



ORGANIZATION OF AMERICAN STATES
Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
Blanca Jeannette Kawas Fernández
(Case 12.507)
Against the Republic of Honduras

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February 4, 2008
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APPLICATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE CASE OF BLANCA JEANNETTE KAWAS FERNÁNDEZ (CASE 12.507) AGAINST THE REPUBLIC OF HONDURAS

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submits to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") an application in case 12,507, *Blanca Jeannette Kawas Fernández*, against the Republic of Honduras (hereinafter "the State", "the Honduran State", or "Honduras") for its responsibility in the extrajudicial execution of the environmentalist Blanca Jeannette Kawas Fernández (hereinafter "the victim"¹), which occurred in the night of February 6, 1995 in the barrio "El Centro" of the city of Tela, the subsequent failure to conduct a diligent investigation and to punish those responsible for her death and for the obstruction of justice in general, and for the failure to make adequate reparations to her next of kin.

2. The Inter-American Commission requests the Court to find the Honduran State internationally responsible for having breached its international obligations through violation of article 4 (right to life) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in relation with the general obligation to respect and guarantee human rights established in article 1.1 of that instrument, to the detriment of Blanca Jeannette Kawas Fernández. The IACHR also asks the Court to declare the State responsible for violating articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in relation with the general obligation to respect and guarantee human rights established in article 1.1 and the obligation established in article 2 of the treaty to adopt internal legal provisions, to the detriment of the victim's next of kin.

3. This case has been handled in accordance with the provisions of the American Convention, and is submitted to the Court pursuant to article 33 of its rules of procedure. A copy of Report 63/06, prepared in observance of article 50 of the Convention, is attached to this application.²

4. The Commission considers it justified to submit this case to the Court, in light of the need to obtain justice and reparations for the victim's next of kin. In addition, the Commission considers that the case reflects the situation of the defenders of the environment and natural resources in Honduras, the attacks against those persons, and the obstacles placed in the way of investigating acts of harassment and persecution.

II. PURPOSE OF THE APPLICATION

5. In this application, the IACHR respectfully requests the Court to find and declare that:

a) The Honduran State is responsible for violation of the right to life, established in Article 4 of the American Convention, in relation to the general obligation established in Article 1(1)

¹ As detailed below, the next of kin of Mrs. Blanca Jeannette Kawas are also victims of the offense. However, the expression "victim" will be confined to her, and "victim's next of kin" will be used to refer to her immediate family.

² IACHR, Report 63/06 (Merits) case 12,507, Blanca Jeannette Kawas Fernández, Honduras, July 20, 2006, Appendix 1.

thereof to respect and guarantee human rights, to the detriment of Blanca Jeannette Kawas Fernández; and

b) The Honduran State is responsible for violation of the right to a fair trial and the right to judicial protection, established in articles 8 and 25 of the Convention, in relation to the general obligation established in Article 1(1) thereof to respect and guarantee human rights, and the obligation established in article 2 of that instrument to adopt domestic legal provisions, to the detriment of the next of kin of Blanca Jeannette Kawas Fernández.

6. As a consequence of the foregoing, the Inter-American Commission requests the Court to order the State to:

- a. Conduct a complete, impartial, effective and expeditious judicial inquiry to establish the circumstances of the death of Ms. Blanca Jeannette Kawas Fernández, identify all persons who were involved in it, at the various levels of decision and execution, bring the criminal case to trial and apply the penalties required by law. In that criminal trial, the full and effective participation of the Public Prosecutor's Office and the victim's next of kin must be assured.
- b. Conduct a complete, impartial, effective and expeditious judicial inquiry to investigate the obstructions of justice in the process conducted into the murder of Ms. Blanca Jeannette Kawas Fernández.
- c. Make full reparations to the next of kin of Blanca Jeannette Kawas Fernández, to include pecuniary and non-pecuniary damages for the human rights violations committed.
- d. Take measures to prevent a recurrence of acts similar to those recounted in the present case. In particular:
 - i. Adopt, as a matter of priority, a policy of eradicating violence against defenders of natural resources, including preventive and protective measures.
 - ii. Adopt a public policy of combating impunity in cases of violations of the human rights of human rights defenders.

III. REPRESENTATION

7. Pursuant to articles 22 and 33 of the Court's rules of procedure, the Commission has appointed Commissioner Florentin Melendez and its Executive Secretary, Santiago A. Canton as its delegates in this case. The Assistant Executive Secretary, Elizabeth Abi-Mershed, and the attorneys Juan Pablo Albán Alencastro and Alejandro Aristizábal, special advisers to the Commission's Executive Secretariat, have been appointed to act as legal advisers

IV. JURISDICTION OF THE COURT

8. In accordance with article 62.3 of the American Convention, the Inter-American Court has jurisdiction to hear any case involving the interpretation and application of the provisions of the Convention that are submitted to it, provided the States parties in the case recognize or have recognized such jurisdiction.

9. The Court has jurisdiction to hear this case. The State subscribed to the American Convention on September 8, 1977 and deposited the instrument recognizing the contentious jurisdiction of the Court on September 9, 1981.

V. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION³

10. On January 13, 2003, the Commission received a petition lodged by the Center for Justice and International Law (CEJIL) and the *Equipo de Reflexión, Investigación y Comunicación* (ERIC) of the Company of Jesus in Honduras

11. On January 16, 2003 the Commission acknowledged receipt of the petition and registered it under number P061/03.

12. On July 18, 2003, the petitioners sent additional information on the alleged events. On that same date, the information was transferred to the State.

13. On September 10 2003, the State requested an extension for presenting its observations, and this was granted on October 14, 2003.

14. The State submitted its observations on October 17, 2003, and they were forwarded to the petitioners for comment. The petitioners responded on December 4, 2003.

15. Subsequently, the State submitted additional observations on March 23, 2004, on June 4, 2004, on August 31, 2004, and on October 4, 2004. The petitioners presented additional comments or information on April 30, 2004, July 8, 2004, July 14, 2004, and September 28, 2004.

16. On October 13, 2005, the Commission adopted Report 67/05, declaring the case admissible.⁴ On October 31, 2005, the IACHR notified the parties that the report had been adopted and gave the petitioners two months in which to present their observations on the merits of the case. It also placed itself at the disposal of the parties with a view to exploring the possibility of a friendly settlement.

17. The Commission received the petitioners' observations on the merits on January 12, 2006, which it forwarded to the State on January 30, 2006 for observations.

18. On March 23, 2006 the State requested an extension for submitting its observations on the petitioners' allegations with respect to the merits of the case. On March 29, 2006, the Commission informed the State that it had been given a one-month extension.

19. On April 28, 2006, the Commission received a communication from the State wherein the latter presented its observations on the merits of the petition.

20. During its 125th regular session, on July 20, 2006, the Commission approved Report 63/06 (Merits), prepared pursuant to article 50 of the Convention. In that report, it concluded that:

the Honduran State is responsible for violation of the right to life (Article 4 of the American Convention), in relation to the obligations established in Article 1(1) thereof, to the detriment of Blanca Jeannette Kawas Fernández; and of the right to a fair trial and the right to judicial

³ The documentation mentioned in this section is found in the file of proceedings before the IACHR. Appendix 3.

⁴ See IACHR, Report 67/05 (Admissibility), Case 12,507, Blanca Jeannette Kawas Fernández, Honduras, October 13, 2005, Appendix 2.

protection (articles 8 and 25 of the Convention), in combination with articles 1(1) and 2 thereof, to the detriment of Ms. Kawas Fernández' next of kin.

21. In that report on the merits of the case, the Commission made the following recommendations to the State of Honduras:

- a) Conduct a complete, impartial, effective and expeditious judicial inquiry to establish the circumstances of the death of Ms. Blanca Jeannette Kawas Fernández, identify all persons who were involved in it, at the various levels of decision and execution, bring the criminal case to trial and apply the penalties required by law. In that criminal trial, the full and effective participation of the Public Prosecutor's Office and the victim's next of kin must be assured.
- b) Conduct a complete, impartial, effective and expeditious judicial inquiry to investigate the obstructions of justice in the process conducted into the murder of Ms. Blanca Jeannette Kawas Fernández.
- c) Make full reparations to Blanca Jeannette Kawas Fernández' next of kin, to include pecuniary and non-pecuniary damages for the human rights violations herein established.
- d) Take measures to prevent a recurrence of acts similar to those recounted in the present case. In particular:
 - i. Adopt, as a matter of priority, a policy of eradicating the violence against defenders of natural resources, including preventive and protective measures.
 - ii. Adopt a public policy of combating impunity in cases of violations of the human rights of human rights defenders.

22. The merits report was notified to the State on August 4, 2006, giving it a period of two months to report on the actions taken to implement the recommendations contained therein, pursuant to article 43.2 of the Commission's rules of procedure.

23. As well, pursuant to article 43.3 of its rules of procedure, the Commission advised the petitioners that it had adopted the merits report and transmitted it to the State, and it requested them to declare, within three months, their position with respect to submitting the case to the Inter-American Court.

24. On September 5, 2006 the petitioners presented a communication in which they declared their interest in having the case submitted to the Inter-American Court of Human Rights.

25. On October 13, 2006, the State requested an extension of the time limit stipulated in article 51.1 of the Convention for carrying out the recommendations made by the Commission in the merits report. At that time, the State expressly agreed that any extension granted would suspend the effect of the time limit established in article 51.1 of the Convention for submitting the case to the Court.

26. On October 31, 2006 the Commission granted the State an extension of six months. In doing so, it advised the State that the time limit stipulated in article 51.1 of the Convention for submitting the case to the Court was to be suspended for that period.

27. On January 25, 2007, the State informed the Commission that it had published an executive order "giving the Prosecutor General of the Republic the power to reach a settlement of the matter out of court". It also advised that it was in contact with the petitioners to seek a proposal for a friendly settlement, and it asked the Commission to use its good offices to help resolve the case in that way, indicating the interest of the State in having a proposal for a friendly settlement submitted via the IACHR.

28. On February 27, 2007, the IACHR received a communication from the petitioners, reporting on a meeting held on February 13 with representatives of the government, in which it was agreed that a proposal to comply with the recommendations would be sent on March 30, 2007. On April 3, 2007, the petitioners presented their proposal for carrying out the recommendations.

29. On April 26, 2007, the Honduran State asked the Commission for a second extension, this time for three months. Again, the State expressly agreed that any extension granted would suspend the effect of the time limit established in article 51.1 of the Convention for submitting the case to the Court.

30. On May 2, 2007, the Commission granted the second extension, for three months. The purpose of the extension was to allow the State additional time for complying with the proposal of the petitioners for a friendly settlement.

31. On June 20, 2007, the State presented to the Commission its response to the proposed friendly settlement, and this was related to the petitioners on June 29, 2007, giving them two weeks to formulate their observations. On July 16, 2007 the Commission received the comments of the petitioners on the State's report.

32. On July 23, 2007, the State sent to the Commission a proposed schedule for attempting to fulfill the recommendations made by the IACHR, in response to the most recent observations from the petitioners. In that same communication, the State requested a further extension of six months for the purposes described, and expressly waived any preliminary objection with respect to the time limit for submitting an eventual application to the Court.

33. On July 27, 2007, the Commission approved a six-month extension, and so notified the parties on July 30, 2007. In notifying this extension, the IACHR requested the State to present a preliminary report, by November 1, 2007, on the measures taken to fulfill the recommendations in Report 63/06, on the basis of the proposal for reparations presented by the petitioners, and bearing in mind their observations. The Commission also asked the State to submit a final report on progress in this respect, by January 24, 2008.

34. On November 2, 2007, the Commission received a preliminary report from Honduras on the status of implementation of the recommendations, and on January 23, 2008, it received a final report and a new request for an extension to fulfill the recommendation made by the IACHR in its July 2006 report.

35. On that same date, the representatives sent to the Commission their comments on the status of the negotiation and implementation of the recommendations, declaring that although they had participated in various meetings and had fulfilled the commitments they have given for this purpose, the level of compliance by the Honduran State had been very limited, for which reason the representatives, in consultation with the victim's next of kin, considered that the case should be elevated to the Inter-American Court.

36. After considering the information supplied by the parties on the negotiations for reaching a friendly settlement and implementing the recommendations contained in the merits

report, and in light of the lack of substantive progress in effectively fulfilling those recommendations, the Commission has decided to submit this case to the Inter-American Court.

VI. CONSIDERATIONS OF FACT

A. Background

1. The situation of the defenders of environmental resources in Honduras

37. The Republic of Honduras has enormous environmental wealth and vast biological diversity. In recent years, these resources have been illegally exploited, causing grave harm to the country's ecosystems. The indiscriminate logging of forests is one of the activities that are most detrimental to the biodiversity of Honduran forests. A report by the Environmental Investigation Agency (EIA), a nongovernmental organization that has done extensive work on this subject, points out that while illegal logging and the international trade in illegal timber are a worldwide problem, "[p]erhaps nowhere in the world ... is this malign industry and its devastating effects as deeply rooted as in ... Honduras."⁵

38. Although the State has made some headway in creating and reinforcing institutions to respond to environmental challenges, the State itself acknowledges that "there are various aspects that place limitations on the availability of forest resources, such as: i) the lack of a clearly defined forest resource management policy; ii) the issue of security of access to and tenure of forested lands; iii) the issue of sustainable harvesting; iv) absence of incentives for reforestation and afforestation; v) the fact that standard-setting, regulatory and supervisory functions relating to timber production are exercised by various authorities, including the Ministry of Agriculture and Livestock, municipalities and private owners."⁶

39. The acceleration in the wholesale devastation of the country's natural resources has made the Honduran public increasingly sensitive to the need to protect its environmental resources. Starting in the 1990's small groups of individuals and some leaders launched private initiatives calling on people to defend their resources and to put a halt to the indiscriminate logging of their forests and natural watersheds.⁷

40. Environmental defenders have suffered reprisals in the form of harassment, threats, persecution and murder at the hands of various sectors involved in the illegal exploitation of the country's natural resources.⁸ International human rights organizations and nongovernmental

⁵ The Illegal Logging Crisis in Honduras. How U.S. and E.U. imports of illegal Honduran wood increase poverty, fuel corruption and devastate forests and communities. Report of the Environmental Investigation Agency (EIA), 2005, p. 7, Annex 1.

⁶ UN, Human Rights Committee, Consideration of reports submitted by States Parties under Article 40 of the Covenant, Initial report, HONDURAS, CCPR/C/HND/2005/1, 26 April 2005, paragraph 9, Annex 2.

⁷ The Illegal Logging Crisis in Honduras. How U.S. and E.U. imports of illegal Honduran wood increase poverty, fuel corruption and devastate forests and communities. Report of the Environmental Investigation Agency (EIA), 2005, p. 7, Annex 1.

⁸ The petitioners declared in proceedings before the Commission that the violence against environmental defenders in Honduras in recent years has claimed the lives of the following leaders in addition to Ms. Kawas: Vicente Matute, murdered in September 1991; Carlos Escaleras, murdered in October 1997; Carlos Antonio Luna López, murdered in May 1998; Carlos Flores, murdered in July 2001; Carlos Arturo Reyes, murdered in June 2003; Cecilio Hernández, murdered in September 2003; Teófilo Gutiérrez, murdered in September 2003. Also reported have been death threats and attempts on the lives of Juan Antonio Mejía and Pedro Antonio Mejía, and the persecution of and threats to Father Andrés Tamayo. Commission cases 12,492, 12,472 and 12,392, alleging violations committed against Carlos Escaleras, Carlos Antonio Luna López and Pedro Antonio Mejía are currently in the merits phase. The IACHR must make clear that the reference to these cases is not indicative of any decision on their merits.

organizations have denounced this situation in a variety of international forums. The Special Representative of the United Nations Secretary-General for Human Rights Defenders, Ms. Hina Jilani, addressed the violence against human rights defenders in Honduras on a number of occasions.⁹

41. For her part, the United Nations' Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has observed that "the situation of Honduran human rights defenders has been difficult in the last few years, with several activists having received death threats."¹⁰ In her final report on her mission to Honduras, the Special Rapporteur pointed out that she had received information on cases of ecologists and indigenous activists who were murdered at the behest of powerful landowners and entrepreneurs. The information made available to the Rapporteur showed that "in most of these cases it was alleged that the perpetrators enjoyed virtual de facto immunity from prosecution because of their social status and political connections."¹¹

42. A number of local and international NGOs have complained of the generalized impunity that prevails when the human rights of environmentalists in Honduras are violated. A 2001 report by Amnesty International stated, for example, that "[i]n confronting and challenging the intentions of extremely powerful political and economic elites [these activists] expose themselves to grave dangers. Their vulnerability is heightened by the absence of State institutions or under-funded State institutions in rural areas and weak or submissive judiciaries that frequently decided in favor of political and economic interests."¹²

43. The IACHR has received information to this effect through the complaints received by its Human Rights Defenders Unit and in various thematic hearings held at headquarters.¹³ Thus, a report presented by a number of organizations at a hearing held during the Commission's 116th regular session made the point that:

Environmental rights defenders now find themselves in a situation of desperation and fear due to the threats they have suffered, the indifference of the authorities to their problems and the lack of action on the impunity given in cases of the assassination of leaders. There is also a special worry that key points of the **Act of Commitment** have not been put into practice. This act was signed in September 2000 by the government and indigenous communities and was related to the murders of environmentalists **Janeth Kawas** in 1995, **Carlos Escaleras** in 1997 and **Carlos Luna** in 1998. (emphasis in the original)¹⁴

⁹ UN, Commission on Human Rights, Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, Annual Report 2004, Document E/CN.4/2005/101, paragraph 49, and UN, Commission on Human Rights, Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, Annual Report 2003, Document E/CN.4/2004/94, paragraph 76, Annex 4.

¹⁰ UN, Commission on Human Rights, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Ms. Asma Jahangir, Addendum, Mission to Honduras, Document E/CN.4/2003/3/Add.2, 14 June 2002, paragraph 67, Annex 5.

¹¹ *Idem.*, para. 63.

¹² Amnesty International. Honduras: Much Remains to Be Done in Terms of Human Rights, August 7, 2001, p. 26. See also: Amnesty International, Essential Actors of Our Times: Human Rights Defenders in the Americas, November 2003, AI, AMR 01/009/2003/s, p. 24, Annex 6.

¹³ The Commission has received information on this matter through, *inter alia*, hearings on the following: Effects of environmental degradation on human rights in the hemisphere (116th regular session), October 2003; General situation of human rights in Honduras (119th regular session), March 2004; Situation of human rights defenders in Central America (123rd regular session), October 2005.

¹⁴ Center for Human Rights and Environment (CEDHA) and the Center of International Environmental Law (CIEL). The Human Cost of Defending the Planet: *Human Rights Violations against Environmental Defenders in the Americas*. Report, 2002 – 2003, pp. 35-36, Annex 7.

44. The State has acknowledged this problem to international bodies. In the first report it filed with the United Nations Human Rights Committee on the application of the International Covenant on Civil and Political Rights, the State wrote that:

It is a simple fact of life in Honduras that Governments have paid very little attention to the indigenous population, which lives by subsistence activities, especially in remote areas of the country. Governmental policies relating to the provision of basic social necessities (health care, schools, food) for these people have been harmful and inconsistent, tending as they have to promote human settlements in areas with abundant natural resources without providing either infrastructures (roads, electricity, basic sanitation) or oversight. Nor have the inhabitants of these settlements had the education and knowledge they would have required in order to make rational, sustainable use of the available natural resources (e.g. the Patuca area), with the result that those resources have been harnessed primarily to serve the interests of a small group of individuals (politicians and entrepreneurs). These persons have promoted the overexploitation of natural resources, both renewable and non-renewable, and their actions have not only degraded and contaminated the environment, they have also adversely affected the interests of the people as a whole. Their undue, unlawful and arbitrary appropriation of large tracts of land, which is a natural source of wealth, has prevented the residents of local communities from having access to the available resources to obtain the income and food that they need in order to sustain their families. In some instances, indeed, people (e.g. Janeth Kawas) who have attempted to defend the local natural resources and the environment, have lost their lives while opposing the destruction or undue appropriation of sites that were regarded as the heritage of all because of their scenic beauty and their utility as a source of employment (e.g. the Bahía de Tela), providing families with an opportunity of earning income and obtaining food. Carlos Luna was another martyr who lost his life while defending the forest resources of Olancho. Other local people who have attempted to exercise their right to dispose freely of the country's natural wealth and resources (such as estuaries, natural lagoons or mangrove swamps), have also been known to lose their lives when they have got in the way of powerful economic interests (e.g. 12 fishermen in the southern part of Honduras were murdered between 1990 and 2001), and those murders have gone unpunished.¹⁵ (Emphasis added by the Commission)

2. Blanca Jeannette Kawas Fernández' work as a defender of environmental resources

45. Blanca Jeannette Kawas Fernández embarked on her work to protect the natural resources in her region back in 1989, when she returned to the country after having lived abroad for a number of years. In the city of Tela, Atlántida Department, Ms. Kawas Fernández and other locals formed the *Asociación Hondureña de Ecología*, regarded as one of the first ecological associations in the region. At Kawas' initiative, the *Fundación para la Protección de Lancetilla, Punta Sal y Texiguat* (PROLANSATE) was established in 1990, its mission being to improve the quality of life of the people living in the watersheds of the Bahía de Tela by preserving natural resources, agroforestry resources, community development, ecotourism, creating an awareness of the environment and changing policies for sustainable management of protected areas. At the time of her death, Ms. Kawas was president of PROLANSATE.

46. Through this organization, Ms. Kawas spearheaded a campaign to put together a Punta Sal Park Management Plan. Thanks to a lobbying effort to make the national authorities more aware of the park's importance, Decree No. 154-94 was approved in 1994, making Punta Sal a

¹⁵ UN, Human Rights Committee, Consideration of reports submitted by States Parties under Article 40 of the Covenant, Initial report, HONDURAS, CCPR/C/HND/2005/1, 26 April 2005, paragraph 15, Annex 2.

National Park.¹⁶ Subsequent to Ms. Kawas' death, another decree was passed that renamed the park in her memory.¹⁷

47. Another important accomplishment that Ms. Kawas' work in defense of the environment achieved was the Ministry of Public Education's approval of a degree program in ecology and environment, which was offered at the Instituto Triunfo de la Cruz, en Tela.¹⁸

48. Ms. Kawas was a regular guest on the radio program "*Vida y Naturaleza*" ["Life and Nature"], broadcast by the local station *Radio América*, with the sponsorship of the *Asociación Hondureña de Periodistas Ambientalistas y Agro Forestales*. Blanca Jeannette Kawas Fernández used this program and other means to denounce, *inter alia*, the attempts by private individuals and companies to illegally take control of the Punta Sal Peninsula, the contamination of the lagoons, and the devastation of the forests in the region. Because of her complaints, Ms. Kawas was at odds with certain members of the *Unión Nacional Campesina* (UNC), an organization seeking to settle thousands of poor rural families inside the Punta Sal National Reserve. She had also taken on the agribusinessmen from the HONDUPALMA Company, a producer of African palm oil. Two days before her death, Blanca Jeannette Kawas had led a demonstration to protest the State's plan to deed property within the Punta Sal Reserves to certain *campesinos* and agribusinessmen.¹⁹ During the demonstration, the leader reported that there were groups interested in obtaining the land for subsequent sale it to foreign investors who wanted to exploit the area.²⁰

B. The murder of Blanca Jeannette Kawas Fernández

49. On February 6, 1995, at around 7:30 p.m., while at her home in the company of her personal assistant, Marcial Bueno, Blanca Jeannette Kawas Fernández was killed by a single bullet. According to the statements that witnesses gave in the presence of the Tela Criminal Magistrate's Court, two men traveling in a white pick-up truck burst onto the premises of the home, and one of the two men fired two shots.²¹

50. Witness Marcial Bueno testified to having seen the alleged victim fall to the floor as a result of a shot in her left cheek, fired from the rear of her house.²² The judicial inspection report confirms this testimony, and states that "Ms. Blanca Jeannette Kawas died instantly as the result of a bullet fired from a 9 mm weapon, which struck her in the back of the neck and exited through her left cheek. The identity of the person or persons who committed the crime is unknown."²³ According to

¹⁶ Decree No. 154-94 "Making Punta Sal a National Park," *Gaceta* no. 27,538, December 28, 1994, Annex 8.

¹⁷ Decree No. 43-95 "Renaming Punta Sal Park to be called the Janeth Kawas Fernández National Park," *Gaceta* No. 27,636 of April 25, 1995, p.1, Annex 9.

¹⁸ Cf. "*A Mecate Corto*," a monthly periodical published by the Jesuits in Honduras, "*Así es Jeannette Kawas*," Year 10, number 99, February 2004, Annex 10.

¹⁹ Both the UNC and Hondupalma were set to receive 15,000 hectares of land from the government, located in Punta de Sal. The deal was allegedly cancelled after the death of the environmentalist. Cf. Press clippings from Honduran newspapers, with headlines reading: "Contract Murder... Janeth Kawas, the first martyr in the environmental struggle"; "Jeannette Kawas: a determination that refuses to die"; "She took on the government, the UNC and HONDUPALMA"; "Ecologist the victim of murder for hire"; "The police say ecologist's death was a planned, contract killing." Annex 11.

²⁰ See *Revista del Sur*, "Ecologista asesinada" April 1995, Annex 12.

²¹ General Bureau of Criminal Investigation, Investigative Report, signed by Daniel Barahona, Noncommissioned investigative police officer III, October 30, 2003, Annex 13.

²² Criminal Magistrate's Court, Declaration of Mr. Trinidad Marcial Bueno Romero, February 9, 1995, sheet 12 of the judicial record., Annex 17.

²³ Report on the Examination of the Body, February 7, 1995, sheet 1 of the court record, Annex 14.

the statement of the medical expert, which is appended to the judicial record, "the 'likely' cause of death was the severing of the spinal cord when the skull base fractured, and hypovolemia caused by loss of blood."²⁴

C. The investigation into the murder of Blanca Jeannette Kawas Fernández

51. On February 7, 1995, the Tela Criminal Magistrate's Court opened inquiries into the alleged crime of "consummated murder," the victim being Ms. Blanca Jeannette Kawas Fernández. Accordingly, the court ordered that testimony was to be taken from several persons and that the crime scene was to be investigated. It also appointed a medical expert.²⁵

52. On February 9, 1995, a representative from the Public Prosecutor's Office filed papers indicating that he would be representing the State in the case. That same day, the court accepted the brief and the representative from the Public Prosecutor's Office as "appearing" for the State.²⁶

53. On March 6, 1995, the Tela Criminal Magistrate's Court ordered the arrest of Juan Mejía Ramírez and Sabas Mejía Ramírez as presumed suspects in the homicide.²⁷ On March 8, 1995, the Court advised the Section Precinct of the Public Security Force (FSP) that "the arrest warrant issued on March 6, 1995, is hereby rescinded." No explanation was given for the decision.

54. On April 17, 1996, a new representative from the Public Prosecutor's Office filed papers to "appear" in the case.²⁸ On June 8, 2001, another representative from the Public Prosecutor's Office filed to "appear" in the case.²⁹

55. On July 30, 2003, the Supreme Court asked for the case file in order to respond to the request from the Inter-American Commission on Human Rights.³⁰ On August 4, 2003, the court sent the Supreme Court the 61 pages comprising the case file on the murder of Ms. Kawas Fernández.

56. On August 14, 2003, another representative from the Public Prosecutor's Office filed to "appear" in the case.³¹ On August 26, 2003, the representative from the Public Prosecutor's Office requested amplification of some of the testimony already given.³²

²⁴ Statement of expert Alfredo Girón Montoya, MD, before the Tela Criminal Magistrate's Court, February 9, 1995, Annex 16.

²⁵ Tela Criminal Magistrate's Court, Internal file, sheet 1 (front and back), Annex 14.

²⁶ Application of the Public Prosecutor's Office to appear, and its acceptance, Tela Criminal Magistrate's Court, Internal file, sheet 11 (front and back), Annex 15.

²⁷ Warrant for the arrest of Juan Mejía Ramírez and Sabas Mejía Ramírez Tela Criminal Magistrate's Court, memorandum sent to Police Lieutenant Ramón Banegas Cárdenas, Internal file, sheets 56 and 57, Annex 19.

²⁸ Second application of the Public Prosecutor's Office to appear, and its acceptance, Tela Criminal Magistrate's Court, Internal file, sheet 52, Annex 18.

²⁹ Third application of the Public Prosecutor's Office to appear, and its acceptance, Tela Criminal Magistrate's Court, Internal file, sheet 58, Annex 20.

³⁰ Requisition for the file by the Supreme Court of Justice, Tela Criminal Magistrate's Court, memorandum sent by Lucila Cruz Méndez, Secretary General of the Supreme Court of Justice, Internal file, sheet 60, Annex 21.

³¹ Fourth application of the Public Prosecutor's Office to appear, and its acceptance, Tela Criminal Magistrate's Court, Internal file, sheet 62, Annex 22.

³² Request of the Public Prosecutor to amplify certain testimony, Tela Criminal Magistrate's Court, Internal file, sheet 64, Annex 23.

57. On September 19, 2003, another representative from the Public Prosecutor's Office filed to appear in the case. That same day, the Public Prosecutor's Office asked the Tela Criminal Magistrate to send the case file to the District Court of First Instance. On September 23, 2003, the Tela Criminal Magistrate sent the case file to the District Judge of First Instance.³³

58. On September 24, 2003, the Supreme Court sent a copy of the case file to the Tela Criminal Magistrate's Court, which referred it to the District Court of First Instance.

59. On October 30, 2003, the General Bureau of Criminal Investigation issued a report on the case in which it highlighted clues as to the presumed involvement of public officials in the facts in this case. Citing from that report:

Based on the statements, plus the statement given by the most recent witness DENCEL, Sergeant ISMAEL PERDOMO is the principal suspect in this matter, as he was always trying to conceal the identity of those who murdered Ms. KAWAS [;] witness DENSEL (sic) mentions that when the LOMBARDIA suspects were apprehended, SERGEANT ISMAEL PERDOMO was traveling in Colonel AMAYA's vehicle; he saw them together several times thereafter in the white Toyota dual cab pickup.³⁴

60. On November 18, 2003, the Training and Advisory Services Department of the Public Prosecutor's Office issued a "Technical Legal Report" on the case in which it pointed out that an Army officer in active service was allegedly involved in planning the murder. In reference to Army Colonel Mario Amaya, the report contends that

this person is the chief suspect in ordering the killing of Ms. Kawas. His name has come up in the investigations conducted by the Bureau of Criminal Investigation, as the person who, some days prior to Ms. Kawas' murder, was seen meeting with Sergeant Ismael Perdomo, Mr. Mario Pineda (know as El Chapín), in the offices of the Tela Police.³⁵

The investigation team established that between February 3 and 4, 1995, in other words three days prior to the murder, a person by the name of MARIO PINEDA, nicknamed "El Chapín" (said to be a former member of a so-called death squad known as "Mano Blanco" and supposed protégé of Colonel Amaya) and Colonel Amaya himself met with Sergeant Ismael Perdomo in the offices of the Tela Police.³⁶

61. That report also stated that a police sergeant suspected of having a hand in planning the murder was alleged to have taken measures to cover up the facts and obstruct the investigation. In the words of the Public Prosecutor's Office,

the investigations found that right from the very day of the murder, Sergeant Ismael Perdomo played a very active role in leading the investigations astray. The following information stands out:

1) Sergeant Perdomo arrives on the crime scene immediately, claiming that "the police patrol was covering a false report of an attempt on one of the banks in the city of Tela."

³³ Order remitting the file to the District Court of First Instance, Internal file, sheet 70, Annex 24.

³⁴ General Bureau of Criminal Investigation, Investigative report, signed by Daniel Barahona, Noncommissioned investigative police officer III, October 30, 2003, Annex 13.

³⁵ Technical Legal Opinion No. DCAT-SATJ- AFS 022/20003 "Determining which investigative procedures are required in a criminal case instituted under the former Code of Criminal Procedure," Public Prosecutor's Office, Department of Technical Legal Training, November 18, 2003, p. 9, Annex 25.

³⁶ Idem, p. 13.

This story was repudiated by the representatives of the Tela banks, who told the investigating officers that on the day the events in this case occurred, no robbery attempt had been made on any bank branch office in the city.

2) Witnesses Alex Dencel Andino and Marco Antonio Urraca State that Sergeant Perdomo pressured them not to testify; witness Juan Francisco Mejía said that Sergeant Perdomo had pressured him to implicate two people who had nothing to do with the case, in exchange for his release from the police jail where he was being held at the time for the theft of a bicycle;

3) This Sergeant Perdomo called the investigating officers handling the case in the city of Tegucigalpa and told them that he had someone in custody (Juan Francisco Mejía) who knew who murdered Ms Kawas. In the end, the officers found inconsistencies in Juan Francisco Mejía's statement. The latter confessed to them that he had been coerced by Sergeant Perdomo to implicate two people (his cousins) who had nothing to do with the crime.³⁷

Summarizing, the investigation report establishes that the Public Security Force (F.S.P.), headed at the time by Sergeant Perdomo, TOOK NO ACTION to arrest the possible material authors of the murder and did not conduct a police sweep. Its attitude vis-à-vis the situation was one of indifference and a casual lack of concern; on a number of occasions, it set out to sidetrack or stall the investigation.³⁸

For all the foregoing reasons, our conclusion is that this Sergeant Perdomo was involved because he was obstructing justice; it is his association with Mario Amaya, then an Army colonel in active service, that lends added credence to the theory that Mario Amaya may also have been involved in the crime.³⁹

62. On December 9, 2003, the District Attorney's Office petitioned the court seeking amplification of various pieces of testimony, since "several of these individuals [witnesses] were threatened and coerced to get them not to testify."⁴⁰

63. That very day, December 9, 2003, the Public Prosecutor's Office petitioned the Court to declare the case file confidential. The Court acceded to that request on December 11, 2003.⁴¹

64. On January 20, 2004, the Court of First Instance summoned one of the prosecutors who directed the initial phase of the investigation. In his statement, the prosecutor maintained that the police authorities may have been involved in the events. In reference to a statement made by one witness, the prosecutor said the following:

We were struck by what he told us about the Tela Police Chief, that the latter had exerted pressure on him to get him to [incriminate himself and] confess that he was one of the killers; he even threatened to kill him. Our suspicion was that the Police knew who the real killers were and were covering up their identity; about a week later the Tela Court released this juvenile because there was no case against him.

³⁷ *idem*, pp. 14 and 15.

³⁸ *Idem*, p. 14.

³⁹ *Idem*, p. 14.

⁴⁰ Request of the Public Prosecutor to amplify certain testimony, District Court of First Instance, Internal file, sheets 151 and 152, Annex 27.

⁴¹ Request of the Public Prosecutor to declare the case file confidential, District Court of First Instance, Internal file, sheet 150, Annex 26.

The statement was useful to us in the sense that we began to look at the possible involvement of the police in the crime.⁴²

65. On February 11, 2004, Mr. Jacobo Kawas Fernández appeared as a private plaintiff in the case and granted an attorney the power to represent his interests.⁴³

66. On March 2, 2004, the Public Prosecutor's Office presented evidence that was added to the case file. That evidence consisted of a preliminary report from the General Bureau of Criminal Investigation, an opinion from the Training and Technical Advisory Services Department of the Public Prosecutor's Office, and a report on the personality of Ms. Kawas Fernández.⁴⁴

67. On March 2, 2004, the district attorney's office requested that an arrest warrant be issued for Ismael Perdomo Velásquez. On March 3, 2004, the District Court of First Instance issued a warrant for the arrest of Ismael Perdomo Velásquez on suspicion of the crime of coercion.⁴⁵

68. On March 10, 2004, Ismael Perdomo Velásquez petitioned the District Court of First Instance to order a preventive measure other than preventive detention. On March 10, 2004, the District Court of First Instance ordered substitute preventive measures in the case of Ismael Perdomo.

69. On March 15, 2004, the District Court of First Instance issued an order for imprisonment of Ismael Perdomo Velásquez.⁴⁶ On March 15, 2004, Perdomo's defense attorney filed a motion seeking dismissal of the case on the grounds that the statute of limitations for criminal proceedings had expired. The Court denied the defense counsel's motion that same day.

70. On March 18, 2004, Perdomo Velásquez's defense counsel filed for reconsideration of the denial of the statute of limitations motion. On March 23, 2004, the Court dismissed the motion for reconsideration and allowed the appeal to go forward and therefore ordered the case file sent up to the Ceiba Atlántida Appellate Court.⁴⁷ The arrest warrant was never executed.

71. On March 23, 2004, the representative of the Public Prosecutor's Office petitioned the District Court of First Instance to institute full trial proceedings against Ismael Perdomo Velásquez charged with the crime of coercion. On March 25, 2004, the Court denied the petition, arguing that the "order of imprisonment issued against ISMAEL PERDOMO VELASQUEZ was appealed by his defense counsel."⁴⁸ As of the date of approval of IACHR report 63/06 on the merits of the case, the Ceiba Atlántida Appellate Court had not yet issued its finding.

⁴² Statement of Saúl Benjamín Zapata Mejía, former prosecutor in the case, given on January 20, 2004, before the First District Court of Comayagua, sheet 166, Annex 28.

⁴³ Appearance of Mr. Jacobo Kawas as private plaintiff, District Court of First Instance, Internal file, Annex 29.

⁴⁴ Evidence submitted by Public Prosecutor, District Court of First Instance, Internal file, sheets 176 and 177, Annex 30.

⁴⁵ District Court of First Instance, memorandum addressed to the Chief of the National Law Enforcement Police, Internal file, sheet not numbered, Annex 31. Article 206 of the Honduran Penal Code provides as follows with respect to the crime of coercion: "Anyone who, without legal authority and whether justly or unjustly, forcibly prevents another person from doing what the law allows or compels another person to do something that the latter does not want to do shall face imprisonment for a period of three months to two years."

⁴⁶ Warrant for the arrest of Ismael Perdomo Velásquez, District Court of First Instance, Internal file, sheet 234 (front and back), Annex 32.

⁴⁷ Decision on the appeal of March 18, 2004, District Court of First Instance, Internal file, sheet 238, Annex 33.

⁴⁸ Request to institute proceedings against Ismael Perdomo Velásquez, District Court of First Instance, Internal file, sheet 241, Annex 34.

VII. CONSIDERATIONS OF LAW

A. Violation of the right to life (article 4 of the American Convention, in relation with article 1.1 thereof)

72. Article 4.1 of the Convention declares that "every person has the right to have his life respected. [...] No one shall be arbitrarily deprived of his life."

73. The Inter-American Court has established that:

[...] the right to life plays a key role in the American Convention as it is the essential corollary for realization of the other rights.⁴⁹ When the right to life is not respected, all other rights lack meaning. The States have the obligation to ensure creation of the conditions required to avoid violations of this inalienable right and, specifically, the duty of avoiding violations of this right by its agents.⁵⁰ Compliance with Article 4, in combination with Article 1(1) of the American Convention, not only requires that no person be deprived of his life arbitrarily (negative obligation), but also that the States take all appropriate measures to protect and preserve the right to life (positive obligation), as part of their duty to ensure full and free exercise of the rights by all persons under their jurisdiction.⁵¹

74. To comply with this obligation, the Court has held that "States must adopt all necessary measures at the legislative, administrative and judicial levels by enacting criminal laws and establishing a system of justice not just to prevent, suppress and punish the arbitrary deprivation of life caused by criminal acts but also to prevent crime and protect individuals from criminal acts committed by others and to investigate such acts effectively."⁵²

75. Consistent with the jurisprudence of the inter-American system, it is not necessary to determine the perpetrators' culpability or intent in order to establish that the rights enshrined in the Convention have been violated, nor is it essential to identify individually the agents to whom the acts of violation are attributed. In the *Paniagua Morales* case, the Court expressly held that in order to establish the international responsibility of the State it is enough to demonstrate that the State authorities supported or tolerated infringement of the rights recognized in the Convention, or that it failed to take the necessary steps under its domestic law to identify and, where appropriate, punish the authors of such violations.⁵³

⁴⁹ I-A Court. *Penal Miguel Castro Castro*. Judgment of 25 November 2006. Series C No. 160, para. 237; I-A Court, *Masacre de Pueblo Bello*. Judgment of 31 January 2006. Series C No. 140, para. 120; I-A Court, *Huilca Tecse*. Judgment of 3 March 2005. Series C No. 121, para. 65

⁵⁰ I-A Court, *Zambrano Vélez et al.*. Judgment of 4 July 2007. Series C No. 166, para. 79; I-A Court, *Montero Aranguren et al. (Detention Center of Catia)*. Judgment of 5 July 2006. Series C No. 150, para. 64; I-A Court, *Ximenes Lopes*. Judgment of 4 July 2006. Series C No. 149, para. 125; I-A Court, *Baldeón García*. Judgment of 6 April 2006. Series C No. 147, para. 83; See also, *United Nations Committee on Human Rights*, General Commentary 6/1982, para. 3 in Compilation of General Recommendations Adopted by Human Rights Treaty Bodies, U.N.Doc.HRI/GEN/1/Rev 1 in 6 (1994); *United Nations Committee on Human Rights*, General Commentary 14/1984, para. 1 in Compilation of General Recommendations Adopted by Human Rights Treaty Bodies, U.N.Doc.HRI/GEN/1/Rev 1 in 18 (1994).

⁵¹ I-A Court. *Vargas Areco*. Judgment of 26 September 2006. Series C No. 155, para. 75; I-A Court, *Ituango Massacres*, Judgment of 1 July 2006. Series C No. 148, para. 130; I-A Court, *Sawhoyamaxa Indigenous Community*. Judgment of 29 March 2006. Series C No. 146, para. 152.

⁵² I-A Court, *Pueblo Bello Massacre*. Judgment of 31 January 2006. Series C No. 140, para. 120. See also I-A Court. *Penal Miguel Castro Castro*. Judgment of 25 November 2006. Series C No. 160, para. 237; I-A Court, *"Mapiripán Massacre"*. Judgment of 15 September 2005. Series C No. 134, para. 231; I-A Court, *Huilca Tecse*. Judgment of 3 March 2005. Series C No. 121, para. 66.

⁵³ I-A Court, *"Panel Blanca" (Paniagua Morales et al.)*. Judgment of 8 March 1998. Series C No. 37, para. 91

76. The Court has also ruled that states have the obligation to ensure creation of the conditions required to avoid violations of this inalienable right and, specifically, the duty of avoiding violations of this right by its agents.⁵⁴ The Court has held as well that “compliance with Article 4, in combination with Article 1(1) of the American Convention, not only requires that no person be deprived of his life arbitrarily (negative obligation), but also that the States take all appropriate measures to protect and preserve the right to life (positive obligation). The State’s active protection of the right to life not only involves its lawmakers, but every State institution, and those whose duty it is to protect safety and security, whether they are police or armed forces.”⁵⁵

77. The Inter-American Court has also established that States can, by attribution, incur international responsibility for human rights violations committed by third parties or individuals, in terms of the State’s obligations to ensure respect for these rights among individuals. On this point the Court has held that:

International responsibility may also be engaged for acts of private individuals that are, in principle, not attributable to the State. The effects [of the obligations *erga omnes* to respect and enforce respect for standards of protection, which is the responsibility of the States Parties to the Convention,] extend well beyond the relationship between the agents of a State and the persons subject to its jurisdiction; those effects are also manifest in the positive obligation that the State has to adopt the necessary measures to ensure effective protection of human rights in inter-personal relationships. The State can be held responsible for the acts of private parties when, by either the action or omission of its agents serving as guarantors, it fails to honor those obligations *erga omnes* undertaken with articles 1(1) and 2 of the Convention.⁵⁶

78. Elaborating upon that standard for attribution of responsibility, the Court has held that:

A State cannot be held responsible for any and every human rights violation committed between private parties within its jurisdiction. The *erga omnes* nature of a State’s Convention-based obligation to ensure respect for Convention-protected rights does not mean that a State bears unlimited responsibility for any act or deed of private parties; in effect, a State has a duty to take measures to prevent crime and protect private parties in their relations with one another when it is cognizant of a real and immediate risk to an individual or certain group of individuals and when the prevention or avoidance of that risk falls within the realm of what the State can reasonably do. In other words, although the juridical consequence of a private individual’s action, omission or deed may be a violation of the human rights of another private individual, that violation is not automatically attributable to the State; attribution will depend on the circumstances of the case and whether the obligation to ensure is being fulfilled.⁵⁷

79. In the *Pueblo Bello Massacre Case*,⁵⁸ the Court held that the obligation to conduct an effective official investigation into extrajudicial, illegal, arbitrary or summary executions follows from the general obligation to ensure to all persons subject to its jurisdiction the free and full exercise of the human rights recognized in the Convention, undertaken in Article 1(1) thereof, in combination with the right to life recognized in its Article 4. The Court also held that in these cases, once they

⁵⁴ I-A Court, *19 Merchants*. Judgment of 5 July 2004. Series C No. 109, para. 153.

⁵⁵ I-A Court, *Mapiripán Massacre Case*. Judgment of September 15, 2005. Series C No. 134, paragraph 232.

⁵⁶ I-A Court, *Mapiripán Massacre Case*. Judgment of September 15, 2005. Series C No. 134, paragraph 111.

⁵⁷ I-A Court, *Pueblo Bello Massacre Case*. Judgment of January 31, 2006, paragraph 123.

⁵⁸ I-A Court, *Pueblo Bello Massacre Case*. Judgment of January 31, 2006, paragraph 142.

learn of an incident, the authorities of a State must undertake, *ex officio* and without delay, a serious, impartial and effective investigation.⁵⁹

80. In the first place, it is important to examine the strong indications that estate agents participated or collaborated in the killing of Blanca Jeannette Kawas Fernández. In its report 63/06, the Commission noted that the killing and the subsequent course of the investigation were not isolated incidents, but part of a general situation of violence and impunity whose victims were principally those engaged in protecting and defending natural resources in Honduras.⁶⁰ In light of previous findings and those indicated in this application, as well as the material contained in the file, there are strong indications for concluding that there is direct State responsibility in the death of the presumed victim. As well, the internal file from the criminal proceeding provides many indications to suggest a cover up of the responsibility of officials in the murder of Blanca Jeannette Kawas Fernández, which were not seriously investigated by the Honduran justice authorities.

81. As early as 1995, the authorities in charge of the investigation had clues suggesting the involvement of members of the State security forces in the immediate crime and in the subsequent cover-up and sidetracking of the investigation. Nevertheless, no investigative measures were taken at the time to either corroborate or disprove those clues. Some years later, one of the first district attorneys that the Public Prosecutor's Office assigned to the investigation was summoned as a witness in the case and mentioned the fact that one of the first witnesses questioned in the investigation had given information to that effect, but those leads were never investigated (*Supra* § 64).

82. Despite these leads, the suspicious activity of the Police authorities and their possible connection to civilians in charge of preparing the operation were never properly looked into from the start of the investigation. On October 30, 2003, almost nine years after the investigation began, a report from the General Bureau of Criminal Investigation again highlighted these leads and asked the court to issue an order for the arrest of the sergeant who at the time of the events was Tela's Police Chief. It also asked that protective measures be ordered for one of the witnesses who had implicated him. According to that report, a police sergeant could be involved in the events (*Supra* § 59).

83. Then, in November 2003, a technical legal report on the case, prepared by the Training and Advisory Services Department of the Public Prosecutor's Office, found that the evidence in the internal file also suggested that an Army officer in active service may have been involved in planning the murder. In addition to highlighting other clues yet again, this document also reports on an Army colonel's alleged involvement in the murder (*Supra* § 60).

84. As of the submission of this application, the criminal case was still in the preliminary phase, thanks to a deliberate attempt on the part of public officials to thwart the investigation and allow the crimes to go unpunished. The Commission's review of the criminal case file uncovered a series of incidents that occurred during that process, the sole purpose of which was to obstruct the investigation and ensure that the guilty parties were never punished. The Commission finds that these acts constitute additional evidence of the State's international responsibility.⁶¹

⁵⁹ I-A Court, *Pueblo Bello Massacre*. Judgment of January 31, 2006, paragraph 143; and *Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, paragraph 145.

⁶⁰ IACHR, Report No. 63/06 (Merits), Case 12.507, *Blanca Jeannette Kawas Fernández*, Honduras, 20 July 2006, para. 33.

⁶¹ The Inter-American Court has held, for example, that "Any oversight or defect in the investigation that makes it less effective in establishing the cause of death or identifying the material or intellectual authors thereof, will imply that the

85. At the domestic level, the technical report previously cited (*Supra* §60) and other evidence point to a series of activities by a police sergeant named as a suspect in the plotting of the murder, intended to cover up the facts and obstruct the investigation, as recounted in the section of this report that deals with the facts of the case (*Supra* §61).

86. Although these findings are in the case file on the murder of Ms. Kawas, thus far these individuals have not been formally indicted for the crime of murder. This, despite the fact that the District Attorney's Office has stated that

[f]rom everything examined in this case, this unit of the Technical Advisory Services Department is of the view that the possible involvement of Colonel Mario Amaya in the murder of Ms. Kawas should be investigated. The evidence thus far compiled indicates to us that there is a link between Colonel Mario Amaya and members of the Tela police force, at the time in the person of Sergeant Ismael Perdomo, now attached to the Santa Bárbara Departmental Headquarters.⁶²

87. The obstruction of justice made it impossible to conduct a thorough inquiry that might have looked into the role of members of the security forces in the murder, and of those who planned it (*Supra*, §61). The apparent complicity between the investigators and the persons being investigated precluded any possibility of an impartial investigation that would have allowed an inquiry into the involvement of State officials and those who planned the crime. The conclusion drawn from all this is that the State's response to the murder of Blanca Jeannette Kawas Fernández reveals a bias in favor of impunity rather than a transparent investigation calculated to identify all those involved in these events.⁶³ It is precisely because the State failed in its duty to investigate that the many clues pointing to the involvement of members of State security forces in the murder of Kawas Fernández have never been proven or disproven.

88. While it is true that an investigation was launched against Sergeant Ismael Perdomo in March 2004, and his provisional detention was requested, the application for arrest was based on his presumed involvement in the crime of "cover-up detrimental to the administration of justice," but not as a suspect in the murder. More than two years after being indicted for that crime, no final decision has been handed down on his case.

89. The Inter-American Court has held that in cases of extrajudicial executions the State must conduct a serious, impartial and effective investigation of what transpired. The Court has written that:

[b]ased on the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, this Court has indicated the principles that must be followed when it is believed that a death may have been the work of an extrajudicial execution. The State authorities who conduct an investigation must, *inter alia*, a) identify the victim; b) recover and preserve evidentiary material related to the death, to aid in any potential prosecution of those responsible; c) identify possible witnesses and obtain

...continuation

obligation to protect the right to life is not being fulfilled." I-A Court, *Baldeón García v. Peru*. Judgment of April 6, 2006, paragraph 97.

⁶² Technical-legal Opinion No. DCAT-SATJ- AFS 022/20003 "Determining which investigative procedures are required in a criminal case instituted under the former Code of Criminal Procedure," Public Prosecutor's Office, Department of Technical Legal Training, November 18, 2003, pp. 15 and 16, Annex 25.

⁶³ The Inter-American Court has held that "if no serious investigation is conducted into human rights violations, the public authorities will, in some way, be aiding and abetting those violations, and thus compromising the State's international responsibility." I-A Court, *Baldeón García v. Peru*. Judgment of April 6, 2006, paragraph 91.

statements from them concerning the death; d) determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death, and e) distinguish between natural death, accidental death, suicide and homicide. The crime scene must be thoroughly investigated as well; autopsies must be conducted and human remains rigorously examined by competent professionals using the most suitable procedures.⁶⁴

90. In the case at hand, Honduras failed to fulfill its obligation properly to investigate the whereabouts of the material and intellectual authors of the murder of Ms. Blanca Jeannette Kawas Fernández, to try and punish them, and to compensate the victim's next of kin. The State has failed either to corroborate or to disprove the evidence suggesting that members of the security forces were involved in the crime. The Commission concludes that Article 4 of the American Convention must be interpreted by reference to the object and purpose of the Convention "as an instrument for the protection of individual human beings," requiring "that its provisions be interpreted and applied so as to make its safeguards practical and effective."⁶⁵ The State's obligation to protect the right to life, analyzed in combination with the obligation under Article 1(1) to respect and ensure the rights recognized in the American Convention, necessitates an "investigation [that] must be conducted by all legal means available and whose purpose must be to find the truth and the investigation, prosecution, capture, trial and punishment of all intellectual and material authors, especially when State agents are or may be involved."⁶⁶ The Honduran State has failed to conduct a serious and exhaustive investigation, to punish those responsible and to make full reparations to the victim's next of kin, all of which engages its international responsibility.

91. For the foregoing reasons, the Commission asks the Court to find and declare that the Honduran State failed in its obligation to guarantee the right to life, to the detriment of Ms. Blanca Jeannette Kawas Fernández, in connection with her murder on February 6, 1995, inasmuch as Honduras has not conducted adequate investigations to identify the material and intellectual authors of that murder, and as a result has failed to try and punish them. It has also been shown that its own authorities actively obstructed justice in the case. Consequently, the Court must declare that Honduras has violated Article 4 of the American Convention, in relation to Article 1(1) thereof.⁶⁷

B. Violation of the right to a fair trial and the right to judicial protection (articles 8 and 25 of the American Convention in relation to articles 1.1 and 2 thereof)

92. The case law of the Inter-American Court holds that any person whose human rights have been violated is entitled to obtain from the competent organs of the State a clarification of the events that violated those rights and a determination of the corresponding responsibilities, through the investigation and prosecution provided for in articles 8 and 25 of the Convention.⁶⁸

93. Article 25 of the Convention provides that:

⁶⁴ I-A Court, *Baldeón García v. Perú*. Judgment of April 6, 2006, paragraph 96; *Pueblo Bello Massacre Case*. Judgment of January 31, 2006, paragraph 177; *Moiwana Community Case*. Judgment of June 15, 2005. Series C No. 124, paragraph 145.

⁶⁵ ECtHR, *McCann et al. v. the United Kingdom* (1995), Series A No. 324, paragraph 146.

⁶⁶ I-A Court, *Baldeón García v. Perú*. Judgment of April 6, 2006, paragraph 94; *Pueblo Bello Massacre Case*. Judgment of January 31, 2006, paragraph 1143.

⁶⁷ I-A Court, *Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, paragraph 273; I-A Court, *Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 132.

⁶⁸ I-A Court, *Barrios Altos*, Judgment of March 14, 2001, paragraph 48.

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted

94. The relevant provision of Article 8 of the Convention reads as follows:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

95. The protection that these provisions afford is reinforced by the general obligation to respect human rights, required under Article 1(1) of the Convention. The Court has expressly held that:

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. ... Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society ..." That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees ... for the determination of his rights, whatever their nature.⁶⁹

96. Therefore, States Parties have an obligation to take every kind of measure to ensure that no one is deprived of judicial protection or denied the exercise of his or her right to a simple and effective recourse.⁷⁰ Accordingly, the State has an obligation to investigate human rights violations, to prosecute those responsible, compensate the victims and ensure that the crimes do not go unpunished. That obligation has special connotations when, as in the case at hand, the evidence suggests that members of State security forces either acquiesced in or connived in the violations and when the violations occurred against a backdrop of violence against persons who defend Honduras' environmental resources.

97. The circumstance that no one has been convicted in the case or that, despite all efforts, it was impossible to establish the facts does not in itself mean that the State has failed in its obligation to investigate. However, in order to establish in a convincing and credible way that this outcome was not the product of the purely mechanical adherence to certain procedural formalities without a genuine search for the truth, the State must show that it carried out an

⁶⁹ I-A Court, *Loayza Tamayo*, Judgment on reparations of November 27, 1998, paragraph 169; *Velásquez Rodríguez*, Preliminary Objections, Judgment of 26 June 1987. Series C No. 1, paragraphs 91, 90 and 93, respectively.

⁷⁰ I-A Court, *Barrios Altos*, Judgment of March 14, 2001, paragraph 43.

immediate, exhaustive and impartial investigation.⁷¹ The judicial investigation must be undertaken in good faith, and must be diligent, exhaustive and impartial, pursuing all possible lines of investigation that could identify the perpetrators of the crime, who would then be tried and punished.

98. In this case, the State had an obligation to initiate an investigation into the events of February 6, 1995, in which Blanca Jeannette Kawas Fernández was killed, and to prosecute the criminal case through to its ultimate consequences.⁷²

99. As the IACHR has pointed out in previous cases,⁷³ the “Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary or Summary Executions,” adopted by the United Nations Economic and Social Council in Resolution 1989/65, explain what is required of an investigation into a suspicious death, in keeping with the standard of due diligence.

100. Those principles provide that in cases such as the present one, the purpose of the investigation must be to identify the victim: to collect and analyze all physical and documentary evidence; to identify possible witnesses and obtain statements from them; to determine the cause, manner and time of the death and the procedure or practice or instrument by which it was provoked, distinguishing between natural death, accidental death, suicide and homicide; and to identify and apprehend the person or persons suspected of involvement.⁷⁴

101. The United Nations bodies have added to those principles a “Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions,”⁷⁵ which holds that “the broad purpose of an inquiry is to discover the truth about the events leading to the suspicious death of a victim.” The Manual provides that those conducting the investigation should adopt, at a minimum, the following measures, among others:

- b) To recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible;
- f) To identify and apprehend the person(s) involved in the death; [and]
- g) To bring the suspected perpetrator(s) before a competent court established by law.

102. The Manual states that “[o]ne of the most important aspects of a thorough and impartial investigation of an extra-legal, arbitrary and summary execution is the collection and analysis of evidence.” Therefore, “[p]ersons conducting an investigation should have access to the scene where the body was discovered and to the scene where the death may have occurred.” According to the parameters set forth in the Manual, the procedure for collecting the evidence

⁷¹ IACHR, Annual Report 1997, Report 55/97, Case 11,137 (*Juan Carlos Abella et al.*), Argentina, paragraph 412. On this same topic, see IACHR, Annual Report 1997, Report 52/97, Case 11,218 (*Arges Sequeira Mangas*), Nicaragua, paragraphs 96 and 97.

⁷² I-A Court, *Baldeón García*. Judgment of 6 April 2006. Series C No. 147; I-A Court, *Pueblo Bello Massacre*. Judgment of 31 January 2006. Series C No. 140; See also Report N° 52/97, 11.218, *Arges Sequeira Mangas*, Nicaragua 1997

⁷³ *Inter alia*, IACHR, Report No. 10/95, Case 10,580, *Manuel Stalin Bolaños*, Ecuador, Annual Report of the IACHR 1995, OEA/Ser.L/V/II.91, Doc. 7, rev. 3, 3 April 1996, paragraphs 32 to 34; Report No. 55/97, case 11,137, *Juan Carlos Abella et al.*, Argentina, paragraphs 413 to 424; and Report No. 48/97, Case 11,411, “*Ejido Morelia*”, Mexico, Annual Report of the IACHR, 1997, OEA/Ser.L/V/II.98, Doc. 7, rev., 13 April 1996. paragraphs 109 to 112.

⁷⁴ United Nations, “Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary or Summary Executions,” Annex to Resolution 1989/65 of the Economic and Social Council.

⁷⁵ United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Document E/ST/CSDHA/12 (1991).

should follow certain standards, some of which are listed below:

- (a) The area around the body should be closed off. Only investigators and their staff should be allowed entry into the area;
- (b) Colour photographs of the victim should be taken as these, in comparison with black and white photographs, may reveal in more detail the nature and circumstances of the victim's death;
- (c) Photographs should be taken of the scene (interior and exterior) and of any other physical evidence;
- (d) A record should be made of the body position and condition of the clothing;
- (e) The following factors may be helpful in estimating the time of death:
 - (i) Temperature of the body (warm, cool, cold);
 - (ii) Location and degree of fixation of lividity;
 - (iii) Rigidity of the body;
 - (iv) Stage of its decomposition;
 - (...)
- (j) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. When applicable, tests for gunshot residue and trace metal detection should be performed.

103. The basic premise of the Protocol is that the evidence must be properly collected, handled, packaged, labeled, and placed in a safe place to prevent its contamination or loss. Based on these guidelines, the Commission finds that in the case at hand none of these procedures was diligently carried out. The early stages of the investigation were not conducted in a way that would preserve, to the maximum, all the evidence that could shed light on the facts.

104. To begin with, the police unit that was the first to arrive on the scene did not properly preserve the crime scene to prevent the loss or contamination of important physical evidence. This was corroborated in numerous pieces of testimony given in the course of the case, which all indicate that many of the neighbors entered the alleged victim's house when the Police were already on the scene.⁷⁶

105. Second, nothing in the case file indicates that physical evidence was collected inside Blanca Jeannette Kawas' house, such as fingerprints, fibers or hair, or evidence of the use of a firearm that might be found at the window from which the shot that killed the alleged victim was fired. Nor does the case file contain any photographs of Blanca Jeannette Kawas' body or of the crime scene. No sketch was done of the crime scene.

106. Third, the case file does not contain an autopsy report with the characteristics listed in the United Nations Manual cited above. The internal file contains only an expert opinion indicating the likely cause of death; but it is not an exhaustive examination of the body to establish the causes of death scientifically.

⁷⁶ See, for example, the statements made by witnesses: Marco Antonio Urraca Zaldivar (9 February 1995), sheet 13 of the court record, Annex 35; Trinidad Marcial Bueno (9 February 1995) sheet 12 of the court record, Annex 36; Carlos Antonio Quintana (10 February 1995) sheet 24 of the court record, Annex 37; Roberto Bendeck (14 February 1995) sheet 25 of the court record, Annex 38; Juan Díaz Martínez (15 February 1995) sheet 31 of the court record. Annex 39

107. Finally, the file contains no evidence to indicate that the authorities conducted ballistics tests on the two bullets that were presumably fired on the night of these events, one of which killed the alleged victim, while the other struck the telephone.

108. These serious omissions demonstrate that the State authorities did not act with the necessary diligence and adopt all the measures necessary to prosecute an investigation that could produce some concrete result. As a result, an investigation that started 11 years ago has produced no outcome. Consequently, the investigation and process conducted by the internal criminal justice system has not been an effective recourse to ensure that the alleged victim's next of kin would have access to the courts, within a reasonable period of time and with full observance of judicial guarantees.

109. The State contended in proceedings before the Commission that it could not be blamed for the duration of the case, which was due not to any negligence on the part of the State authorities, but rather to the intrinsic complexity of the case. A thorough examination of the internal judicial process, however, from its inception (February 7, 1995) to the present does not support the State's contention. In addition to the previously mentioned problems with the initial investigative procedures, throughout the process the authorities charged with moving the investigation forward, securing evidence and then weighing that evidence for conclusions, have directly contributed to dragging out the proceedings.

110. The court record, for example, contains internal complaints among officials about the lack of diligence on the part of the investigators in charge of the case. Thus, in November of 2003 the Coordinator from the Public Prosecutor's Office sent a note of protest to the Judge hearing the case, in which he stated that

The agents began their work that same day, but not without first cautioning that the District Attorney's Office had to make arrangements for their stay in this city, because they had not been assigned travel expenses. Mr. JACOBO KAWAS, brother of BLANCA JEANNETTE KAWAS, was contacted and provided them with an apartment and 1,000,000 lempiras so that they would be able to work for three days. However, they were only here for a day and a half, and did not complete the investigation. They presented me with a preliminary report and said that without per diem they could not continue to work (...) I am asking for your help, specifically, that you send the investigators back to this city, with instructions to conduct an in-depth and complete investigation, and not look to make a profit off their per diem.⁷⁷

111. From the start of the investigation no tests were done, and investigatory leads that became obvious from the initial evidence collected in the early months of the investigation were not followed up. In an opinion written by the Public Prosecutor's Office at the request of the Supreme Court, eight years after the investigation started, that office concluded the following:

- 1) The case under examination has not been properly investigated; various pieces of evidence that are vital to establishing, clearly and conclusively, the responsibility of certain persons who have been named as the possible material and intellectual authors of Ms. Kawas' murder have not been weighed. Although the Judge has the power to order the filing of evidence because he is the examining authority, those orders have not been given, thus causing an unwarranted delay in solving the case and ultimately ensuring that justice is done.
- 2) Similarly, the Public Prosecutor's Office has not actively participated in prosecuting the case, since it has not requested the proceedings needed to establish the guilt of the authors of the crime.

⁷⁷ Public Prosecutor's Office, note signed by Lic. Javier Santos Cruz, Coordinator of the Public Prosecutor's Office in Tela, November 5, 2003, Annex 40.

3) As to the role of the Criminal Investigation Police, while it is true that a special investigative team was formed in 1995, devoted exclusively to this case, to date there is nothing to suggest that significant headway has been made in the weighing of the evidence, which is essential in order to establish the motive for the crime and, ultimately, to identify those who may be responsible for it. All that exists is a report prepared by a special investigative team back in May of 1995. Whether the Secretariat for Security, through the General Bureau of Criminal Investigation, is still pursuing the investigation into this case is not known.⁷⁸

112. In the proceedings before the Commission, the State contended that the problems in moving the case forward were attributable to the procedural framework in effect at the time of the event, which has slowed the investigation. In the State's words,

The present case is being prosecuted under the inquisitorial system of adjudication, governed by the 1984 Code of Criminal Procedure. In principle, the latter creates the position of "Examining Judge," who is the absolute director of the preliminary proceedings. Agents from the Public Prosecutor's Office are relegated to a purely formal role and, under that system, only intervene when the case goes to trial. This means that the "Examining Judge" does not have the input and logistics necessary to swiftly carry out the examining proceedings with which he is legally entrusted. Although the Public Prosecutor's Office does have the necessary resources, the Prosecution's involvement in the preliminary proceedings, as previously noted, is purely formal.⁷⁹

113. This argument does not clear the State of its responsibility. Under the American Convention, the State is required to provide effective legal recourse to victims of human rights violations (Article 25), recourse that must be substantiated in accordance with the rules of due process (Article 8(1)), all as part of the State's general obligation to ensure the free and full exercise of the rights recognized by the Convention to all persons subject to its jurisdiction (Article 1(1)).⁸⁰ In the case at hand, the Commission notes the State's own acknowledgement that its laws prevent victims and their next of kin from obtaining prompt justice for human rights violations, which proves that the State failed to comply with its obligations under articles 8 and 25, in combination with the duties under articles 1(1) and 2 of the American Convention.⁸¹

114. From the evidence placed before the Court, it is clear that for long periods of time there were no judicial proceedings at all. For example, the internal record contains no evidence of any procedural activity in the period from 1996 to 2001, the date on which a new prosecutor appeared in the case. Investigative activity on the case did not resume until the latter half of 2003, when the Supreme Court of Justice asked for the case file in order to respond to the Commission's request. In other words, from June 1995 to September 2003, no evidence was taken to shed light on the facts in this case. Then, in December 2003, based on a technical-legal report prepared by

⁷⁸ Technical Legal Opinion No. DCAT-SATJ- AFS 022/20003 "Determining which investigative procedures are required in a criminal case instituted under the former Code of Criminal Procedure," Public Prosecutor's Office, Department of Technical Legal Training, November 18, 2003, pp. 15 and 16, annex 25.

⁷⁹ Observations of the State, presented to the IACHR on June 2, 2004, Appendix 3.

⁸⁰ I-A Court, *Pueblo Bello Massacre*, Judgment of January 31, 2006, paragraph 169.

⁸¹ In a similar case, the Inter-American Court held that:

States cannot fail to comply with these Convention-based obligations by alleging difficulties with their own internal laws. For that reason, the code of criminal procedure that Paraguay followed in the proceeding prosecuted against Mr. Canese cannot be invoked by the State as justification for its failure to comply with the alleged victim's right to be prosecuted within a reasonable period of time, pursuant to the State's obligation under Article 8(1) of the American Convention. I-A Court, *Ricardo Canese*, Judgment of August 31, 2004, paragraph 148.

the Public Prosecutor's Office, some measures were taken to pursue the case. However, the case has been at a standstill since March 2004, awaiting the Appellate Court's ruling on an appeal filed by the only person being investigated in the case (for the crime of coercion). In short, nearly 13 years have passed since the start of the criminal investigation, yet the case is still in the preliminary phase. Not one person has stood trial thus far.

115. The Commission considers that the delay in proceedings cannot be laid to the complexity of the case or the actions of the victim's next of kin. On the one hand, this is not a complex case. It involves a single victim whose identity has been clearly established, and since the start of the investigation, there has been solid evidence, sufficient to bring criminal proceedings against those suspected of being the responsible parties. Furthermore, the victim's next of kin have done nothing to obstruct, delay or paralyze the investigations.

116. That being the case, the State is exclusively to blame for the ineffectiveness of the internal remedies. Its obligation was to act in good faith and to conduct a diligent, exhaustive and impartial investigation to explore all possible lines of investigation, so as to identify the authors of the crime, prosecute them and apply the penalty that the law requires. That obligation has not been fulfilled, in the terms described in this report. As a consequence of the State's failure to fulfill its duties, the victim's next of kin have been denied their right to know the truth of what happened and to be compensated for the damages and suffering sustained.

117. The failure to prosecute this case and to take measures to avoid a recurrence of such events has nurtured a climate of impunity in which acts of violence committed against defenders of human rights and the environment in Honduras go unpunished, as described in section VI.A.1 of this report (Supra § 37 to 44). The Commission stresses that impunity in this case has had an enormous impact in Honduras. As pointed out in the Report on the Situation of Human Rights Defenders in the Americas,

one of the most serious consequences of these patterns of violations targeting human rights defenders is that they send society as a whole an intimidating message putting it in a defenseless situation. These acts are aimed at causing generalized fear, and so, at discouraging all other human rights defenders, and intimidating and silencing the denunciations, claims, and grievances of the victims of human rights violations, spurring on impunity, and impeding the full realization of the rule of law and democracy.⁸²

118. As the Inter-American Court has held, the failure to punish these acts encourages their repetition. The Commission reiterates that the rule of law and democracy cannot be fully realized if the domestic courts are not efficient in prosecuting the egregious human rights violations committed in many States and if attacks upon human rights defenders are allowed to go unpunished. When a State prosecutes and punishes violence against human rights defenders, it sends a clear message to society that there will be no leniency for those who violate human rights.⁸³

119. The obstruction of justice in the investigations described in the preceding chapter in itself constitutes violation of judicial guarantees and the right to judicial protection; the internal investigations and proceedings have not been effective recourses to guarantee access to the courts, to establish the facts, to try and punish the guilty parties, and to redress the consequences of the violations. This denial of justice has caused the victim's next of kin anguish, sadness and a sense

⁸² IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/VII. 124, Doc. 5 rev. 1, March 7, 2006, Chapter V, paragraph 140.

⁸³ Ibid, paragraph 107

of powerlessness, and they have been denied their right to know the truth of what happened. Therefore, the Commission asks the Court to find and declare that the Honduran State is responsible for violation of articles 8(1) and 25 of the American Convention, in relation to articles 1(1) and 2 thereof, to the detriment of the next of kin of Blanca Jeannette Kawas Fernández'.

VIII. REPARATIONS AND COSTS

120. By virtue of the facts alleged in this application, and the consistent jurisprudence of the Inter-American Court, which holds that "it is a principle of international law that any violation of an international obligation that has caused damage involves a new obligation: to adequately redress the damage caused"⁸⁴, the Commission submits to the Court its ideas for reparations and costs that the Honduran State must grant as a consequence of its responsibility for the human rights violations committed against the victim and her next of kin.

121. Bearing in mind the Court's rules of procedure, which allow independent representation for individuals, the Commission will merely outline the general criteria governing reparations and costs that it considers the Court should apply in the present case. The Commission understands that it is up to the victims and their representatives to substantiate their claims, pursuant to article 63 of the American Convention and article 23 and others of the Court's rules of procedure.

A. Obligation to make reparations

122. An essential function of justice is to remedy the damage caused to the victim. That function must find expression through rectification or restitution and not solely through compensation, which does not reestablish the moral balance or return what was taken.

123. Article 63.1 of the American Convention provides that:

[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the 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 constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

124. As the Court has consistently held, "Article 63(1) of the American Convention reflects a customary rule that is one of the fundamental principles of contemporary international law regarding the responsibility of States. When an illicit act attributable to a State takes place, it incurs an international responsibility for violation of the international rule, with the consequent duty of redressing and putting an end to the consequences of the violation."⁸⁵

125. Reparations are crucial for ensuring that justice is done in an individual case, and they constitute a mechanism that elevates the court's decision beyond the sphere of moral condemnation. Reparations consist of measures that tend to eliminate the effect of the violations. Reparation for damages caused by violation of an international obligation requires, wherever

⁸⁴ I-A Court. *Cantoral Huamaní and García Santacruz*. Judgment of 10 July 2007. Series C No. 167, para. 156; I-A Court. *Zambrano Vélez et al.*. Judgment of 4 July 2007. Series C No. 166, para. 103; and I-A Court. *Escué Zapata*. Judgment of 4 July 2007. Series C No. 165, para. 126.

⁸⁵ I-A Court, *La Cantuta*. Judgment of 29 November 2006 Series C No. 162, para. 200; I-A Court, *Penal Miguel Castro Castro*. Judgment of 25 November 2006. Series C No. 160, para. 414; I-A Court, *Montero Aranguren et al. (Detention Center of Catia)*. Judgment of 5 July 2006. Series C No. 150, para. 116

possible, full restitution (*restitutio in integrum*), which consists in restoring the situation prior to the violation.

126. When full restitution is not possible, as in the present case, it is the Inter-American Court's place to order a series of measures that, beyond guaranteeing respect for the rights violated, will repair the consequences produced by the violations and compensate for the damages caused.⁸⁶

127. The obligation to make reparations, which is regulated in all its aspects (scope, nature, modes and establishment of beneficiaries) by international law, cannot be modified by the State nor can it avoid complying with it by invoking provisions of its domestic law.⁸⁷

128. Reparation in this case must serve to vindicate the rights of the victim and those of her loved ones. It must serve to force the State to resolve this case and to take concrete measures to prevent, punish and eradicate intimidation and attacks against defenders of the environment and natural resources. The impunity that surrounds this case sends to society a message that crimes of this kind are not priorities.

B. Measures of reparation

129. To remedy the situation of the victim and/or her next of kin, the State must comply with the following obligations: "obligation to investigate and bring to light the facts that may be reliably established (truth); obligation to prosecute and punish those responsible (justice); obligation to make full reparation for moral and pecuniary damages caused (reparation); and obligation to expel from the security forces those known to have committed, ordered or tolerated these abuses (creation of security forces worthy of a democratic State). These obligations are not mutual alternatives nor are they optional: the State responsible must comply with each of them, to the extent of its possibilities, and in good faith."⁸⁸

130. The United Nations Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation of Gross Violations of Human Rights and Fundamental Freedoms has classified the components of that right into four general categories: restitution, compensation, rehabilitation, and measures of satisfaction and guarantees of non-repetition.⁸⁹ In the opinion of the United Nations Special Rapporteur on the question of impunity for human rights violators, these measures of satisfaction must include: cessation of continuing violations; verification of the facts and full and public disclosure of the truth; an official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim; apology, including public acknowledgement of the facts and acceptance of responsibility; judicial or

⁸⁶ I-A Court, *La Cantuta*. Judgment on the merits, reparations and costs. Judgment of 29 November 2006 Series C No. 162, para. 201; I-A Court, *Penal Miguel Castro Castro*. Judgment of 25 November 2006. Series C No. 160, para. 415; I-A Court, *Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on preliminary objections, merits, reparations and costs. Judgment of 24 November 2006. Series C No. 158, para. 143

⁸⁷ I-A Court. *Cantoral Huamaní and García Santacruz*. Judgment of 10 July 2007. Series C No. 167, para. 190; I-A Court. *Zambrano Vélez et al.*. Judgment of 4 July 2007. Series C No. 166, para. 148; I-A Court, *La Cantuta*. Judgment on the merits, reparations and costs. Judgment of 29 November 2006 Series C No. 162, para. 200; I-A Court, *Penal Miguel Castro Castro*. Judgment of 25 November 2006. Series C No. 160, para. 415.

⁸⁸ MÉNDEZ, Juan E., "El Derecho a la Verdad frente a las graves violaciones a los Derechos Humanos", in *La Aplicación de los Tratados sobre Derechos Humanos por los Tribunales Locales*, CELS, 1997, p. 517

⁸⁹ Principles and Guidelines on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, prepared by Dr. Theo Van Boven pursuant to Resolution 1995/17 of the Human Rights Subcommittee, E/CN.4/ sub.2/1997/17.

administrative sanctions against persons responsible for the violations; preventing the recurrence of violations, etc.

131. The Court, for its part, has held that reparations are measures that tend to eliminate the effects of violations that were committed.⁹⁰ Those measures embrace the various forms in which the State can address its international responsibility, which according to international law include measures of restitution, compensation, rehabilitation, satisfaction, and guarantees of no repetition.⁹¹

132. By virtue of the foregoing, the Inter-American Commission asks the Court to order measures of integral reparation, which will in turn send a message against the impunity that surrounds the great majority of human rights violations in member states of the Organization of American States. This will require the establishment and, where necessary, the reinforcement of judicial and administrative mechanisms whereby victims can seek reparation through official procedures that are expeditious, fair, inexpensive and accessible.

133. Consistent with the elements of evidence submitted in this application, and in light of the rules established by the Court in its jurisprudence, the Inter-American Commission presents its conclusions and claims with respect to the reparation measures that should be made in the case of Blanca Jeannette Kawas Fernández.

1. Measures for cessation, rehabilitation, satisfaction and guarantees of no repetition

134. A fundamental element that emerges from the determination of State responsibility for human rights violations is the requirement that such conduct must cease, and that there be a guarantee of no repetition.⁹²

135. The Court has consistently held that the identification of the individuals responsible is a natural corollary of obligations under the Convention, and a requirement for eliminating generalized situations of impunity.⁹³

136. The Court has established that impunity constitutes a violation of the State's duty that injures the victim, the victim's relatives, and society as a whole, and that it fosters the chronic repetition of human rights violations.

137. In this respect, the Commission considers that this measure must entail not only satisfaction but also cessation, for until the State fulfils its obligation to investigate, prosecute and punish the human rights violations in the present case, it stands in continuous violation of the rights

⁹⁰ I-A Court, *La Cantuta*. Judgment on the merits, reparations and costs. Judgment of 29 November 2006 Series C No. 162, para. 202; I-A Court, *Penal Miguel Castro Castro*. Judgment of 25 November 2006. Series C No. 160, para. 416; I-A Court, *Dismissed Congressional Workers (Aguado Alfaro et al.)*. Judgment on preliminary objections, merits, reparations and costs. Judgment of 24 November 2006. Series C No. 158, para. 144

⁹¹ see United Nations, final report presented by Theo Van Boven, Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation of Gross Violations of Human Rights and Fundamental Freedoms, E/CN.4/Sub2/1990/10, 26 July 1990. See also: I-A Court, *Blake*. Reparations Judgment of 22 January 1999. Series C No. 48, para. 31; *Suárez Rosero*, Reparations, Judgment of 20 January 1999. Series C No. 44, para. 41

⁹² I-A Court, *Castillo Páez*. Reparations. Judgment of 27 November 1998. Series C No. 43, para. 52

⁹³ The Court has defined impunity as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention". In this respect, see I-A Court *Blanco Romero et al.*. Judgment of 28 November 2005. Series C No. 138, para. 94; I-A Court *Gómez Palomino*. Judgment of 22 November 2005. Series C No. 136, para. 76.

established in articles 8.1 and 8.5, and the obligation enshrined in article 1 of the American Convention.

138. The Court has held repeatedly that every individual, and society as a whole, is entitled to know what happened in the case of human rights violations.⁹⁴ Similarly, the United Nations Commission on Human Rights has recognized that “for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators, including their accomplices, of these violations are essential steps towards rehabilitation and reconciliation, and urges States to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations can be investigated and made public and to encourage victims to participate in such a process.”⁹⁵

139. The Court has also established that the State must remove all obstacles and mechanisms, *de facto* and *de jure*, that sustain impunity, and that it must grant sufficient guarantees of security to the judicial authorities, prosecutors, witnesses, justice workers and the victims, and use all measures within its reach to see the process through to a successful conclusion.⁹⁶

140. Consistent with the Court's jurisprudence, and given in particular the serious nature of the human rights violations that occurred in the present case, full reparation will require the State to investigate the murder of Blanca Jeannette Kawas, with due diligence and in a serious, impartial and exhaustive manner, in order to clarify the truth surrounding that deed. To this end, it must take all the judicial and administrative measures necessary to complete the investigation, to locate, prosecute and punish the intellectual and material author or authors, and to report on the results. As well, the State is under the obligation to investigate and punish all those responsible for the obstruction of justice, the cover-up and the impunity that have surrounded these cases.

141. On November 29, 1985, the United Nations General Assembly approved by consensus the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,⁹⁷ according to which victims “are entitled to access to the mechanisms of justice and to prompt redress ... for the harm that they have suffered” and that to this end it is essential for “the views and concerns of victims to be presented and considered at appropriate stages of the proceedings

⁹⁴ I-A Court. *Bueno Alves*. Judgment on the merits, reparations and costs of 11 May 2007. Series C No. 164, para. 90; I-A Court, *Penal Miguel Castro Castro*. Judgment of 25 November 2006. Series C No. 160, para. 347

⁹⁵ E/CN.4/RES/2001/70

⁹⁶ I-A Court, *La Cantuta*. Judgment on the merits, reparations and costs. Judgment of 29 November 2006 Series C No. 162, para. 226; I-A Court, *Carpio Nicolle et al.*. Judgment of 22 November. 2004. Series C No. 117, para. 134. See also I-A Court, *Almonacid Arellano*. Judgment on preliminary objections, merits, reparations and costs. Judgment of 26 September 2006 Series C No. 154, para. 156

⁹⁷ A/RES/40/34. “Access to justice and fair treatment. 4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt

redress, as provided for by national legislation, for the harm that they have suffered. 5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. 6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) Providing proper assistance to victims throughout the legal process; (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.”

where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.”

142. Consistent with such considerations, the victim's next of kin must have full access and capacity to act in all stages and instances of those investigations, in accordance with domestic law and the rules of the Inter-American Convention. The State must also ensure that the decisions of domestic courts are enforced, pursuant to this obligation. The outcome of the process must be publicized, so that Honduran society will know the truth.⁹⁸

143. Secondly, Honduras must adopt measures for rehabilitation of the victim's next of kin. Those measures must include psychological and medical rehabilitation.

144. Third, the severity and the nature of the facts of this case demand that the State take measures to honor the memory of the victim.

145. Satisfaction has been understood as any measure that the perpetrator of a violation must take, in accordance with international instruments or customary law, to recognize that he or she has committed an illicit act.⁹⁹ Satisfaction is given effect in three successive acts, generally cumulative: apologies, or any other gesture that acknowledges commission of the act in question; trial and punishment of the individuals responsible; and measures to prevent repetition of the damage.¹⁰⁰

146. The Commission therefore requests the Court to order, among others, the following measures:

- To make public the outcome of the domestic proceedings for investigation and punishment, in recognition of the right of the victim's next of kin, and of Honduran society as a whole, to know the truth.
- To publicize, through the press, radio and television, any judgment rendered by the Court; and
- To recognize publicly its international responsibility for the damage caused and for the violations committed, in the solemn and meaningful manner that the objectives of reparation demand, in consultation with the victim's next of kin and their representatives.

147. The Commission also considers that the State is obliged to prevent the recurrence of human rights violations such as those that now concern us, and consequently it asks the Court to order Honduras to adopt, on a priority basis, a policy to eradicate violence against defenders of the environment and natural resources, which policy must include measures of prevention and protection.

148. As well, the Commission considers that, as a guarantee of no repetition, the Court must order the Honduran State to adopt a public policy to combat impunity for those who violate the human rights of defenders of the environment and natural resources, and of human rights in general.

⁹⁸ I-A Court. *Cantoral Huamaní and García Santacruz*. Judgment of 10 July 2007. Series C No. 167, para. 191; I-A Court. *Escué Zapata*. Judgment of 4 July 2007. Series C No. 165, para. 166; I-A Court *Huilca Tecse*. Judgment of 03 March 2005. Series C No. 121, para. 107; I-A Court *s Hermanas Serrano Cruz*. Judgment of 01 March 2005. Series C No. 120, para. 175.

⁹⁹ Brownlie, *State Responsibility*, Part 1. Clarendon Press, Oxford, 1983, p. 208.

¹⁰⁰ *Idem*.

2. Compensation measures

149. The Court has established the essential criteria that must guide fair indemnity, intended to compensate economically and in an adequate and effective manner for the damage suffered as the result of human rights violations. The Court has also established that indemnity is merely compensatory, and that it must be sufficient in amount to make up for all the pecuniary and non-pecuniary or moral damages caused.¹⁰¹

2.1. Pecuniary damages

150. In its jurisprudence on reparations, the Court has consistently held that material or pecuniary damages include actual losses incurred (*damnum emergens*) and lost earnings (*lucrum cessans*) for the victim and the victim's next of kin.¹⁰²

151. The concept of actual losses has been understood as the direct and immediate economic consequence of the violation, reflecting the costs incurred by the victim's relatives in seeking justice.¹⁰³ As the Court may find from the evidence in this case, the victim's next-of-kin made significant financial outlays to obtain justice through the domestic system and to overcome the psychological and moral trauma that the actions of the Honduran State caused them.

152. On the other hand, the concept of lost earnings relates to the loss of economic income or benefits that will not be received as a result of a determined act, where these can be quantified with measurable and objective indicators.¹⁰⁴

153. Without prejudice to the claims that the representatives of the victim and her next-of-kin may present at the appropriate time in the proceedings, the IACHR asks the Court to determine the amount of fair compensation for actual losses and lost earnings, applying its broad powers in this matter.

2.2. Non-pecuniary damages

154. On non-pecuniary damages, the Court has ruled that:

... non-pecuniary damage may include both the sufferings and affliction caused to the direct victims and their next of kin – the impairment of highly significant personal values – and also the changes of a non-pecuniary nature in the lives of the victim or his family. As it is not possible to assign a precise monetary equivalent to non-pecuniary damage, there are only two ways in which it can be compensated, in order to make integral reparation to the victims. First, by the payment of an amount of money or the delivery of goods or services of a significant financial value, which the Court determines by the reasonable application of legal discretion and fairness; and, second, by the execution of acts or civil works of a public nature

¹⁰¹ I-A Court. *La Cantuta*. Judgment on the merits, reparations and costs. Judgment of 29 November 2006 Series C No. 162, para. 210; I-A Court, *Hilaire, Constantine and Benjamin et al.*. Judgment of 21 June 2002. Series C No. 94, para. 204; I-A Court, *Garrido and Baigorria. Reparations*, Judgment of 27 August 1998, Series C No. 39, para. 41.

¹⁰² I-A Court. *La Cantuta*. Judgment on the merits, reparations and costs. Judgment of 29 November 2006 Series C No. 162, paras. 213 and 214; I-A Court. *Penal Miguel Castro Castro*. Judgment of 25 November 2006. Series C No. 160, para. 423; I-A Court, *Tibi*. Judgment of 7 September 2004. Series C No. 114.

¹⁰³ I-A Court. *La Cantuta*. Judgment on the merits, reparations and costs. Judgment of 29 November 2006 Series C No. 162, para. 215; I-A Court, *Loayza Tamayo. Reparation*. Judgment of 27 November 1998. Series C No. 42, para. 147; y I-A Court, *Aloboetoe et al. Reparations*. Judgment of 10 September 1993. Series C No. 15, para. 50.

¹⁰⁴ See for example, I-A Court, *Carpio Nicolle et al.*. Judgment of 22 November. 2004. Series C No. 117, paras. 105 ff; I-A Court, *Cruz Flores*. Judgment of 18 November 2004. Series C No. 115, para. 151 y 152.

or with public impact that have effects such as the recovery of the victims' memory, acknowledgement of their dignity, consolation of their next of kin, or dissemination of a message of official disapproval of the respective human rights violations and of commitment to efforts to ensure that they do not happen again.¹⁰⁵

155. In the case at hand, the sufferings that the victim's next-of-kin experienced through the failure to conduct a diligent investigation of the facts and to punish those responsible, among other affronts, justify the Commission in asking the Court, given the nature of the case, to establish the amount of fair compensation for non-pecuniary damages.

C. The beneficiaries

156. Article 63.1 of the American Convention requires that the consequences of the breach of rights be remedied and "that fair compensation be paid to the injured party". The persons entitled to such compensation are generally those directly injured by the violation in question.

157. Given the nature of the present case, the beneficiaries of reparations ordered by the Court as a result of the human rights violations perpetrated by the Honduran State are the victim, already mentioned in this application, and her next-of-kin, who have suffered pecuniary and/or non-pecuniary damages as a result of the alleged human rights violations. According to information in the file, the next-of-kin include:

- a. Blanca Fernández (mother)
- b. Jacobo Kawas Cury (father)
- c. James Gordon Watt (husband)
- d. Jaime Alejandro Watt Kawas (son)
- e. Selsa Damaris Watt Kawas (daughter)
- f. Carmen Marielena Kawas Fernández (sister)
- g. Jacobo Roberto Kawas Fernández (rather)
- h. Jorge Jesús Kawas Fernández (brother)

D. Costs and expenses

158. According to the consistent jurisprudence of the Court, costs and expenses must be understood to be included in the concept of reparation embodied in article 63.1 of the American Convention, because the activities pursued by the victim or victims, their successors or their representatives to access international justice imply disbursements and commitments of a financial nature that should be compensated.¹⁰⁶

159. In the case at hand, the Commission requests that the Court, after hearing the representatives of the victim and her next-of-kin, order the Honduran State to pay the necessary and reasonable expenses, duly demonstrated, that they have incurred and are incurring in the

¹⁰⁵ I-A Court, *La Cantuta*. Judgment on the merits, reparations and costs. Judgment of 29 November 2006 Series C No. 162, para. 216; I-A Court, *Penal Miguel Castro Castro*. Judgment of 25 November 2006. Series C No. 160, para. 430; I-A Court, *Masacres de Ituango*. Judgment of 1 July 2006. Series C No. 148, para. 383; I-A Court, *Pueblo Bello Massacre*. Judgment of 31 January 2006. Series C No. 140, para. 254.

¹⁰⁶ I-A Court, *La Cantuta*. Judgment on the merits, reparations and costs. Judgment of 29 November 2006 Series C No. 162, para. 243; I-A Court, *Penal Miguel Castro Castro*. Judgment of 25 November 2006. Series C No. 160, para. 455; I-A Court, *Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment on preliminary objections, merits, reparations and costs. Judgment of 24 November 2006. Series C No. 158, para. 152.

processing of this case, both in the domestic system and before the inter-American system of human rights.

IX. CONCLUSION

160. The extrajudicial execution of the environmentalist Blanca Jeannette Kawas Fernández, the subsequent lack of due diligence in the investigation and punishment of those responsible for her death, and in general the obstruction of justice, as well as the failure to make adequate reparation to her next-of-kin, constitute violations of the rights protected by articles 4 (right to life), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, failure to fulfill the general obligation to respect and guarantee the human rights established in article 1.1 of the treaty, and breach of the duty to adopt the legislative or other measures called for in article 2 of that instrument.

X. PETITION

161. By virtue of the arguments of fact and of law set forth above, the Inter-American Commission on Human Rights requests the Court to find and declare that:

a. The Republic of Honduras is responsible for violation of the right to life established in article 4 of the American Convention, in relation with the general obligation to respect and guarantee human rights enshrined in article 1.1 thereof, to the detriment of Blanca Jeannette Kawas Fernández; and

b. The Republic of Honduras is responsible for violation of the right to a fair trial and the right to judicial protection, established in article 8 and 25 of the American Convention, in relation with the general obligation to respect and guarantee human rights enshrined in article 1.1 and the obligation established in article 2 of that instrument to adopt domestic legal provisions, to the detriment of the next of kin of Blanca Jeannette Kawas Fernández.

And as a consequence to order the State to:

a. Conduct a complete, impartial, effective and expeditious judicial inquiry to establish the circumstances of the death of Ms. Blanca Jeannette Kawas Fernández, identify all persons who were involved in it, at the various levels of decision and execution, bring the criminal case to trial and apply the penalties required by law. In that criminal trial, the full and effective participation of the Public Prosecutor's Office and the victim's next of kin must be assured.

b. Conduct a complete, impartial, effective and expeditious judicial inquiry to investigate the obstructions of justice in the process conducted into the murder of Ms. Blanca Jeannette Kawas Fernández.

c. Make full reparations to the next of kin of Blanca Jeannette Kawas Fernández, to include pecuniary and non-pecuniary damages for the human rights violations committed.

d. Take measures to prevent a recurrence of acts similar to those recounted in the present case. In particular:

- i. Adopt, as a matter of priority, a policy of eradicating violence against defenders of natural resources, including preventive and protective measures.
- ii. Adopt a public policy of combating impunity in cases of violations of the human rights of human rights defenders.

XI. SUPPORTING EVIDENCE

A. Documentary evidence

162. Following is a list of the documentary evidence available at this moment:

APPENDIX 1. IACHR, Report 63/06 (Merits) case 12,507, Blanca Jeannette Kawas Fernández, Honduras, 20 July 2006

APPENDIX 2. IACHR, Report 67/05 (Admissibility), Case 12,507, Blanca Jeannette Kawas Fernández, Honduras, October 13, 2005.

APPENDIX 3. File of proceedings before the Inter-American Commission on Human Rights.

ANNEX 1. The Illegal Logging Crisis in Honduras. How U.S. and E.U. imports of illegal Honduran wood increase poverty, fuel corruption and devastate forests and communities. Report of the Environmental Investigation Agency (EIA), 2005.

ANNEX 2. UN, Human Rights Committee, Consideration of reports submitted by States Parties under Article 40 of the Covenant, Initial report, HONDURAS, CCPR/C/HND/2005/1, 26 April 2005.

ANNEX 3. UN, Commission on Human Rights, Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, Annual Report 2004, Document E/CN.4/2005/101.

ANNEX 4. UN, Commission on Human Rights, Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, Annual Report 2003, Document E/CN.4/2004/94.

ANNEX 5. UN, Commission on Human Rights, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Ms. Asma Jahangir, Addendum, Mission to Honduras, Document E/CN.4/2003/3/Add.2, 14 June 2002.

ANNEX 6. Amnesty International. Honduras: Much Remains to Be Done in Terms of Human Rights, August 7, 2001, p. 26. See also: Amnesty International, Essential Actors of Our Times: Human Rights Defenders in the Americas, November 2003, AI, AMR 01/009/2003/s.

ANNEX 7. Center for Human Rights and Environment (CEDHA) and the Center of International Environmental Law (CIEL). The Human Cost of Defending the Planet: *Human Rights Violations against Environmental Defenders in the Americas*. Report, 2002 – 2003.

ANNEX 8. Decree No. 154-94 "Making Punta Sal a National Park," *Gaceta* no. 27,538, December 28, 1994.

ANNEX 9. Decree No. 43-95 "Renaming Punta Sal Park to be called the Janeth Kawas Fernández National Park," *Gaceta* No. 27,636 of April 25, 1995.

ANNEX 10. "A *Mecate Corto*," a monthly periodical published by the Jesuits in Honduras, "Así es Jeannette Kawas", Year 10, number 99, February 2004.

ANNEX 11. Press clippings from Honduran newspapers.

ANNEX 12. *Revista del Sur*, "Ecologista asesinada" April 1995.

ANNEX 13. General Bureau of Criminal Investigation, Investigative Report, signed by Daniel Barahona, Noncommissioned investigative police officer III, October 30, 2003.

ANNEX 14. Report on the Examination of the Body, February 7, 1995, sheet 1 of the court record.

- ANNEX 15.** Application of the Public Prosecutor's Office to appear, and its acceptance, Tela Criminal Magistrate's Court, Internal file, sheet 11 (front and back).
- ANNEX 16.** Statement of expert Alfredo Girón Montoya, MD, before the Tela Criminal Magistrate's Court, February 9, 1995.
- ANNEX 17.** Criminal Magistrate's Court, Declaration of Mr. Trinidad Marcial Bueno Romero, February 9, 1995, sheet 12 of the judicial record.
- ANNEX 18.** Second application of the Public Prosecutor's Office to appear, and its acceptance, Tela Criminal Magistrate's Court, Internal file, sheet 52.
- ANNEX 19.** Warrant for the arrest of Juan Mejía Ramírez and Sabas Mejía Ramírez Tela Criminal Magistrate's Court, memorandum sent to Police Lieutenant Ramón Banegas Cárdenas, Internal file, sheets 56 and 57.
- ANNEX 20.** Third application of the Public Prosecutor's Office to appear, and its acceptance, Tela Criminal Magistrate's Court, Internal file, sheet 58.
- ANNEX 21.** Requisition for the file by the Supreme Court of Justice, Tela Criminal Magistrate's Court, memorandum sent by Lucila Cruz Méndez, Secretary General of the Supreme Court of Justice, Internal file, sheet 60.
- ANNEX 22.** Fourth application of the Public Prosecutor's Office to appear, and its acceptance, Tela Criminal Magistrate's Court, Internal file, sheet 62.
- ANNEX 23.** Request of the Public Prosecutor to amplify certain testimony, Tela Criminal Magistrate's Court, Internal file, sheet 64.
- ANNEX 24.** Order remitting the file to the District Court of First Instance, Internal file, sheet 70.
- ANNEX 25.** Technical Legal Opinion No. DCAT-SATJ- AFS 022/20003 "Determining which investigative procedures are required in a criminal case instituted under the former Code of Criminal Procedure," Public Prosecutor's Office, Department of Technical Legal Training, November 18, 2003.
- ANNEX 26.** Request of the Public Prosecutor to declare the case file confidential, District Court of First Instance, Internal file, sheet 150.
- ANNEX 27.** Request of the Public Prosecutor to amplify certain testimony, District Court of First Instance, Internal file, sheets 151 and 152.
- ANNEX 28.** Statement of Saúl Benjamín Zapata Mejía, former prosecutor in the case, given on January 20, 2004, before the First District Court of Comayagua, sheet 166.
- ANNEX 29.** Appearance of Mr. Jacobo Kawas as private plaintiff, District Court of First Instance, Internal file.
- ANNEX 30.** Evidence submitted by Public Prosecutor, District Court of First Instance, Internal file, sheets 176 and 177.
- ANNEX 31.** District Court of First Instance, memorandum addressed to the Chief of the National Law Enforcement Police, Internal file, sheet not numbered.
- ANNEX 32.** Warrant for the arrest of Ismael Perdomo Velásquez, District Court of First Instance, Internal file, sheet 234 (front and back).
- ANNEX 33.** Decision on the appeal of March 18, 2004, District Court of First Instance, Internal file, sheet 238.
- ANNEX 34.** Request to institute proceedings against Ismael Perdomo Velásquez, District Court of First Instance, Internal file, sheet 241.
- ANNEX 35.** Statement of Marco Antonio Urraca Zaldivar (9 February 1995), sheet 13 of the court record.
- ANNEX 36.** Statement of Trinidad Marcial Bueno (9 February 1995) sheet 12 of the court record.
- ANNEX 37.** Statement of Carlos Antonio Quintana (10 February 1995) sheet 24 of the court record.
- ANNEX 38.** Statement of Roberto Bendeck (14 February 1995) sheet 25 of the court record.

ANNEX 39. Statement of Juan Díaz Martínez (15 February 1995) sheet 31 of the court record.

ANNEX 40. Public Prosecutor's Office, note signed by Lic. Javier Santos Cruz, Coordinator of the Public Prosecutor's Office in Tela, November 5, 2003.

ANNEX 41. Other documents from the domestic case file.

ANNEX 42. Curriculum vitae of the expert offered by the Commission

163. The Commission explains that the reproductions of the documents from the domestic investigation file herewith submitted to the Court are the best copies that it has been able to obtain to date. Some of the sheets are incomplete or illegible.

164. Consequently, the Commission asks the Court to request the State of Honduras to send certified copies of all documents relating to the investigations pursued within domestic jurisdiction relating to this case, as well as an authenticated copy of applicable legislation and regulatory provisions.

B. Testimonial evidence

165. The Commission requests the Court to accept statements from the following witnesses:

- Jacobo Kawas Fernández, brother of the victim, who will give a statement about the events of February 6, 1995; the various efforts made by the victim's family in the period immediately after her murder; the response and the attitude of the authorities in the face of these efforts; the conduct of the domestic investigations; the obstacles encountered by the victim's family in seeking justice; the consequences for his personal life and that of the family produced by the human rights violations suffered by his sister; among other aspects relating to the object and purpose of this application.

- Trinidad Marcial Bueno Romero, former personal assistant to the victim, who will give a statement about the work of Blanca Kawas in defense of the environment and natural resources, the confrontations with campesinos from the UNC and with agribusiness people from the Hondupalma Company, the events of February 6, 1995; among other aspects relating to the object and purpose of this application.

C. Expert evidence

166. The Commission asks the Court to accept the opinion of the following expert:

Rigoberto Ochoa, Human Rights Specialist, who will tell the Court about the situation of defenders of the environment and natural resources, and in general the situation of human rights defenders in Honduras, among other aspects relating to the object and purpose of this application.

XII. DATA ON THE ORIGINAL PLAINTIFFS AND THE VICTIMS

167. Pursuant to article 33 of the Court's rules of procedure, the Inter-American Commission presents the following information: the original complaint was presented by the organizations Center for Justice and International Law (CEJIL) and the *Equipo de Reflexión, Investigación y Comunicación* (ERIC) of the Company of Jesus in Honduras.

168. The victim's next of kin have authorized the organizations Center for Justice and International Law (CEJIL) and the *Equipo de Reflexión, Investigación y Comunicación* (ERIC) of the Company of Jesus in Honduras as their representatives. Those representatives will submit

documentation confirming their powers of attorney directly to the Court. The representatives have established a single common domicile at the following address:

[REDACTED]

Washington, DC, February 4, 2008