

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 27, 2012**

**CASE OF KAWAS FERNÁNDEZ v. HONDURAS
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The judgment on merits, reparations and costs (hereinafter “the judgment”) delivered by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or the “Court”) on April 3, 2009, in which it decided, *inter alia*, to order that the State must:

[...]

8. [...] pay Blanca Fernández, Selsa Damaris Watt Kawas, Jaime Alejandro Watt Kawas, Jacobo Roberto Kawas Fernández, Jorge Jesús Kawas Fernández and Carmen Marilena Kawas Fernández, the amounts established in paragraphs 171 to 173, 178, 184, 185 and 220 of th[e] judgment as compensation for pecuniary and non-pecuniary damage and reimbursement of costs and expenses, as appropriate, within one year of notification of th[e] judgment, in accordance with paragraphs 221 to 225 [t]hereof;

9. [...] conclude the criminal proceedings, or initiate any others that may be necessary, for the facts that gave rise to the violations in this case, and decide them as provided for by law, within a reasonable period of time, in accordance with paragraphs 189 to 195 of th[e] judgment;

10. [...] publish in the Official Gazette and in a newspaper with widespread national circulation, once, paragraphs 1 to 8 of Chapter I, 17 to 35 of Chapter V, 45 to 155 of Chapters VII, VIII and IX, and 189 to 195 of Chapter X of th[e] judgment, without the corresponding footnotes, and the operative paragraphs, within six months of notification of th[e] judgment, in accordance with paragraph 199 [t]hereof;

11. [...] organize, within one year, a public act of acknowledgement of international responsibility, in accordance with paragraph 202 of th[e] judgment;

12. [...] erect, within two years, a monument in memory of Blanca Jeannette Kawas Fernández, and put up signs in the national park named after her, in accordance with paragraph 206 of th[e] judgment;

13. [...] provide free of charge, immediately and for as long as necessary, [...] psychological and/or psychiatric treatment to Blanca Fernández, Selsa Damaris Watt Kawas, Jaime Alejandro Watt Kawas, Jacobo Roberto Kawas Fernández, Jorge Jesús Kawas Fernández and Carmen Marilena Kawas Fernández, should they request this, in accordance with paragraph 209 of th[e] judgment;

14. [...] conduct, within two years, a national awareness-raising campaign on the importance of the work of environmentalists in Honduras and their contribution to the defense of human rights, in accordance with paragraph 214 of th[e] judgment.

[...]

2. The briefs of September 30, 2009, June 2, 2010, and September 16, 2011, in which the Republic of Honduras (hereinafter “the State” or “Honduras”) presented information on

compliance with the judgment delivered by the Court in the instant case (*supra* having seen paragraph 1). Also, the brief of October 20, 2011, in which the State requested a “six-month extension to comply with operative paragraphs 12 and 14” of the judgment (*supra* having seen paragraph 1).

3. The briefs of November 13, 2009, and October 28, 2011, in which the representatives of the victims (hereinafter “the representatives”) presented their observations on the briefs presented by the State (*supra* having seen paragraph 2).

4. The communications of December 11, 2009, and December 16, 2011, in which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) presented its observations on the briefs of the State and the representatives (*supra* having seen paragraphs 2 and 3).

5. The note of the Secretariat of the Court (hereinafter “the Secretariat”) of October 26, 2011, in which, in response to the brief of October 20, 2011 (*supra* having seen paragraph 2), the State was informed that it should present, within six months, a detailed report on compliance with the reparations ordered in the twelfth and fourteenth operative paragraphs of the judgment (*supra* having seen paragraph 1).

CONSIDERING THAT:

1. An inherent attribute of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. In accordance with the provisions of Article 67 of the American Convention, the State must comply fully and promptly with the judgments delivered by the Court. In addition, Article 68(1) of the American Convention establishes that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” To this end, the States must ensure implementation of the Court’s decisions in its judgments at the domestic level.¹

3. The States Parties to the Convention that have accepted the Court’s binding jurisdiction must comply with the obligations established by the Court. This obligation includes the State’s duty to inform the Court of the actions taken to comply with the measures ordered by the Court in its decisions. Prompt observance of the State’s obligation to inform the Court of the way in which each measure ordered by the Court is being fulfilled is essential in order to assess the status of compliance with the judgment as a whole.²

A. *Obligation to pay Blanca Fernández, Selsa Damaris Watt Kawas, Jaime Alejandro Watt Kawas, Jacobo Roberto Kawas Fernández, Jorge Jesús Kawas Fernández and Carmen Marilena Kawas Fernández, the amounts established in the judgment as compensation for pecuniary and non-pecuniary damage and reimbursement of costs and expenses (eighth operative paragraph of the judgment)*

¹ Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003, Series C No. 104, para. 60, and *Case of Chitay Nech et al. v. Guatemala. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of December 1, 201, third considering paragraph.

² Cf. *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 22, 2005, seventh considering paragraph, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 1, sixth considering paragraph six.

4. The State provided information on the payments made to each beneficiary for pecuniary and non-pecuniary damage and to Jacobo Roberto Kawas Fernández for reimbursement of costs and expenses, as ordered (*supra* having seen paragraph 1). The State forwarded documentary evidence of each payment to the Court.³

5. The representatives indicated that “the next of kin of Blanca Jeannette Kawas Fernández [...] indicated that they had received the said payments”; consequently the representatives considered that “the State has complied with its obligation to compensate the victims of the instant case for the pecuniary and non-pecuniary damage they suffered, and to reimburse the costs and expenses derived from the processing of the case before the organs of the inter-American human rights system.”

6. The Commission observed that the eighth operative paragraph of the judgment (*supra* having seen paragraph 1) “has been complied with.”

7. The information received from the parties reveals that the State has complied fully with this measure of reparation.

B. Obligation to conclude the criminal proceedings, or initiate any others that may be necessary, for the facts that gave rise to the violations in this case, and decide them as provided for by law, within a reasonable period of time (ninth operative paragraph of the judgment)

8. The State did not provide information on compliance with this obligation.

9. The representatives indicated that “the State did not refer to the pending criminal proceedings in relation to both the murder of [Blanca Jeannette] Kawas Fernández and the obstruction of its investigation [...].” Accordingly, they indicated that “the review of the case file [...] which they carried out] on October 27, 2011, at the Sectional Court of First Instance of Tela, reveals that only five investigative procedures were conducted between March 12, 2010, and September 5, 2011.” Moreover, “there is no record that these procedures were followed up on, or that they have had any positive results for the investigation.” They considered that these actions “are absolutely insufficient” and they expressed their concern “about the lack of progress in [compliance with this obligation ...] more than 16 years after the murder of Mrs. [...] Kawas Fernández.” Consequently, they asked the Court to reiterate to the State its obligation to conduct an effective and diligent investigation, in order to identify and punish all those responsible for the facts of this case, as well as to request the State, once again, to forward the information indicated in paragraph 195 of the judgment “as soon as possible” (*supra* having seen paragraph 1).

10. The Commission “observe[d] with concern the lack of information from the State” concerning this aspect, “a situation [that] is even more serious taking into account the information provided by the representatives, who indicate[d] that they had reviewed the case file and verified that very few procedures had been carried out, without further follow-up”. Therefore, it “consider[ed] that the Court should require the State to provide detailed and updated information on the progress of the investigations [...].”

11. Approximately 17 years have elapsed since Blanca Jeannette Kawas Fernández was deprived of her life violently. As established in the judgment (*supra* having seen paragraph

³ Expense Form of the Honduran Finance Ministry, photocopies of the checks issued by the General Treasury of the Republic of Honduras and receipts signed by the beneficiaries of the compensation (file of monitoring compliance with judgment, tome I, folios 191 to 222).

1), the authorities in charge of the initial investigation agreed that her murder “was preceded by careful planning involving people from the area”; and that at least one police agent carried out obstructive, coercive and threatening acts in order to prevent the investigation.⁴ Almost three years after it delivered the judgment in this case, the Court has not received any type of information from the State to enable it to verify compliance with this obligation, which includes both the investigation into the murder of Mrs. Kawas Fernández and the obstruction of justice in relation to the corresponding facts.⁵ However, the Court takes into account that the representatives, after consulting the respective case file, indicated that no significant progress had been made in the investigations. Therefore, the Court reiterates to the State that it must present detailed information on:

(a) The status of the existing criminal case files on the murder of Blanca Jeannette Kawas Fernández and the obstruction of its investigations; (b) the measures adopted to provide the agents in charge of the investigation with the necessary resources to carry out their work, as well as any measures of protection ordered, if appropriate; (c) the measures of protection adopted for the witnesses, and (d) any substantive progress made in the respective investigations and proceedings.⁶

12. The Court reminds the State that the obligation to comply with the Court's decisions includes the obligation to provide information opportunistically on the actions taken to this end.⁷ Based on the foregoing, the Court finds that this aspect remains pending compliance.

C. Obligation to publish certain paragraphs of the judgment in the Official Gazette and in a national newspaper with widespread circulation (tenth operative paragraph of the judgment)

13. The State advised that it had “proceeded to publish the judgment [...] as ordered by the Court” in “*La Gaceta*, the official gazette of the Republic of Honduras,” and in “*La Tribuna*, a newspaper with widespread national circulation,” on September 10 and 28, 2009, respectively, and forwarded photocopies of the said publications.⁸

14. The representatives indicated that they “accepted” the “publication made in the Official Gazette.” However they noted that the next of kin of Blanca Jeannette Kawas had advised them of their “dissatisfaction with the publication in [...] *La Tribuna* newspaper” because it “does not have widespread circulation at the national level and [...] is one of the newspapers with least circulation in the northern part [of the country],” where the facts of the case took place. According to the representatives, if the publication of the judgment is not made “widely in a newspaper that is read in that region, [...] this measure of reparation will be absolutely ineffective.” Therefore, they asked the Court to order that the judgment be published again “in a national newspaper which has an impact in the northern part of Honduras,” and sent the Court the pertinent parts of “a 2006 study by an American company, Urban & Associates Inc., on the consumer patterns and coverage of the media in Honduras,” together with a survey conducted by researchers of the Jesuit Reflection,

⁴ Cf. *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009. Series C No. 196, paras. 84, 86 and 87.

⁵ Cf. *Case of Kawas Fernández v. Honduras*, *supra* note 4, para. 191.

⁶ Cf. *Case of Kawas Fernández v. Honduras*, *supra* note 4, para. 195.

⁷ Cf. *Case of Barrios Altos v. Peru*, *supra* note 2, seventh considering paragraph, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 1, sixth considering paragraph.

⁸ Cf. *La Gaceta*, official gazette of the Republic of Honduras of September 10, 2009 (file of monitoring compliance, tome I, folio 8) and pages of *La Tribuna* newspaper of September 28, 2009 (file of monitoring compliance, tome I, folio 58 to 63).

Research and Communication Team (hereinafter "ERIC") "of [50] inhabitants of El Progreso, where this organization has its offices, and of Tela."

15. The Commission "appreciate[d] that the State had complied with the official publication [of the judgment...]." However, it indicated that "it does not have sufficient elements to state its position in relation to the publication in a national newspaper with widespread circulation. In order to resolve this dispute, [it considered] pertinent that the Inter-American Court [...] ask the State to provide information on the criteria used to choose *La Tribuna*, as well as the necessary documentation to prove that this medium does, in fact, have widespread national circulation."

16. The information provided by the parties reveals that the State has complied, within the six-month period established in the judgment (*supra* having seen paragraph 1), with its obligation to publish certain parts of the judgment in its Official Gazette. However, the elements provided by the representatives do not reveal that *La Tribuna* is not a national newspaper, so that the Court finds that the State has also complied with the obligation to publish certain paragraphs of the judgment in a newspaper with widespread national circulation. Consequently, the State has complied with the tenth operative paragraph of the judgment.

D. Obligation to organize a public act of acknowledgement of international responsibility (eleventh operative paragraph of the judgment)

17. The State advised that, on June 10, 2010, it had organized a "Public act of acknowledgment of international responsibility to restore the memory of the environmentalist, Blanca Jeannette Kawas Fernández," and forwarded documentary evidence in support of this information to the Court.⁹

18. The representatives indicated that the next of kin of Mrs. Kawas Fernández had "expressed their agreement with the ceremony held on June 10, 2010."

19. The Commission observed that the eleventh operative paragraph of the judgment "has been complied with."

20. According to the information provided by the parties, the State has complied with the obligation to organize a public act of acknowledgment of international responsibility, in accordance with the eleventh operative paragraph of the judgment (*supra* having seen paragraph 1).

E. Obligation to erect a monument in memory of Blanca Jeannette Kawas Fernández, and to put up signs in the national park named after her (twelfth operative paragraph twelve), and obligation to conduct a national awareness-raising campaign on the importance of the work of environmentalists in Honduras and their contribution to the defense of human rights (fourteenth operative paragraph of the judgment)

⁹ Cf. Report of the Secretariat of State for the Interior and Population on the "Public act of acknowledgement of international responsibility to restore the memory of the environmentalist, Blanca Jeannette Kawas Fernández in compliance with the judgment delivered by the Inter-American Court of Human Rights against the State of Honduras" (file of monitoring compliance, tome I, folios 223 to 229).

21. In a brief of October 20, 2011, (*supra* having seen paragraph 2), regarding the obligation to erect a monument, the State indicated that it was coordinating this measure of reparation with Jaime Watt Kawas, son of Mrs. Kawas Fernández. Regarding the awareness-raising campaign, it advised that, "currently, the Justice and Human Rights Ministry is coordinating its implementation with other public institutions, as well as with non-governmental organizations working in the area of the environment." The State indicated recently that "the two-year time frame for complying with these two measures of reparation [was] about to expire," and therefore asked the Court for "a six-month extension as of that date to comply with the [eleventh and fourteenth] operative paragraphs of the judgment [...]."

22. The representatives indicated that they had "contacted Jaime Watt, who stated that the State had not approached him recently to reach agreement on the construction of the monument." According to the representatives, Mr. Watt indicated that "approximately two years ago, when they [*sic*] presented a proposal for the design of the monument, the State asked them [*sic*] also to find a piece of land to erect it on, to which the family objected, considering that it was incumbent on the State to comply with its international obligations." Since then, the representatives had apparently not "received information regarding the construction of the monument in memory of Jeannette Kawas Fernández."

23. Regarding "the placing of signs in the Jeannette Kawas Fernández national park," the representatives indicated that "according to information provided to them by the PROSALANTE Association – to which Mrs. Kawas Fernández belonged – to date, only 6 of the 44 signs that the State had to place in this park had been installed." Lastly, the representatives indicated that they were not "aware of the actions undertaken by the State to coordinate implementation of the awareness-raising campaign."

24. The Commission "t[ook] note of the time frame that the Court had granted the State to report on compliance" with the twelfth and fourteenth operative paragraphs of the judgment (*supra* having seen paragraphs 1, 2 and 5 and *infra* considering paragraph 25) and considered it "necessary that, in this report, the State refer" to the observations of the representatives concerning these aspects (*supra* considering paragraphs 22 and 23).

25. The Secretariat's note of October 26, 2011 (*supra* having seen paragraph 5), confirmed that the time frame granted for compliance with the said twelfth and fourteenth operative paragraphs of the judgment had expired on May 6, 2011. In view of the State's request for an "extension" (*supra* having seen paragraphs 2 and 21), it was advised that it had six months to present information on compliance with both aspects; in other words, until April 26, 2012. The Court clarifies that this is not an extension, because the judgment established a time frame of two years to comply with both measures of reparation. Consequently, the Court awaits this information, and considers that the twelfth and fourteenth operative paragraphs of the judgment (*supra* having seen paragraph 1) remain pending compliance.

F. Obligation to provide psychological and/or psychiatric treatment to Blanca Fernández, Selsa Damaris Watt Kawas, Jaime Alejandro Watt Kawas, Jacobo Roberto Kawas Fernández, Jorge Jesús Kawas Fernández and Carmen Marilena Kawas Fernández (thirteenth operative paragraph of the judgment)

26. Neither the State nor the representatives referred to this measure of reparation. For its part, the Commission "consider[ed] that the Court should require the State to submit detailed and updated information on [...] the actions taken to provide health care services."

27. The judgment ordered the State to provide “adequate and effective psychological and/or psychiatric treatment, free of charge and immediately [...] to the next of kin considered victims [...]” who requested this within two years of notification of the judgment.¹⁰ The Court has no information that would allow it to determine whether any of the victims, beneficiaries of this measure, requested this psychological and/or psychiatric treatment before May 6, 2011, the date on which the two-year period mentioned by the representatives expired.¹¹ Consequently, the State and the representatives must present updated information on each of the beneficiaries of this measure, indicating whether they requested psychological and/or psychiatric treatment within the time frame established by the Court and, if appropriate, indicating the measures taken to provide the necessary treatment. Accordingly, the Court considers that this obligation remains pending compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and pursuant to Articles 33, 62(1), 62(3), 65 and 68(1) of the American Convention on Human Rights, 24 and 30 of its Statute, and 31(2) and 69 of its Rules of Procedure,

DECLARES THAT:

1. In accordance with the provisions of this order, the Republic of Honduras has complied with the following obligations established in the judgment:

a) Pay Blanca Fernández, Selsa Damaris Watt Kawas, Jaime Alejandro Watt Kawas, Jacobo Roberto Kawas Fernández, Jorge Jesús Kawas Fernández and Carmen Marilena Kawas Fernández, the amounts established in the judgment as compensation for pecuniary and non-pecuniary damage and reimbursement of costs and expenses, as appropriate, within one year of notification of the judgment (*eighth operative paragraph of the judgment and considering paragraphs 4 to 7*);

b) Publish in the Official Gazette and in a newspaper with widespread national circulation, once, paragraphs 1 to 8 of Chapter I, 17 to 35 of Chapter V, 45 to 155 of Chapters VII, VIII and IX, and 189 to 195 of Chapter X of th[e] judgment, without the corresponding footnotes, and the operative paragraphs, within six months of notification of the judgment (*tenth operative paragraph and considering paragraphs 13 to 16*), and

c) Organize, within one year, a public act of acknowledgement of international responsibility (*eleventh operative paragraph of the judgment and considering paragraphs 17 to 20*).

¹⁰ Cf. Case of *Kawas Fernández v. Honduras*, *supra* note 4, para 209.

¹¹ The judgment (*supra* having seen paragraph 1) was notified to the representatives on May 6, 2009 (merits file, tome III, folios 879 and 880).

2. In accordance with the provisions of this order, the Republic of Honduras has not complied with the following obligations established in the judgment:

- a) Conclude the criminal proceedings, or initiate any others that may be necessary, for the facts that gave rise to the violations in this case, and decide them as provided for by law, within a reasonable period of time (*ninth operative paragraph of the judgment and considering paragraphs 8 to 12*);
- b) Erect, within two years, a monument in memory of Blanca Jeannette Kawas Fernández, and put up signs in the national park named after her, (*twelfth operative paragraph of the judgment and considering paragraphs 21 to 25*);
- c) Provide free of charge, immediately and for as long as necessary, [...] psychological and/or psychiatric treatment to Blanca Fernández, Selsa Damaris Watt Kawas, Jaime Alejandro Watt Kawas, Jacobo Roberto Kawas Fernández, Jorge Jesús Kawas Fernández and Carmen Marilena Kawas Fernández, should they request this (*thirteenth operative paragraph of the judgment and considering paragraphs 26 and 27*), and
- d) Conduct, within two years, a national awareness-raising campaign on the importance of the work of environmentalists in Honduras and their contribution to the defense of human rights (*fourteenth operative paragraph of the judgment and considering paragraphs 21 to 25*).

AND DECIDES:

- 1. To require the Republic of Honduras to adopt all necessary measures to comply effectively and promptly with the aspects that remain pending indicated in the second declarative paragraphs *supra*, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.
- 2. To request the Republic of Honduras to present to the Inter-American Court of Human Rights, by April 26, 2012, at the latest, a complete and detailed report on the measures taken to comply with the reparations ordered by the Court that remain pending compliance, as established in this order. Subsequently, the Honduran State must continue presenting a report on compliance every three months.
- 3. To request the representatives of the victims and the Inter-American Commission on Human Rights to present any observations they deem pertinent on the reports of the Republic of Honduras mentioned in the preceding operative paragraph, within four and six weeks, respectively, of receiving them.
- 4. To keep open the proceedings of monitoring compliance with regard to the pending aspects of the judgment that are indicated in the second declarative paragraph *supra*.
- 5. To require the Secretariat of the Court to notify this order to the Republic of Honduras, the Inter-American Commission on Human Rights, and the victims or their representatives.

Diego García-Sayán
President

Manuel Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary