

**Order of the  
Inter-American Court of Human Rights  
of November 29, 2008**

**Request for Provisional Measures  
With regard to Honduras**

**Matter of Kawas Fernández v. Honduras**

**Having seen:**

1. The brief dated February 4, 2008, received on that same day by the Secretariat of the Inter-American Court of Human Rights (hereinafter "the Secretariat"), whereby the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed, pursuant to Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 33 et seq. of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), an application against the Republic of Honduras with the Inter-American Court of Human Rights (hereinafter "the Court") for "the [alleged] extrajudicial execution of environmentalist Blanca Jeannette Kawas [...], the [alleged] failure to conduct a diligent investigation and to punish those responsible for her death and, in general, for the [alleged] obstruction of justice as well as for the [alleged] failure to make adequate reparations to her next of kin." The original petition, together with the annexes thereto, was received by the Secretariat on February 25, 2008. At present, said case is ready to proceed to oral proceedings in accordance with Articles 40 et seq. of the Rules of Procedure.

2. The brief dated May 7, 2008 and the annexes thereto, received by the Secretariat on that same day, whereby the Center for Justice and International Law (hereinafter "CEJIL") and the *Equipo de Reflexión, Investigación y Comunicación (Reflection, Research and Communication Team) from the Society of Jesus* (hereinafter "ERIC"), representatives of the alleged victims (hereinafter "the representatives") filed their brief containing pleadings, motions and evidence (hereinafter "the brief containing pleadings and motions").

3. The brief dated July 3, 2008, received by the Secretariat on that same date, whereby the Republic of Honduras (hereinafter "the State") filed the answer to the application filed by the Commission as well as its comments on the written brief containing pleadings and motions.

4. The Order of the President of the Court dated October 7, 2008, calling the parties to a public hearing to be held on December 2, 2008.

5. The brief dated November 28, 2008, received by the Secretariat on that same day, whereby the representatives of the alleged victims, pursuant to Article 63(2) of the American Convention and Article 25 of the Rules of Procedure, filed a request for

provisional measures to prevent irreparable damage to the right to life and humane treatment of Dencen Andino Alvarado.

6. The alleged facts upon which the request for provisional measures is based, namely:

- a. Mr. Dencen Andino Alvarado is "one of the most important witnesses in the investigation proceedings being conducted in Honduras for the murder of Jeannette Kawas, given that he was able to see the faces of the two men who perpetrated the crime as they were running away from the crime scene."
- b. On February 9, 1995, Mr. Dencen Andino Alvarado testified before the *Juzgado de Paz de lo Criminal* (Criminal Magistrates' Court) in and for Tela regarding the facts of the instant case, and on August 29, 2003 he rendered additional testimony.
- c. Mr. Dencen Andino Alvarado "has been subjected to coercion and intimidation by [a police officer] –suspected of involvement in the murder of Kawas- who attempted to coerce him not to testify in the domestic investigation proceedings. As a result, the witness fears for his life and during the proceedings he requested the prosecutor's office to provide protection".
- d. On November 27, 2008, Mr. Dencen Andino "received another death threat from [said police officer]."

7. The legal arguments put forward by the representatives to support the request for provisional measures, in which they stated that the facts described are of extreme gravity and urgency insofar as "it is clear that, given the renewed interest in the case in Honduras as a result of the proceeding pending before this [...] Court, the life of witness Dencen Andino Alvarado is in great danger; and if the threat [against him] is carried out, the witness will suffer irreparable damage. Moreover, the impunity of those responsible for the death of Kawas will be guaranteed inasmuch as Mr. Andino Alvarado is a key witness in the investigations."

**Considering:**

1. That Honduras has been a State Party to the American Convention since September 8, 1977 and that it accepted the jurisdiction of the Court on September 9, 1981.

2. That Article 63(2) of the American Convention provides that in cases of "extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court may adopt such provisional measures as it deems pertinent in matters it has under consideration.

3. That, as set forth in Article 25 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"):

1. At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.

[...]

3. In contentious cases already submitted to the Court, the victims or alleged victims, their next of kin, or their duly accredited representatives, may present a request for provisional measures directly to the Court.

[...]

4. That Article 1(1) of the Convention establishes the general obligation of the States Parties to respect the rights and freedoms enshrined therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, which obligation is imposed not only in connection with the power of the State but also in relation to the actions of individual third parties.<sup>1</sup>

5. That the adoption of these provisional measures does not imply a decision on the merits of the dispute<sup>2</sup> or on the State's responsibility for the events reported in connection with the case of *Kawas Fernández v. Honduras*. By adopting provisional measures, the Court is only exercising its mandate under the Convention, in cases of extreme gravity and urgency that require measures of protection in order to prevent irreparable damage to persons.<sup>3</sup>

6. That, in matters such as the one before this Court, the extreme seriousness of the threat should be assessed taking into account the specific context, and that it is clear that, if fundamental rights such as the right to life and physical integrity are subject to such type of threat, the context warrants consideration of provisional measures.<sup>4</sup>

7. That the urgency refers to special and exceptional situations that require and warrant immediate action and response aimed at averting the threat. These are circumstances that because of their own nature imply an imminent risk. The nature of the remedial action derives from the urgency of the threat. This should imply, above all, an immediate and, in principle, temporary measure in order to address such situation, insofar as the lack of response would be, in itself, dangerous.<sup>5</sup>

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<sup>1</sup> Cf. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considering clause No. 3; and *Matter of Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of May 2, 2008, Considering clause No. 19; and *Matter of Carlos Nieto Palma et al.* Provisional Measures regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of August 5, 2008, Considering clause No. 3.

<sup>2</sup> Cf. *Case of Guerrero-Gallucci and Martínez-Barrios*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering Clause No. 14; y, *Matter of "Globovisión" Television Station*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of January, 29, 2008, Considering Clause No. 13.

<sup>3</sup> Cf. *Matter of James et al* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of May 27, 1998, Considering clause No. 7, and *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of July 3, 2007, Considering clause No. 6, and *Case of Gloria Giralte de García-Prieto et al.* Provisional Measures regarding El Salvador. Order of the Inter-American Court of Human Rights of January 27, 2007, Considering clause No. 6.

<sup>4</sup> Cf. *Matter of Carlos Nieto Palma et al.*, *supra* note 1, Considering Clause No. 16; and *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*. Provisional Measures regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering clause No. 17.

<sup>5</sup> Cf. *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, *supra* note 4, Considering Clause No. 18.

8. That, in the instant case, the irreparable nature of the extremely serious and urgent threat relates to the right to life and humane treatment. In addition, the Court notes that the testimony given by Mr. Dencen Andino Alvarado in the domestic proceedings is related to the subject matter of this case.

9. That, based on the facts as presented before the Court by the representatives during the proceedings regarding the instant case, the situation of Mr. Dencen Andino Alvarado is, *prima facie*, one of extreme gravity and urgency that require the adoption of measures of protection in order to prevent irreparable damage to him. The foregoing will allow Mr. Andino Alvarado to be safe during the investigation and the proceedings in the criminal case in which he is a witness. The necessary measures to be adopted must effectively prevent Mr. Andino Alvarado's loss of life and injury to his physical integrity.

**Therefore,**

**The Inter-American Court of Human Rights,**

in accordance with Article 63(2) of the American Convention on Human Rights and by virtue of the authority vested in it by Article 25 of the Rules of Procedure,

**Decides:**

1. To require the Republic of Honduras to adopt, without delay, such measures as may be necessary to effectively ensure the protection of Mr. Dencen Andino Alvarado's life and physical integrity.

2. To call upon the Government of the Republic of Honduras to adopt such measures as may be necessary to ensure that Mr. Dencen Andino Alvarado is not persecuted or threatened as a result of his participation as a witness in the investigation conducted by the authorities in the case regarding the murder of Blanca Jeannette Kawas Fernández, as set forth in Considering Clause No. 9 of this Order.

3. To require the State that the measures of protection ordered herein be designed and implemented with the participation of the beneficiaries of such measures or their representatives.

4. To call upon the State to provide information to the Inter-American Court of Human Rights, every two months, regarding the provisional measures adopted, and to request the beneficiaries of these measures or their representatives and the Inter-American Commission on Human Rights to submit their comments on the State's bimonthly reports, within four and six weeks respectively, following receipt thereof.

5. To request the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights, the beneficiary of these measures and his representatives.

Cecilia Medina-Quiroga  
President

Diego García-Sayán

Sergio García-Ramírez

Manuel E. Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri  
Secretary

So ordered,

Cecilia Medina-Quiroga  
President

Pablo Saavedra-Alessandri  
Secretary