the State should fall into arrears, it shall pay interest on the amount owed, corresponding to the banking interest on arrears in the Republic of Honduras.

**X
OPERATIVE PARAGRAPHS**

265. Therefore,

THE COURT

DECIDES,

Unanimously, that:

1. The State is responsible for the violation of the obligation to guarantee the right to life recognized in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Carlos Luna López, under the terms of paragraphs 116 to 139 of this Judgment.

2. The State is not responsible for the violation of the right to personal integrity (humane treatment), recognized in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Carlos Luna López, under the terms of paragraph 140 of this Judgment.

3. The State is not responsible for the violation of the right to participate in government, recognized in Article 23 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Carlos Luna López, under the terms of paragraphs 141 to 144 of this Judgment.

4. The State is not responsible for the violation of the rights to a fair trial and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention on Human

Rights, in relation to Article 1(1) thereof, to the detriment of Carlos Luna López, under the terms of paragraphs 153 to 197 of this Judgment.

5. The State is responsible for the violation of the right to personal integrity (humane treatment) recognized in Articles 5(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Mariana Lubina López, Rosa Margarita Valle Hernández, César Augusto Luna Valle, Carlos Antonio Luna Valle, Lubina Mariana Luna Valle, Allan Miguel Luna Valle, José Fredy Luna Valle and Roger Herminio Luna, under the terms of paragraphs 201 to 212 of this Judgment.

AND ORDERS,

Unanimously that:

6. This Judgment constitutes *per se* a form of reparation.

7. The State shall provide, through its specialized health care institutions or personnel, free, immediate, appropriate and effective psychological or psychiatric care, as required, to Rosa Margarita Valle Hernández, Carlos Antonio Luna Valle, Lubina Mariana Luna Valle, César Augusto Luna Valle, Allan Miguel Luna Valle, José Fredy Luna Valle and Roger Herminio Luna Valle, under the terms of paragraph 224 of this Judgment.

8. The State shall hold a public act in acknowledgment of its international responsibility in which it shall make reference to the facts of the case and to its declared responsibility, in accordance with this Judgment, within six months of its notification, under the terms of paragraph 227 of the Judgment.

9. The State shall comply with the publications indicated in paragraph 230 of this Judgment, within six months of notification thereof.

10. The State shall submit an annual report describing the actions it has undertaken to implement, within a reasonable time, an effective public policy for the protection of human rights defenders, particularly defenders of the environment, under the terms of paragraphs 243 and 244 of this Judgment.

11. The State shall pay the amounts established in paragraphs 250, 253, 254, 256 and 260 of this Judgment in respect of pecuniary and non-pecuniary damages and reimbursement of costs and expenses, within one year from notification of this Judgment.

12. Within one year of notification of this Judgment, the State shall provide the Court with a report on the measures adopted in compliance therewith.

The Court shall monitor full compliance with this Judgment, in exercise of its powers and in compliance with its obligations under the American Convention, and will consider this case closed when the State has fully complied with all the provisions established herein.

Done in Spanish and English, the Spanish text being authentic, in Mexico, Federal District, on October 13, 2013.

Diego García-Sayán
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto F. Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary