

**Order of the
Inter-American Court of Human Rights*
of July 08, 2009
Provisional Measures
Regarding Guatemala
Case of Integrantes del Equipo de Estudios Comunitarios y
Acción Psicosocial (ECAP)
Masacre Plan de Sánchez v. Guatemala**

Having Seen:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court", or "the Tribunal") of November 25, 2006, by which it ordered to the Republic of Guatemala (hereinafter "the State" or "Guatemala") to undertake provisional measures in favor of Eugenia Judith Erazo Caravantes, Leonel Meoño, Carlos Miranda, Evelyn Lorena Morales, Dorcas Mux Casia, Víctor Catalan, Fredy Hernández, Olga Alicia Paz, Nieves Gómez, Paula María Martínez, Bonifacio Osorio Ixpatá, Gloria Victoria Sunun, Dagmar Hilder, Magdalena Guzmán, Susana Navarro, Inés Meneses, Olinda Xocop, Felipe Sarti, María Chen Manuel, Andrea González, María Isabel Torresi, Celia Aidé López López, Jesús Méndez, Juan Alberto Jiménez, Fernando Suazo, Manuel Román, Mónica Pinzón, Maya Alvarado, Gloria Esquit, Carlos Paredes, Santiago Tziquic, Franc Kernaj, Lidia Pretzantzin Yoc, Bruce Osorio, Paula María López, Adder Samayoa, Glendy Mendoza, Jacinta de León, Pedro López, Claudia Hernández, Amalia Sub Chub, Anastasia Velásquez, Cruz Méndez, Isabel Domingo, Marisol Rodas, Luz Méndez, Magdalena Pedro Juan, Vilma Chub, Petrona Vásquez, Mariola Vicente, Joel Sosof, Ana Botán, Cristian Cermeño, Margarita Giron, Juan Carlos Martínez, Daniel Barczay, and Evelyn Moreno.

2. The Order of the Inter-American Court of November 26, 2007, through which it decided:

1. To reiterate as pertinent what was ordered in the Resolution of the Inter-American Court of Human Rights of November 25, 2006.

2. To rescind the provisional measures ordered by the Inter-American Court of Human Rights in its Resolution of November 25, 2006 in favor of Bonifacio Osorio Ixpatá.

3. To reiterate to the State the order of maintaining the measures that it would have undertaken and using immediately the necessary ones that are necessary to effectively protect the life, integrity, and liberty of Eugenia Judith Erazo Caravantes, Leonel Meoño, Carlos Miranda, Evelyn Lorena Morales, Dorcas Mux Casia, Víctor Catalan, Fredy Hernández, Olga Alicia Paz, Nieves Gómez, Paula María Martínez, Gloria Victoria Sunun, Dagmar Hilder, Magdalena Guzmán, Susana Navarro, Inés Meneses, Olinda Xocop, Felipe Sarti, María Chen Manuel, Andrea González, María Isabel Torresi, Celia Aidé López López, Jesús Méndez, Juan Alberto Jiménez, Fernando Suazo, Manuel Román, Mónica Pinzón, Maya Alvarado, Gloria Esquit, Carlos Paredes, Santiago Tziquic, Franc Kernaj, Lidia Pretzantzin Yoc, Bruce Osorio, Paula María López, Adder Samayoa, Glendy Mendoza, Jacinta de León, Pedro López, Claudia Hernández, Amalia Sub Chub, Anastasia Velásquez,

Cruz Méndez, Isabel Domingo, Marisol Rodas, Luz Méndez, Magdalena Pedro Juan, Vilma Chub, Petrona Vásquez, Mariola Vicente, Joel Sosof, Ana Botán, Cristian Cermeño, Margarita Giron, Juan Carlos Martínez, Daniel Barczay and Evelyn Moreno, in conformity with the Order of the Inter-American Court of Human Rights from November 25, 2006.

4. To call upon the State to give participation to the beneficiaries of these measures in the planning and implementation of them, and, in general, to keep them informed about the advance regarding the execution of the measures ruled by the Inter-American Court of Human Rights.

5. To reiterate the State to keep informing the Inter-American Court of Human Rights every two months about the undertaken provisional measures, and to require the beneficiaries of these measures or their guardians to present their observations within four weeks counted after the notification of the briefs from the State, and to the Inter-American Commission of Human Rights to present its observations regarding the mentioned briefs from the State within six weeks counted after their reception.

[...]

3. The briefs from the State presented on August 27, 2008 and on January 19, 2009.

4. The observations from the guardians of the beneficiaries of the provisional measures (hereinafter "the guardians") presented on October 31, 2008 and on November 11, 2008.

5. The brief of the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission") presented on December 29, 2008 and April 22, 2009.

6. The communications from the Secretariat of the Court (hereinafter "the Secretariat") from February 23 and March 20, 2009, through which, by following the instructions of the President of the Court, it was reiterated to the guardians to present, forthwith, their observations towards the brief from the State received on January 19, 2009. The communication from the Secretariat from April 20, 2009, through which, by following the instructions of the President of the Court, it was reiterated to the guardians about that presentation of observations, and to the Inter-American Commission the presentation of its respective observations. It is worth mentioning that up to the date of the present Resolution, the guardians have not submitted the above observations.

CONSIDERING:

1. That the State ratified the American Convention on May 25, 1978, and, according to Article 62 thereof, it recognized the contentious jurisdiction of the Court on March 9, 1987.

2. That the disposition established in Article 63(2) of the Convention confers a binding nature to the passing, by the State, of the provisional measures that this Court may order, for according to the law of state responsibility, supported by the international jurisprudence, the States shall accomplish their conventional obligations under good faith (*pacta sunt servanda*).¹

¹ Cf. *Matter of James et al.*. Provisional Measures regarding Trinidad and Tobago. Order of the Court of June 14, 1998, Considering sixth; *Matter of Pueblo Indígena Kankuamo*. Provisional Measures regarding Colombia. Order of April 3, 2009, Considering fifth; and *Matter Fernández Ortega et al.*. Provisional Measures regarding Mexico. Order of the Court of April 30, 2009, Considering sixth.

3. That the Court has indicated that the provisional measures are two types: one precautionary and the other protective.² The precautionary type of measure is linked within the framework of the international adversarial. In this sense, these measures have as object and aim to preserve the rights in possible risk until the controversy is resolved. Its object and aim is that of assuring the integrity and the effectiveness of the merits decision, and, in this way, to avoid the rights in litigation to be infringed, a situation that could make the merits innocuous or to invalidate its effective application. The provisional measures let the State in point to fulfill the final decision, and, in case, to proceed to the ordered reparations.³ In regards to the protective type of the provisional measures, this Court has pointed out that these are turned into a truly judicial guarantee of a preventive type because they protect human rights, under the heading that they look to avoid irreparable damages to the people.⁴

4. That Article 63(2) of the Convention demands that it is mandatory for the Court to rule provisional measures that three conditions must occur: i) "extreme seriousness"; ii) "urgency", y iii) that it tries to avoid irreparable damages to the people." These three conditions are coexistent and must be present in every situation in which intervention of the Court is asked. In the same way, the three described conditions must persist so that the Court maintains the ordered protection. If one of them has ceased in effectiveness, the Court shall consider the pertinence of continuing with the ordered protection.

5. That if a State asks to rescind or to modify the ruled provisional measures, it shall present enough evidence and argumentation that allows the Court to comprehend that the risk or threat does not fulfill the requirements of extreme seriousness and urgency to avoid irreparable damages anymore. Moreover, the guardians of the beneficiaries who want the measures to continue shall present evidence of the reasons for it.

6. That in regards to it, the Court must take into account that, in conformity to the Preamble of the American Convention, the international protection of nature is "coadjutor or complementary to the one that offers the intern right of the American States." For that reason, in case that it is proved that the State in point has developed effective mechanisms or actions of protection for the beneficiaries of the provisional measures, the Court might decide to rescind from the provisional measures, providing with the obligation of protection to the due responsible, this is, the State. It is repeated that this is a decision by the Court and not by the State, for it would be inadmissible to subordinate the mechanism planned in the American Convention to restrictions that would make the function of the Court inoperative, and; therefore, the protective system of human rights established in the

² Cf. *Case of Herrera Ulloa*. Provisional Measures regarding Costa Rica. Order of the Court of September 7, 2001, Considering fourth; *Case López Álvarez et al.*. Provisional Measures regarding Honduras. Order of the Court of January 26, 2009, Considering third; and *Matter Fernández Ortega et al.*, *supra* note 1, Considering fifth.

³ Cf. *Matter of the Capital El Rodeo I and El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considering seventh; *Matter of "El Nacional" and "Así es la Noticia" Newspapers*. Provisional Measures regarding Venezuela. Order of the Court of November 25, 2008, Considering 23; and *Matter of Luis Uzcátegui*. Provisional Measures regarding Venezuela. Order of the Court of January 27, 2009, Considering nineteenth.

⁴ Cf. *Matter of the Capital El Rodeo I and El Rodeo II Judicial Confinement Center*, *supra* note 3, Considering eighth; *Case of Bámaca Velásquez*, Provisional Measures regarding Guatemala. Order of the Court of January 27, 2009, Considering 45; and *Matter Fernández Ortega et al.*, *supra* note 1, Considering fifth.

Convention.⁵ If for this reason the provisional measures ruled by the Court are lifted, it shall be the responsibility of the State, according to its duty of guaranteeing human rights, to maintain the protection measures that it would have undertaken and that the Court considered to be effective, for the time that the circumstances indicate.

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7. That, having passed the protection measures, the Court or whoever presides it does not require in principle any evidence of the factual substance of the case that prima facie seem to fulfill the requirements of the Article 63 of the Convention. On the contrary, the maintenance of the protection measures demands an evaluation of the Court in regards to the persistence of the situation of extreme seriousness and urgency to avoid irreparable damages that originated them,⁶ over the basis of information allowed for producing evidence.

8. That regarding the instant case, the present measures were passed due to the appraise prima facie of threat to the right to life and to humane treatment of the members of the Community Studies and Psychosocial Action Team (hereinafter "ECAP" by its Spanish acronym), who were supporting the process of indemnity to the victims and survivors of the *Plan de Sanchez Massacre Case*, according to the established in the Order by the Presidency of October 20, 2006 and ratified by the Court on November 25, 2006.

9. That in conformity with the Order ruled by the Inter-American Court from November 26, 2007, the State must, *inter alia*, keep the measures that it would have undertaken, and immediately undertake the necessary ones in order to protect the life and integrity of the beneficiaries of these provisional measures (*supra* Having Seen 2).

10. That in regards to the passing of the protection measures ruled by the Court, the State manifested that the ECAP buildings in the central headquarter and the offices in Rabinal were provided with security, through the Civil National Police. It added that the employees of the Presidency Commission Coordinator of Politics of the Executives Regarding Human Rights (hereinafter "COPREDEH" by its Spanish acronym) held a meeting with the Director of ECAP, who stated that the protection measures provided by the Civil National Police had been effective until March, 2008; therefore, from that date on, only established a security perimeter and not a "permanent post in the head office of ECAP," but that they had not received any new threats or intimidations. Finally, the Stated asked the Court to rescind from the provisional measures as any incidents of threats occurred against the members of ECAP, "in observance to what was said by the Community Studies and Psychosocial

⁵ Cf. *Matter of Luis Uzcátegui*. Provisional Measures regarding Venezuela. Order of the Court of February 20, 2003, Considering thirteenth; *Matter of Marta Colomina*. Provisional Measures regarding Venezuela. Order of the Court of July 4, 2006, Considering eleventh; and *Case of Raxcacó Reyes Case et al.*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 2, 2007, Considering twelveth.

⁶ Cf. *Matter of Pueblo Indígena Kankuamo*, *supra* note 1, Considering seventh; and *Case of Mack Chang Case et al.*. Provisional Measures regarding Guatemala. Order of the Court of January 26, 2009, Considering 32.

Action Team –ECAP-'s own beneficiaries and the guardians of the Centre for Human Rights Legal Action –CALDH-" (*supra* Having Seen 3)

11. That in relation to the investigation of the facts that originated the request for provisional measures, the State informed: a) about the denouncement presented by Bonifacio Osorio Ixtapá, it indicated that the case had been identified with the number 248/2006/646, in charge of the Crimes against Human Rights Activists Unit in the Government Attorney's Office Human Rights Section. That the Crime Investigation Department of the Public Prosecutor's Office made an investigation in the city council of Rabinal, Baja Verapaz, but since it was known that the claimant stopped working for ECAP; they shelved the file; b) regarding the denouncement presented by Marta Olinda Xocop Morales, it stated that the file is identified with the number MP001/2007/10789 in charge of the same state's attorney unit, for the crime of threats and intimidation. It added that testimonial statements of facts were collected, and that "a photograph album of the arrested people was shown to Mrs. Xocop without any result," among other proceedings, and the case was still being investigated (*supra* Having Seen 3).

12. That in regards to the passing of the provisional measures, the guardians informed that the mechanisms of execution accorded with the Ministry of Internal Affairs and COPREDEH were the protection through a permanent post in the head office of ECAP, which was stopped without any previous warn, and only perimeter security was being done. They added that, in the offices of ECAP in Rabinal, this permanent post has remained, but they are not content with the personnel assigned because they do not have a police uniform and it is difficult to identify them. However, they considered that given the fact that they had not received any new threats or intimidation, it was possible to rescind from the measures. In its brief from November 11, 2008, they reiterated that "up to the moment, the extreme seriousness and urgency to avoid irreparable damages that led to the passing of these measures for every single beneficiary do not persist [...] however, the impunity in which the incidents of threats and intimidation received by the members of the organization do persist [...] because up to this moment new serious incidents of threats or intimidation have not occurred against the ECAP team [...] it is possible to rescind from the measures" (*supra* Having Seen 4).

13. That the guardians referred to the investigation of the incidents indicating that "the information given by the State until the moment does not represent an important progress [...] beyond the initial and necessary processes regarding the collection of the statements of the facts by the threaten people, robot pictures and the revision of [the] photograph album [...]." They asked to remind the State about its obligation to investigate the incidents that caused the request for provisional measures in favor of the members of ECAP, "because the more impunity given to the authors of this type of incidents, the more possibilities of them being repeated."

14. That through the briefs from December 29, 2008 and April 22, 2009, the Commission considered in its observations that the information presented by the State and by the guardians "is not clear regarding the measures that are currently in force, this is, how and where they are done, and; on the other hand, it considered that it would be important that the Court be provided with more information to understand if there are more members of the organization in risk, in that case, which ones" (*supra* Having Seen 5). Finally, it said that the State does not reveal relevant advances in regards to the determination of the responsible people that caused these provisional measures.

15. That according to the information presented by the guardians, this Court issues that the planning of the provisional measures has been done by common consent for both sides, although its passing has not been done completely

beneficial for the beneficiaries. Nevertheless, the guardians agreed with the State when they informed that up to the moment the extreme seriousness and urgency to avoid irreparable damages that caused the passing of these measures for every beneficiary do not persist; therefore, they expressed the possibility for them to be rescinded.

16. That Article 1(1) of the Convention establishes the general obligations that the States Parties have to respect the right and liberty stated in it and to guarantee its free and *ipso jure* to every person under its jurisdiction.⁷ In consequence, apart from the existence of specific provisional measures, the State is specially forced to guarantee the rights of the people in risk and it must promote the necessary investigations to clarify the facts, followed by the consequences that the proper law establishes. For that investigation, the State in point must make its best efforts to determine all the facts that are related to the threat and the way or ways of expression that it had; to determine if a pattern of threats against the beneficiary or the group or the organization that they belong to exists; to determine the objective or purpose of the threat; to determine who is or are behind the threat, and to punish them in any case. Now, the Court has stated that a supposed failure regarding lack of investigation by the State not necessarily constitutes a situation of extreme seriousness and urgency that call for the keeping of the provisional measures. Besides, the duty to investigate can be prolonged in some cases for a significant period of time, time in which the threat or risk not necessarily stays extreme and urgent. Finally, this Court has stated that the analysis of effectiveness of the investigations and proceedings in relation to the facts that lead to the provisional measures correspond to the examination of the merits of the case.⁸ In addition, the failure to comply the duty is certainly reprehensible, but it is not *per se* a valid reason to keep the provisional measures. It shall correspond to the beneficiaries and to the Commission to argue and to demonstrate that this lack of investigation contributes or causes the situation of extreme seriousness and urgency to avoid irreparable damages to the particular beneficiary.

17. That according to what was presented; this Court infers that an investigation is being carried nowadays about the supposed threats experienced by Marta Olinda Xocop. However, this Court considers proper to reiterate that a supposed lack of investigation by the State not necessarily constitutes, by itself, a circumstance of extreme seriousness that require the keeping of the provisional measures.⁹

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18. That the provisional measures have an exceptional characteristic, they are ruled according to the necessities for protection and, once passed, they must always be kept, as long as the Court considers that the basic requirements of the

⁷ Cf. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Court of January 15, 1988, Considering third; *Matter of Carlos Nieto Palma et al.*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of January 26, 2009, Considering 22, and *Matter of Fernández Ortega et al.*, *supra* note 1, Considering forth.

⁸ Cf. *Matter of Pilar Noriega García et al.*. Provisional Measures regarding Mexico. Order of the Court of February 6, 2008, Considering Fourteenth; *Matter of Leonel Rivero et al.*. Provisional Measures regarding Mexico. Order of the Court of November 25, 2008 Considering Eighteenth, and *Matter of Luis Uzcátegui*, *supra* note 3, Considering 31.

⁹ Cf. *Case of the Constitutional Court*. Provisional Measures regarding Peru. Order of the Court of March 14, 2001, Considering Fourth; *Case of López Álvarez et al.*. Provisional Measures regarding Honduras. Order of the Court of January 26, 2009, Considering 23; and *Matter of Luis Uzcátegui*, *supra* note 3, Considering 31.

extreme seriousness and urgency to avoid irreparable damages to the rights of the people protected by them persist.¹⁰ In this regard, the Court emphasizes that the presentation of observations and information related to the compliance of the provisional measures in discussion, constitutes a duty of the Commission, of the beneficiaries from those provisional measures or their guardians and the State.

19. That taking into account the information provided by the guardians and the State, the Court estimates that the situation of extreme seriousness and urgency and imminent risk that caused the undertaking of the provisional measures to protect the life and integrity of the members of ECAP does not persist. In consequence, this Court considers convenient to rescind from the provisional measures in favor of all the beneficiaries.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

in use of the attributions conferred in Articles 63(2) of the American Convention of Human Rights and 26 and 30 of its Rules of Procedures,¹¹

DECIDES:

1. To rescind the provisional measures ordered by the Court in its Orders of November 25, 2006 and November 26, 2007 in favor of Eugenia Judith Erazo Caravantes, Leonel Meoño, Carlos Miranda, Evelyn Lorena Morales, Dorcas Mux Casia, Víctor Catalan, Fredy Hernández, Olga Alicia Paz, Nieves Gómez, Paula María Martínez, Gloria Victoria Sunun, Dagmar Hilder, Magdalena Guzmán, Susana Navarro, Inés Meneses, Olinda Xocop, Felipe Sarti, María Chen Manuel, Andrea González, María Isabel Torresi, Celia Aidé López López, Jesús Méndez, Juan Alberto Jiménez, Fernando Suazo, Manuel Román, Mónica Pinzón, Maya Alvarado, Gloria Esquit, Carlos Paredes, Santiago Tziquic, Franc Kernaj, Lidia Pretzantzin Yoc, Bruce Osorio, Paula María López, Adder Samayoa, Glendy Mendoza, Jacinta de León, Pedro López, Claudia Hernández, Amalia Sub Chub, Anastasia Velásquez, Cruz Méndez, Isabel Domingo, Marisol Rodas, Luz Méndez, Magdalena Pedro Juan, Vilma Chub, Petrona Vásquez, Mariola Vicente, Joel Sosof, Ana Botán, Cristian Cermeño, Margarita Giron, Juan Carlos Martínez, Daniel Barczay and Evelyn Moreno.

2. To request the Secretariat of the Court to notify this Order to the State, to the Inter-American Commission of Human Rights and to the beneficiaries or their representatives.

3. To close this file.

¹⁰ Cf. *Case of the Constitutional Court*, supra note 9, Considering Third; *Matter of Carlos Nieto Palma et al.*, supra note 7, Considering Twentieth; and *Matter of Pueblo Indígena Kankuamo*, supra note 1, Considering Fourth.

¹¹ Regulation of the Court partially reformed in its LXXXII Regular Session, carried out from January 19 to 31, 2009.

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