

POLICY AND PRACTICE NOTE

Kawas v. Honduras – Protecting Environmental Defenders

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Abstract

This policy note examines the reasoning and implications of the judgment of the Inter-American Court of Human Rights in the milestone case of *Kawas v. Honduras*. In its first-ever ruling on environmental defenders, the Court found a positive obligation on the part of member states in the Hemisphere to protect environmentalists who are in serious jeopardy from human rights violations. The *Kawas* case is a paradigmatic example of the constant threats these activists encounter, both in the Americas and internationally, and states in the region are now on notice to ensure special protection to those most in danger of harm. The Court arrived at the remarkable juncture of 'making visible and potentially punishable what heretofore has been invisible and unpunished'. An Epilogue addresses the subsequent ruling in the 'Mexican Ecologists' case, and offers recommendations to human rights and environmental defenders and practitioners both regionally and internationally.

Keywords: Environmental human rights defenders; Inter-American Commission on Human Rights; Inter-American Court on Human Rights; *Kawas v. Honduras*

Environmental activists find themselves in a special situation of double vulnerability. This is due to the fact that the majority of the cases they defend confront not only State interests but also the interests of powerful economic groups in connivance with, and much more powerful than, the State, with their own armed forces and an enormous degree of impunity. CEDHA – Center for Human Rights and Environment (CEDHA, 2003)

Introduction

This policy note examines the reasoning and implications of the judgment of the Inter-American Court of Human Rights in the milestone case of *Kawas*

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Fernández v. Honduras.¹ In April 2009, in its first-ever ruling on environmental defenders, the Court found a positive obligation on the part of member states in the Hemisphere to protect environmentalists who are in serious jeopardy from human rights violations.

Two notable sections of the *Kawas* judgment extend the Court's line of authority in terms of governments' legal obligations to protect human rights defenders to that of also protecting 'at-risk' environmental advocates, and these sections are at the heart of this policy note:

- Finding a violation of American Convention on Human Rights Article 16 (freedom of association) in the judgment's Chapter IX (*Kawas v. Honduras*: 140–55),² and
- Ruling in the Chapter X section on 'Reparations' with regard to guarantees of non-repetition (*ibid*: 210–15).

The Court also found that Honduras violated the following rights of Jeannette Kawas and/or her family: right to life, right to humane treatment, and rights to judicial guarantees and protection (access to justice). However, the focus of this analysis is the precedent that was established in the *Kawas* case regarding environmental defenders' protection worldwide, and that was established especially within the ruling of a violation of the right to freedom of association.

This is a pioneering case considering the context of historical violence that natural resources defenders have to face in Honduras and throughout the region, and this policy note examines the ruling from the perspective of its application to future protection of these activists around the world ([Center for Justice and International Law \(CEJIL\)](#), undated).

The groundbreaking Center for Human Rights and Environment (CEDHA) 2002–3 Report, 'The Human Cost of Defending the Planet', described the unfortunate reality that exists in the world today:

[T]o be an environmentalist is... a dangerous undertaking; environmental activists are being systematically beaten, threatened, detained, raped, tortured and murdered as part of a deliberate attempt to silence and intimidate both the defenders and those they represent. (CEDHA, 2003: 5)

The facts of the *Kawas* case illustrate this horrific reality. Forty-eight-year-old environmental advocate Blanca Jeannette Kawas

1 *Case of Kawas Fernández v. Honduras*, Judgment of 3 April 2009, Series C No. 196 (hereinafter cited as *Kawas v. Honduras*).

2 American Convention on Human Rights 'Pact of San José, Costa Rica', 22 November 1969, OASTS 36, OAS Doc. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (1979), 1144 UNTS 123 (entered into force 18 July 1978). Article 16(1) of the Convention governs freedom of association and provides that: 'Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.' See also n. 16.

Fernández was shot to death in her home on the night of 6 February 1995, in connection with her opposition to the exploitation of the Punta Sal Peninsula forestlands and illegal logging in a National Park area, which she helped to designate and now bears her name (*Honduras News in Review*, 2008; *Asociación por los Derechos Civiles (ADC)*, 2009). She was a founder of PROLANSATE (Fundación para la Protección de Punta Sal, Lancetilla y Texiguat), a Honduran conservation foundation that sought to safeguard the human right to a healthy environment by improving the quality of life of the people living in the watersheds of the Tela Bay area on the Caribbean coast (including approximately 1,500 Garífuna people).³

In its introduction to the case, the Court refers to the application filed by the Inter-American Commission on Human Rights (IACHR), and points out that, as President of PROLANSATE, Kawas ‘had denounced, among other matters, the attempts by private individuals and entities to illegally appropriate Punta Sal, as well as the contamination of the lakes and the depredation of the forests of the region’ (*Kawas v. Honduras*: 2). The Representatives’ brief to the court noted:⁴

Blanca Jeannette Kawas was a well-known Honduran defender of the environment who promoted the protection of her country’s natural resources, principally in Tela, an area located on the Atlantic coast of Honduras. . . . [her death] was particularly symbolic, because she was the first person murdered in Honduras for defending natural resources and the environment. After her murder, and owing to the impunity that characterized it, a series of murders of other defenders of the environment in Honduras occurred. (*Kawas v. Honduras*: 5, citing the brief of the Representatives)

Jeannette Kawas fought for natural resources protection, effective forest management and parks preservation. Like so many other committed environmental activists throughout the Americas, her campaigns provoked powerful economic interests, private investors and companies to attempt to dismantle her efforts (*Environmental Law Alliance Worldwide (ELAW)*, 2009). Hers was the first of a string of seven murders of, or acts of aggression and threats against, environmental defenders in that volatile region of Honduras (*IACHR*, 2008: 45–8).

In its ruling, the Court found the Honduran government legally responsible for Kawas’s assassination. The Court held that the Honduran government, which had colluded with those commercial interests operating in the area, failed to properly investigate her murder and prosecute her killers (*Kawas v. Honduras*: 75–108). This cover-up resulted in a continuation of the state culture of impunity for violations of the human rights of

3 PROLANSATE Foundation, Tela, Honduras, <http://www.prolansate.org>.

4 See n. 9.

environmental defenders, and this is the situation currently found throughout the Hemisphere ([Environmental Defender Law Center \(EDLC\), 2009](#)).

The Inter-American System: Commission and Court Procedure

The Inter-American system of protection of human rights includes human rights norms laid out in the Charter of the Organization of American States (OAS),⁵ the American Declaration of the Rights and Duties of Man,⁶ the American Convention on Human Rights and its Protocols, together with corresponding supervisory organs: the Inter-American Commission on Human Rights (IACHR)⁷ and the Inter-American Court of Human Rights,⁸ as well as the system's political organs, the Permanent Council and the General Assembly of the OAS ([International Center for Not-for-Profit Law \(ICNL\), 2011](#)).

As to the Inter-American system procedural history in this case, domestic legal remedies were pursued by Kawas's next of kin and repeatedly thwarted by the Honduran government over the seven years following her murder. In 2003, CEJIL and the Honduras Team for Reflection, Research and Communication of the Company of Jesus (ERIC) (Kawas family Representatives) lodged a petition before the IACHR, alleging that Honduras was responsible for Jeannette Kawas's killing (in violation of the American Convention which it is party to), as well as the murders of two other environmental activists.^{9,10} The IACHR

5 Charter of the Organization of American States (OAS), signed in Bogotá in 1948 and amended by the Protocol of Buenos Aires in 1967, by the Protocol of Cartagena de Indias in 1985, by the Protocol of Washington in 1992, and by the Protocol of Managua in 1993.

6 American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948.

7 Any person, group of persons or non-governmental organization (NGO) may present a petition to the IACHR alleging violations of the rights protected in the American Convention on Human Rights and/or the American Declaration of the Rights and Duties of Man. The petition may be presented in any of the four official languages of the OAS and may be presented on behalf of the person filing the petition or on behalf of a third person.

The IACHR may only process individual cases where it is alleged that one of the member states of the OAS is responsible for the human rights violation at issue. The IACHR applies the Convention to process cases brought against those states that are parties to that instrument. For those states that are not parties, the Commission applies the Declaration ([IACHR, undated b](#)).

8 Headquartered in San José, Costa Rica, the Inter-American Court of Human Rights is 'an autonomous judicial institution whose purpose is the application and interpretation of the [Convention]' (Article 1 of the Court's Statute). The Court was created by the entry into force of the Convention on 18 July 1978, and can issue advisory as well as adjudicatory decisions. The Court only has adjudicatory jurisdiction over cases brought to it by the IACHR or by state parties to the Convention that have recognized the Court's jurisdiction (e.g. Honduras) ([IACHR, 2010a](#): Introduction).

9 Representatives in *Kawas* (term used by the IACHR and the Court) are the attorneys and advisors from the Center for Justice and International Law (CEJIL) and the Honduras Team for Reflection, Research and Communication of the Company of Jesus (ERIC).

10 The *Escaleras* and *Luna* cases are still in the Merits phase at the IACHR, as are cases of other environmental defenders that were admitted at the Commission in the past decade

declared the case admissible in 2005, acknowledging that granting an exception to the procedural requirement of exhaustion of domestic remedies was based on the unwarranted delay by the state (IACHR, 2005; IACHR, 2008: 10–36).

The case proceeded in the Commission for five years. The Commission ultimately concluded that Honduras violated the following articles of the Convention for Jeannette Kawas: Article 4(1) (right to life (via Article 1(1), which obligates states parties to ‘undertake to respect the rights and freedoms recognized herein and to ensure to all persons . . . the free and full exercise of those rights and freedoms . . .’), and for her next of kin: due process violations Articles 8(1) and 25 (rights to judicial guarantees and protection (via Article 1(1)). Finally, in February 2008, after negotiations for reaching a friendly settlement broke down and Honduras had not implemented or made progress on the recommendations in the Commission’s report on the Merits, the Commission submitted the case to the Court (IACHR, undated b; IACHR, 2008: 1–4).

Kawas’s case progressed through Court briefs and hearings for more than a year, beginning with the Representatives adding the allegation of a violation of Article 16 (via Article 1(1)) (freedom of association) to the other allegations that the IACHR posited previously (*Kawas v. Honduras*: 6). In July 2008, the state partially acknowledged international responsibility and acquiesced to the Articles 8(1) and 25 due process violations to the next of kin, but denied Articles 4(1) (right to life) and 16 violations to Jeannette Kawas, and also denied the Article 5 (right to humane treatment) violation to her family (ibid: 7–8).

Significantly, the Honduran government did acknowledge the results achieved by Kawas through her work ‘as a defender of human rights and the conservation of the environment and natural resources’ and confirmed that it ‘regretted the events that caused her irreparable loss’. But the state rejected the IACHR’s argument that the Kawas case reflects the situation of environmental defenders in Honduras, and also dismissed the Representatives’ argument that the impunity surrounding the Kawas case generated a context of violence against environmentalists (ibid: 8, 19).

Right to Life and Due Process Violations

In November 2008, the Court ordered Provisional Measures to protect an eyewitness to Kawas’s murder.¹¹ These measures remained through the 2009 judgment, and are still in effect at the present time (ibid: 15–16).

(Interamerican Association for Environmental Defense (AIDA), 2010a). See also Epilogue to this policy note regarding the recent *Cabrera/Montiel v. Mexico* case and its implications. (Regarding Admissibility and Merits phases of IACHR cases, see IACHR, undated b.)

11 Provisional Measures are an instrument used by the Court under Article 63(2) of the Convention in cases of extreme gravity and urgency to prevent irreparable damage to persons. The Provisional Measures, ordered *ex officio* or at the request of a party, result in protection offered by the respondent state to alleged victims. Those can include family

Unfortunately there was never a request for Precautionary Measures submitted on Jeannette Kawas's behalf to the IACHR in the months prior to her murder, which is part of the justification for the state's rejection of the violation of Article 4(1) (right to life).¹²

Honduras replied to the Court that:

it was not in the position of guarantor . . . , since 'Mrs. Kawas had not reported any threats to her life, and was not under the custody and protection of the State . . . [The State was not] informed [either] of any actual or immediate risk that could endanger her life or integrity.' (*Kawas v. Honduras*: 47)

A key issue arises out of the state's refutation of the Commission's and the Representatives' claims noted above that Honduras 'knew or should have known' about Jeannette Kawas (a celebrated environmental leader) being at risk. Despite Honduras's denial, the Court found that, although the Kawas assassination was under orders from private interests, her killing was facilitated by the intervention of government agents; at least one agent of the state participated in the events that ended Kawas's life; and these acts were motivated by her 'vision regarding environmental protection' (ibid: 97–9; ADC, 2009).

The Court concluded that her shooting was premeditated and that government officials were also involved in its concealment, noting:

Nor is it required that the agents to whom such violations are attributed be identified individually, but rather it is enough to prove that there have been acts or omissions that allowed for the perpetration of such violations or that the State has failed to fulfill an obligation. (*Kawas v. Honduras*: 73, 76, citing *Velásquez-Rodríguez v. Honduras*: 173, 134, 172, 176)¹³

members, witnesses, journalists, political candidates, human rights defenders, etc. This does not in any way result in prejudging the merits of the matter before the Court (Burbano Herrera, 2010; Inter-American Court of Human Rights, 2009: Article 27).

12 The mechanism for Precautionary Measures is established in Article 25 of the IACHR Rules of Procedure. In serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a state adopt Precautionary Measures to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case, as well as to persons under the jurisdiction of the state concerned, independently of any pending petition or case.

The Precautionary Measures may be of a collective nature to prevent irreparable harm to persons due to their association with an organization, a group, or a community with identified or identifiable members. As a result, the number of Precautionary Measures granted does not reflect the number of persons protected by their adoption. Moreover, the Rules of Procedure establish that the granting of such measures and their adoption by the state shall not constitute a prejudgment on the violation of the rights protected by the Convention or other applicable instruments (IACHR, 2010b).

13 *Case of Velásquez-Rodríguez v. Honduras*, Judgment of 29 July 1988, Series C No. 4.

Additionally, the Court went to great lengths through its ‘evidence appraisal test’ to establish that, after Kawas’s death, Honduras committed serious omissions in its investigations, thus impeding the plaintiffs’ ability to learn the truth of what happened (*Kawas v. Honduras*: 75–108). The Court declared that a state cannot allege its lack of effectiveness in the investigation to avoid admitting its responsibility. Due to the resulting impunity, the Court explained that environmental advocates in the region (including those in PROLANSATE) remained at risk through to the present time (*ibid*: 97–9).¹⁴

The Court also established Honduras’s responsibility for failing to guarantee access to justice (Articles 8(1) and 25) to the next of kin, as well as for violating their right to humane treatment (Article 5(1)), noting that Kawas’s murder remained unpunished, with the legal proceedings still in preliminary stages, even as judgment was rendered in April 2009 (*ibid*: 123, 139, 109–18). The judges opined that 14 years exceeds any reasonable term, and that all impediments encountered were the Honduran judicial authorities’ complete responsibility (*ibid*: 100–108; *ADC, 2009*).

Violation of Article 16: Right to Freedom of Association

When she was killed in 1995, Jeannette Kawas was PROLANSATE’s President and was lawfully exercising her right to freedom of association guaranteed under Article 16 of the Convention.¹⁵ Along with the negative obligations created under this article, the Court also cited to two other key cases from 2005 and 2007 addressing freedom of association, commenting on the positive obligations of states to ‘prevent attacks on it, to protect those who exercise it, and to investigate violations restricting such freedom’ (*Kawas v. Honduras*: 140–55).¹⁶ In one of these cases the Court stated:

[T]hose who are protected by the Convention not only have the right and freedom to associate freely with other persons, without the

14 This implicates the legal duties of governments to protect these activists – as is detailed in subsequent sections and in the Conclusion of this policy note.

15 The IACHR and the Court, through their case law and other Advisory Opinions, have raised the Inter-American standards for the protection of the right to freedom of association. The IACHR has indicated that the right to freedom of association has been widely recognized as a substantive civil right that offers protection from the arbitrary interference of the state when persons decide to associate with others, and it is fundamental for the existence and functioning of a democratic society (*INCL, 2011*).

16 ‘Article 16(1). . . provides that individuals under the jurisdiction of the States Parties have the right and freedom to associate freely with others, without any interference by the public authorities that could limit or impair the exercise of such right. It relates, therefore, to the right to join with others in lawful common pursuits, without pressure or interference that may alter or impair the nature of such purpose’ (*Kawas v. Honduras*: 143). (See n. 2.) Additionally, the American Declaration provides that freedom of association is the right of every person ‘to associate with others to promote, exercise and protect [their] legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature’ (Article XXII).

interference of the public authorities limiting or obstructing the exercise of the respective right, which thus represents a right of each individual; but they also enjoy the right and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose. (*Huilca-Tecse v. Perú*: 69)¹⁷

The Court emphasized the importance of protecting human rights advocates for the role they play in defending and promoting the rights in a democratic society,¹⁸ pointing out

that the States have the *duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety*; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity. (*Kawas v. Honduras*: 145, emphasis added)

In this chapter of the judgment, focusing on the Convention's provisions on the right to freedom of association, the Court placed significant prominence on 'the important role of human rights defenders in democratic societies', and, based on the positive obligation of governments to provide special protection to human rights advocates (environmental activists among them), confirmed that states must guarantee that defenders can group together under the form of any association they think best to do their work (ibid: 145–8).

In arriving at the conclusion that environmental defenders should be considered human rights defenders, the Court expounded on the concept that human rights defense is 'not limited to civil and political rights, but necessarily involves economic, social and cultural rights monitoring, reporting and education' (ibid: 147).¹⁹ In addition to the international and regional treaties mentioned previously, the Court also referred to the reports of the United Nations (UN) Special Rapporteur on the Situation of Human Rights Defenders (UN, OHCHR, undated) as well as the land-

17 *Case of Huilca-Tecse v. Perú*, Judgment of 3 March 2005, Series C No. 121.

18 'The right to freedom of association must also be protected because without it, various other human rights cannot be fully exercised. The UN Declaration on Human Rights Defenders speaks throughout in terms of rights to be exercised "individually and in association with others".' (EDLC, 2009: n. 72, citing UN General Assembly, 1998). (See more, n. 20.)

19 '[B]ased on international law norms of "universality, indivisibility and interdependence" found in the American Declaration..., American Convention [Preamble], and the Inter-American Democratic Charter, and upheld by the Court's case law' (*Kawas v. Honduras*: 147).

mark UN Declaration on Human Rights Defenders (UN General Assembly, 1998).²⁰

Additionally, the Court commented on the ‘undeniable link between the protection of the environment and the enjoyment of other human rights’ and the multi-faceted issue of ‘the right to healthy environment’, citing both its own case law and that of the European Court of Human Rights, as well as OAS Resolutions, Article 11 of the Convention’s Protocol of San Salvador,²¹ and domestic national constitutions in the region (*Kawas v. Honduras*: 148). Article 11 of the San Salvador Protocol states that:

1. Everyone shall have the *right to live in a healthy environment* and to have access to basic public services.
2. The States Parties shall *promote the protection, preservation, and improvement* of the environment. (emphasis added)

The Court established the state’s liability for the Article 16 (freedom of association) violation, in relation to the existing link between Jeannette Kawas’s death and her work as an environmentalist (*Kawas v. Honduras*: 151–2). The Court made the crucial point that

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

Finally, the Court declared that Kawas’s unpunished murder has had an undeniable intimidating effect on all environmental rights defenders in Honduras, compounded by the aggravating factor that in the decade after her death, five environmental leaders were killed in similar circumstances (ibid: 154; ADC, 2009). Completing the connection to the finding of the Article 16 violation, the Court stated that in the region, environmentalists

20 The Human Rights Defenders Declaration is a set of safeguards designed to guarantee the rights of human rights defenders and ensure their proper protection. Following up on the 1998 Declaration, the UN General Assembly passed a comprehensive resolution on human rights defenders in December 2009, detailing the precarious situation of activists around the world and calling on UN member states to adopt strong and effective measures to prevent and eliminate human rights violations against defenders (UN General Assembly, 2009). The most recent OAS resolution regarding human rights defenders was adopted in June 2009 (OAS General Assembly, 2009). (See also IACHR, undated a, and IACHR, 2006.)

21 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (‘Protocol of San Salvador’), 17 November 1988, OASTS No. 69. Honduras is not a signatory (see signatories and ratifications listed by the OAS Department of International Law at <http://www.oas.org/juridico/english/sigs/a-52.html>, referenced 2 October 2011).

suffer threats, violent attacks and executions for the activities they perform (*Kawas v. Honduras*: 152–5).

Reparations: Guarantees of Non-Repetition and Duty to Protect

The noteworthy recognition by the Inter-American Court that environmental activists are human rights defenders, and that those advocates who are shown to be at risk require protection by states, is manifested in the subsection ‘Other reparations sought’ in the judgment’s ‘Reparations’ chapter (ibid: 210–15), as well as in the Separate Opinion by Judge García-Ramírez that accompanies the judgment (*Kawas v. Honduras*: Separate Opinion of Judge Sergio García-Ramírez: 10–12).²²

In this remedies chapter, the Court ordered the state to:

- pay the victim’s relatives compensation for material and nonmaterial damages and expenses;
- provide the fees to cover long-term psychological support for the next of kin;
- finally conclude its investigation of the crime and have the case settled in a reasonable period; and
- conduct various public acts of international recognition to honor Jeannette Kawas. (*Kawas v. Honduras*: 162–209; ELAW, 2009; ADC, 2009)

When the Court spoke to ‘guarantees of non-repetition’, it reviewed the requests of the Commission and the Representatives that Honduras should be ordered to implement a public policy to protect human rights/natural resources advocates and prevent violence against them, and ‘fight against impunity in connection with violations of the human rights of human rights advocates’ (*Kawas v. Honduras*: 210–11).

Additionally, the Court reiterated that the motives of Kawas’s murder concerned her work as an environmental defender, and that other environmental activists were also the targets of threats, attacks and murders.

Of consequence is the Court’s next declaration that, remarkably, the state itself ‘acknowledged the complex situation of those who devote themselves to defending the environment in that country’ (ibid: 212). In the first report Honduras filed to the UN Human Rights Committee in April 2005 regarding its implementation of the International Covenant on Civil and Political Rights,²³ the state wrote that:

In some instances . . . , 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

22 Separate Opinions in this Court are distinct from Dissents and Concurrences.

23 International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

sites that were regarded as the heritage of all . . . *Other local people who have attempted to exercise their right to dispose freely of the country's natural wealth and resources . . . have also been known to lose their lives when they have got in the way of powerful economic interests . . . , and those murders have gone unpunished.* (UN, Human Rights Committee, 2005: 15, emphasis added)²⁴

Of the more than 225 paragraphs in the *Kawas* judgment, the most pivotal is paragraph 213 of this 'Reparations' chapter. Here, the Court recognized that in 2007, Honduras created the 'Group for the Investigation of Environmental Activists' Deaths', housed in the Secretary of State's Office. However, the Court then countered their note of appreciation by reaffirming 'that the threats and attempts against the integrity and life of human rights supporters and impunity in th[ese] type[s] of events are particularly serious in a democratic society'.

Kawas reached its decisive and critical finding regarding protection of at-risk environmental defenders in that same paragraph, when it declared that:

the State has a duty to adopt [and] fulfill [all] measures . . . guaranteeing the free performance of environmental advocacy activities; the instant protection of environmental activists facing danger or threats as a result of their work; and the instant, responsible and effective investigation of any acts endangering the life or integrity of environmentalists on account of their work. (*Kawas v. Honduras*: 213, emphasis added)

Consequently, paragraph 214 concludes:

as a way to contribute to avoiding the recurrence of facts such as those of the instant case, the Court finds it appropriate to order the State to carry out a national campaign to create awareness and sensitivity regarding the *importance of environmentalists' work in Honduras and their contribution to the protection of human rights*, targeting security officials, agents of the justice system and the general population. (emphasis added)

Separate Opinion of Judge García-Ramírez

In the 'Preservation of the Environment' section of the Separate Opinion by Judge García-Ramírez, he was compelled to emphasize 'the special duty of the State when it comes to human rights defenders' (*Kawas v. Honduras*: Separate Opinion: 10). The judge made the persuasive point that

the violation of the duty of guarantee in this case – in which the right to life was violated – runs counter to the general protection of those

24 Some documents in the *Kawas* case transliterate the spelling of Jeannette to 'Janeth'.

who devote their life and work to the preservation of the environment, a service that reaches well beyond the individual right of one or a few persons: it concerns and affects us all. Such devotion has now become evident, since the victim was a recognized environmentalist who had faced opposition and adversity because of her being such. (ibid: 11, emphasis added)

Addressing the issue of the chilling effect of the impunity discussed in the judgment, Judge García-Ramírez put forth this final assertion:

Any actions and omissions that directly affect those who act in this context also intimidate others who are engaged in similar activities. Therefore, they create individual and social discouragement, causing serious damage to the community as a whole. The position of the Court on this subject is, moreover, in line with the repeated requirement that special protection be provided to persons engaged in the defense of human rights. Preservation of the environment, the integrity of which is a right of all, [militates] in that direction and [requires] protection. (ibid: 12, emphasis added)²⁵

Conclusion

In its judgment in the historic case of *Kawas Fernández v. Honduras*, the Inter-American Court of Human Rights found a legal duty on the part of member states in the Hemisphere to protect environmental defenders who are at risk of having their rights violated. The *Kawas* case is a paradigmatic example of the constant threats these activists encounter throughout the Americas (see EDLC, undated). While there may not be a general and systematic pattern of killings of environmental defenders in Honduras, that government and others in the region are now on notice to ensure special protection to those most in danger of harm.

The Court arrived at the remarkable juncture of ‘making visible and potentially punishable what heretofore has been invisible and unpunished’ (CEDHA, 2003: Prologue). Regrettably, the Court’s preventative measures regarding protection of environmental defenders are weak and limited to their Provisional Measures and to the Commission’s Precautionary Measures, both of which are fraught with problems of application and enforcement, as are the Court’s reparation measures in general.²⁶ The Inter-American Court of Human Rights, as well as the Inter-American

25 The words in square brackets are the author’s unauthorized corrected translation of the Spanish original, which has been corroborated with several colleagues associated with the Court, the IACHR and the Representatives from the *Kawas* case.

26 Subsequent papers by the author currently in progress, as well as her LL.M. thesis forthcoming in 2012, will address issues of effective and innovative remedies for, and protection of, environmental defenders.

Commission on Human Rights and other democratic institutions, should apply the important ruling in the *Kawas* case as they seek concrete ways to further strengthen appropriate remedies, and actively protect environmental rights advocates, both in the Americas and around the world.²⁷

Epilogue

In the months after the *Kawas* case was resolved, a critical subsequent case was decided at the Inter-American Court which has significant implications for human rights practitioners and environmental defenders both in the Americas and internationally. At the end of November 2010, the Court released its judgment in the ‘Mexican Ecologists’ case, *Cabrera/Montiel v. Mexico*, holding that the state was responsible for the arbitrary detention and torture of Rodolfo Montiel and Teodoro Cabrera, two environmental activists who were falsely imprisoned and subjected to horrific physical and psychological abuse by the Mexican military 10 years earlier.²⁸

In an insightful post-judgment commentary, attorney Jonathan Kaufman of EarthRights International (ERI), co-author of one of the *amicus* briefs in this case, noted that the *Cabrera/Montiel* legal victory came after nearly a decade during which Mexico obstructed investigations and blocked the victims and their advocates from seeking justice (Kaufman, 2010).²⁹ Unfortunately, for procedural and other reasons, the Court declined to consider the relationship between the abuses committed against Montiel and Cabrera and their environmental defense work, thereby limiting the reach of its decision. These attacks were part of a larger pattern of intimidation and violence against environmentalists whose activities threatened powerful local and international economic interests – the type of non-state actors (such as the lumber companies which Cabrera and Montiel confronted) alleged to be operating in complicity with states throughout the region and around the world.

Kaufman commented further that the ERI and Environmental Defender Law Center (EDLC), in their *amicus* briefs, argued that

the precarious status of environmental defenders imposes a heightened duty on states to take proactive steps to protect them, and that attacks on such persons due to their public interest activities amount to violations of their right to freely associate, to participate in government, and to be involved in development decisions that affect them.

27 See also *Interamerican Association for Environmental Defense (AIDA)*, 2010b, in particular 38–9.

28 *Case of Cabrera García and Montiel Flores v. México*, Judgment of 26 November 2010, Series C No. 220.

29 For more information see website of the Mexican Human Rights NGO, Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh), <http://centroprodh.org.mx/prodh>, specifically pages on the ‘Mexican Ecologists’ case.

These issues were not taken up by the Court, not because they weren't significant but because the Inter-American Commission (which receives and considers complaints and refers them to the Court only if the State respondent does not comply with its recommendations) had focused exclusively on the individual harms and judicial irregularities rather than the wider implications of the case. (ibid.)

The Commission stated that sufficient evidence was not presented to be able to find violations by Mexico of Articles 13 and 15, and most importantly, of Article 16 (freedom of association), the same violation which the Court did find against Honduras and so compellingly addressed in the *Kawas* case (IACHR, 2009: 30). In recent conversations with individuals who worked on both the *Cabrera/Montiel* and *Kawas* cases, it was pointed out that there were a number of issues that the attorneys who originally brought the 'Mexican Ecologists' case to the Commission in 2001, as well as the litigators who assisted later, could have dealt with differently. Doing so would then have allowed the Commission to treat the case as the Court later did in *Kawas*, by admitting the allegation of a violation of Article 16 (right to freedom of association), ultimately affording the victims fuller relief and remedy.

Even though in 2001 the freedom of association and other human rights violations noted above were unfortunately not alleged by the Representatives, when they were actually lodged as formal complaints five years later the Commission could have stepped beyond its usual procedural rules and accepted those allegations not addressed in the Admissibility phase, thereby fulfilling its mandate to assist victims of human rights violations in the Hemisphere (IACHR, undated b). However, some individuals close to *Cabrera/Montiel* reason that, because the victims did not give sufficiently detailed information about their environmental defense activities before and at the time of their detention, which would have more concretely demonstrated the connection between their activism as environmentalists and the human rights abuses they experienced at the hands of the Mexican military, the Commission (and later the Court) was unable (and unwilling) to 'connect the dots'.

Many human rights and environmental advocates are frustrated and disappointed that the Court did not extend its landmark *Kawas* holding in the follow-up *Cabrera/Montiel* judgment, because, if it had done so, it could then have developed important protection schemes for environmental defenders. Such defenders – because they often confront resource extraction businesses in collusion with governmental entities – are at extreme risk for their environmental activities (especially vulnerable leaders like *Kawas*, *Cabrera* and *Montiel*).

In a recent press release from the IACHR condemning the murder of an environmental activist in El Salvador, it was stated that

[i]n the last few years, the defense of the environment and its relationship to human rights are issues that have arisen more frequently in the Commission's work and in the petitions and requests it receives. At the same time, the IACHR is receiving more and more complaints about killings, threats, and harassment against those who work in defense of the environment. (IACHR, 2011)

A vital lesson all environmental and human rights defenders should take away from the *Cabrera/Montiel* and *Kawas* cases is to be extraordinarily vigilant about documenting their daily activities and all experiences of threats, warnings and potential or actual violations by either states or non-state organizations, in order to be able to access that detailed information whenever necessary. For example, if environmentalists are distributing flyers regarding their work on a day they are threatened or detained, that information can be a critical piece of evidence to subsequently prove human rights violations by governmental entities or third parties.

Additionally, it is important to utilize all the opportunities available for preventative measures from domestic, regional and international human rights mechanisms when environmental leaders are receiving threats or experiencing other forms of repression or criminalization.

Practitioners anywhere in the world who advocate on behalf of these courageous defenders must also be alert to occasions in the coming months and years to cite to the *Kawas* caselaw, and to employ the *Cabrera/Montiel* Commission and Court briefs from the Representatives and *amici*. It will be highly valuable to 'think outside of the box' and frame cases more broadly when bringing them to any of the international human rights mechanisms, whether at the UN or at the regional levels in the Americas, Europe, Africa, and hopefully soon in Asia. In this way, victims who are targeted for their human rights and environmental activism will have much greater success in protecting their crucial work or litigating against those who have violated the defenders' human rights.³⁰

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30 In another shocking example of a woman environmental rights defender being assassinated, we have learned since the writing of this Epilogue of the murder in India of civil rights and natural resources activist Shehla Masood. For more information see website of the Observatory for the Protection of Human Rights Defenders, a joint program of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), <http://www.omct.org/human-rights-defenders/urgent-interventions/india/2011/08/d21392/> (referenced 1 October 2011).

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The author dedicates this article in honor of Blanca Jeannette Kawas Fernández (1946–1995), and in memory of all the heroic human rights activists around the world who have lost their lives defending the environment.

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