

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF DECEMBER 1, 2003**

**PROVISIONAL MEASURES
IN THE MATTER OF THE REPUBLIC OF COLOMBIA
CLEMENTE TEHERÁN *ET AL.* CASE
(ZENÚ INDIGENOUS COMMUNITY)**

HAVING SEEN:

1. The June 19, 1998 Order of the Inter-American Court of Human Rights (hereinafter "the Court") in which it decided:

1. To ratify the Order of the President of the Inter-American Court of Human Rights of March 23, 1998.

2. To call upon the State of Colombia to maintain the measures necessary for protecting the lives and personal safety of Rosember Clemente-Teherán, Armando Mercado, Nilson Zurita, Edilberto Gaspar-Rosario, Dorancel Ortiz, Leovigildo Castillo, Santiago Méndez, Zoila Riondo, Saúl Lucas, José Guillermo Carmona, Celedonio Padilla, Eudo Mejía-Montalvo, Marcelino Suárez-Lazaro, Fabio Antonio Guevara, José Luis Mendoza, Misael Suárez-Estrada, Ingilberto M. Pérez, Martín Florez, Jacinto Ortiz-Quintero, Juan Antonio Almanza-Pacheco, José Carpio-Beltrán and Luis Felipe Álvarez-Polo, in order to avoid irreparable damage to them, in strict conformity with the obligation to respect and guarantee human rights, which it undertook to fulfill under Article 1(1) of the American Convention on Human Rights.

3. To call upon the State of Colombia to adopt such measures as may be necessary to protect the life and physical safety of Mr. Nilson Zurita in order to avoid irreparable damage to him upon his return to the San Andrés de Sotavento Zenú indigenous community Reservation.

4. To call upon the State of Colombia to investigate the acts denounced which gave rise to these measures, for the purpose of obtaining effective results that would lead to the discovery and punishment of those responsible.

5. To call upon the State of Colombia to continue to submit its reports on the provisional measures taken every two months, starting on the date of notification of this Order, and upon the Inter-American Commission on Human Rights to submit its comments on those reports within six weeks of its receipt thereof.

2. The January 29, 1999 Order of the Court in which it decided:

1. To require that the State of Colombia maintain the measures necessary to protect the lives and physical safety of Rosember Clemente Teherán, Armando Mercado, Nilson Zurita, Edilberto Gaspar Rosario, Dorancel Ortiz, Leovigildo Castillo, Santiago Méndez, Ziola Riondo, Saul Lucas, José Guillermo Carmona, Celedonio Padilla, Eudo Mejía Montalvo, Marcelino Suárez Lazaro, Fabio Antonio Guevara, José Luis Mendoza, Misael Suárez Estrada, Ingilberto M. Pérez, Martín Florez, Jacinto Ortiz Quintero, Juan Antonio Almanza Pacheco, José Carpio Beltrán, and Luis Felipe Alvarez Polo, in order to avoid irreparable damage to them, in strict conformity with the obligation to respect and

* Judge Hernán Salgado Pesantes informed the Court that, for reasons of *force majeure*, he would be unable to participate in the deliberation and signing of the instant Order.

guarantee human rights, which it undertook to fulfill under Article 1(1) of the American Convention on Human Rights.

2. To require the State of Colombia to investigate the acts denounced that gave rise to the present measures, for the purpose of obtaining effective results which will lead to the discovery and punishment of those responsible.

3. To require that the State of Colombia investigate the truthfulness of the possible connection of the persons protected by the provisional measures with illegal groups, especially the possible participation of Rosember Clemente Teherán (councilman), Juan Carlos Casado (mayor), and Marcelino Suárez (chief) in armed paramilitary groups.

4. To require that the State listen to the opinions of the petitioners and inform them as to progress in the implementation of the measures ordered by the Court.

5. To require that the State of Colombia, in its next report, include information on the measures adopted in relation to the operative paragraphs of the present Order.

6. To require that the State of Colombia continue to submit its reports every two months on the provisional measures taken and that the Inter-American Commission on Human Rights present its observations to those reports within a period of six weeks of their receipt.

3. The August 12, 2000 Order of the Court in which it decided:

1. To request that the State of Colombia maintain all the measures necessary to protect the life and personal integrity of Rosember Clemente Teherán, Armando Mercado, Nilson Zurita, Edilberto Gaspar-Rosario, Dorancel Ortiz, Leovigildo Castillo, Santiago Méndez, Ziola Riondo, Saúl Lucas, José Guillermo Carmona, Celedonio Padilla, Eudo Mejía-Montalvo, Marcelino Suárez-Lázaro, Fabio Antonio Guevara, José Luis Mendoza, Misael Suárez-Estrada, Ingilberto M. Pérez, Martín Florez, Jacinto Ortiz-Quintero, Juan Antonio Almanza-Pacheco, José Carpio-Beltrán, and Luis Felipe Álvarez Polo, in order to avoid irreparable damage to them, in strict conformity with the obligations to respect and guarantee human rights, which it undertook to fulfill under Article 1(1) of the American Convention on Human Rights.

2. To request that the State of Colombia continue investigating the facts denounced that gave rise to the current measures, with the purpose of obtaining effective results that may lead to the identification and punishment of those responsible.

3. To request that the Inter-American Commission on Human Rights submit to the Inter-American Court of Human Rights detailed information concerning the status of the provisional measures and the situation of all persons protected, once it establishes contact with them.

4. To request that the State of Colombia continue submitting its reports on the provisional measures adopted every two months, and that the Inter-American Commission on Human Rights submit its observations on those reports within six weeks of receiving them.

4. The August 14, 2000, October 13, 2000, December 7, 2000, February 12, 2001, April 25, 2001, June 13, 2001, August 3, 2001, October 3, 2001, December 7, 2001, February 7, 2002, May 2, 2002, July 3, 2002, September 2, 2002, November 6, 2002, and January 21, 2003 reports by the State of Colombia (hereinafter "the State") in which it stated the various protection measures provided to the Zenú Community. Said measures include, among others: police and judicial investigation of the murders committed in the Community; constant patrolling and inspections of the workplaces and residences of the urban perimeter; constant communication with the leaders to hear their concerns and problems within the communities; and the establishment, in coordination with the Community, of the Frente de Seguridad Especial Indígena or Special Indigenous Security Front, and of the Escuela de Seguridad Ciudadana or Citizen Security School.

5. The November 21, 2001 brief with observations by the Inter-American Commission on Human Rights (hereinafter "the Commission") in which it asked the State to clarify several "points of interest to determine the situation of the [Zenú] Community." These had to do with patrolling the rural area of the Zenú Reservation, the control posts for entry to and exit from the Community, the nature of the information exchanged by members of the Community and State authorities, and the investigations conducted by the State.

6. The January 23, 2003, May 8, 2003, July 7, 2003 and September 9, 2003 briefs by the Commission in which it did not make additional observations regarding the situation of the persons protected by the Provisional Measures in the Zenú Community.

7. The March 21, 2003, May 21, 2003, and July 23, 2003 reports by the State in which it pointed out that, since its November 21, 2001 brief, the Commission "has not made any observations regarding the reports submitted by the Government of Colombia."

8. The September 10, 2003 note by the Secretariat of the Court (hereinafter "the Secretariat") in which, under instructions by the Court, it pointed out that the January 23, 2003, May 8, 2003, July 7, 2003 and September 9, 2003 briefs by the Commission "d[id] not [...] include additional observations to those made in previous reports," for which reason it asked the Commission to clarify:

whether the lack of detailed information can be interpreted as meaning that the situation of extreme gravity and urgency, envisaged in Article 63(2) of the American Convention on Human Rights, which gave rise to adoption of the Provisional measures, has ceased, and whether it wishes that they be rescinded.

9. The September 26, 2003 report by the State in which it pointed out that "the protective measures taken in favor of the beneficiary Community are in force." The State also informed of the ongoing investigations regarding the murders of the following persons: Dagoberto Santero Bacilo et al., Bernabela Riondo, Saúl Antonio Baltasar, and Alfonso Suárez Solano.

10. The October 10, 2003 brief with observations by the Commission, in which it stated that:

[after] debating the matter the Commission deemed it pertinent to, on the one hand, close case 11,858, which does not preclude reopening it in response to a request by representatives of the victims and, on the other hand, to inform the [...] Court that it does not have information that enables it to verify the existence of the situation that justified issuing the Provisional Measures six years ago. This does not preclude the possibility that the Commission may deem it necessary to invoke once again the mechanism of Article 63(2) of the American Convention, if circumstances and the available information so require. Until then, the Commission will address the situation of the indigenous communities that inhabit this area through its authority regarding the study of general situations and thematic areas, in this case through the Rapporteurship on Indigenous Peoples.

11. The October 14, 2003 note by the Secretariat in which, under instructions by the President of the Court, it asked the State to make such observations as it deemed pertinent regarding the last brief with observations by the Commission.

12. The November 27, 2003 report by the State in which it pointed out that "it can be concluded that the situation of extreme gravity and urgency that gave rise to ordering the Provisional Measures has ceased" with respect to the Zenú Community.

Therefore, "the Government asks the [...] Court to rescind the Provisional Measures in this case."

CONSIDERING:

1. Colombia has been a State party to the American Convention on Human Rights (hereinafter "the American Convention") since July 31, 1973 and it accepted the binding jurisdiction of the Court on June 21, 1985.

2. 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, in matters it has under consideration, adopt such Provisional Measures as it deems pertinent.

3. Provisional Measures are exceptional in nature, they are issued on the basis of protection needs and, once issued, they must be maintained as long as the basic requirements mentioned in the previous Considering persist.

4. The information supplied by the State shows that it implemented several measures to protect the lives and physical safety of the members of the Zenú Community protected by the Provisional Measures.

5. The Commission does not have information that enables it to verify the existence of the situation that justified adoption of the Provisional Measures six years ago, and therefore it deems it pertinent to rescind the Provisional Measures. This "does not preclude the possibility that the Commission may deem it necessary to once again invoke the mechanism of Article 63(2) of the American Convention, if circumstances and the available information so require" (*supra* Having Seen 10).

6. The State asked that the Provisional Measures be rescinded in this case (*supra* Having Seen 12).

7. The Court has the authority to fully or partially rescind the Provisional Measures that it has ordered.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

exercising the authority granted to it by Articles 63(2) of the American Convention on Human Rights and 25 and 29 of its Rules of Procedure,

DECIDES:

1. To rescind and conclude the Provisional Measures ordered by the Inter-American Court of Human Rights in its June 19, 1998, January 29, 1999 and August 12, 2000 Orders in favor of Rosember Clemente Teherán, Armando Mercado, Nilson Zurita, Edilberto Gaspar Rosario, Dorancel Ortiz, Leovigildo Castillo, Santiago Méndez, Zoila Riondo, Saúl Lucas, José Guillermo Carmona, Celedonio Padilla, Eudo Mejía Montalvo, Marcelino Suárez Lazaro, Fabio Antonio Guevara, José Luis Mendoza, Misael Suárez Estrada, Ingilberto M. Pérez, Martín Florez, Jacinto Ortíz Quintero, Juan Antonio Almanza Pacheco, José Carpio Beltrán, and Luis Felipe Álvarez Polo.

2. Communicate the instant Order to the State and to the Inter-American Commission on Human Rights.
3. Shelve this file.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary