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Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Chunima Human Rights Activists v. Guatemala
Doc. Type:	Order of the Court
Decided by:	President: Hector Fix-Zamudio; Vice President: Orlando Tovar-Tamayo; Judges: Thomas Buergenthal; Rafael Nieto-Navia; Policarpo Callejas-Bonilla; Sonia Picado-Sotela; Julio A. Barberis
Dated:	1 August 1991
Citation:	Chunima Human Rights Activists v. Guatemala, Order of the Court (IACtHR, 1 Aug. 1991)
Represented by:	APPLICANTS: Americas Watch and the Center of Justice and International Law
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The Inter-American Court of Human Rights issues the following order:

1. On June 28, 1991, the Inter-American Commission on Human Rights (hereinafter "the Commission") forwarded to the Inter-American Court of Human Rights (hereinafter "the Court") a resolution passed that same month on case 10.674 concerning Guatemala, in which it requested "provisional measures to protect the life and personal integrity" of fourteen persons. According to the Commission, these persons are apparently members of the "Consejo de Comunidades Etnicas Runujel Junam" (CERJ), their relatives or judicial officials who have investigated and acted in cases related to the assassination of members of human rights organizations in Chunimá, Departament of El Quiché, Republic of Guatemala. The Commission's resolution sets down facts reported by Americas Watch and by the Center for Justice and International Law (CEJIL) on April 4 and 18 and again on May 2, 1991, and expresses the opinion that "there is abundant evidence that the members of human rights organizations in Chunimá are facing grave and irreparable danger." The Commission is likewise of the opinion that "the background materials submitted by the petitioners present prima facie a grave case of imminent and irreparable danger to the life and physical integrity of the members of human rights organization and their relatives."

On July 2, 1991, the Court received from the Commission the documentation accompanying the request for provisional measures.

2. Exercising the powers conferred on him under Article 23(4) of the Rules of Procedure of the Court (hereinafter "the Rules"), the President of the Court (hereinafter "the President") issued an order dated July 15, 1991, whose operative part reads as follows:

1. To order the Government of Guatemala to adopt without delay all necessary measures to protect the right to life and the physical integrity of DIEGO PEREBAL-LEÓN, JOSÉ VELÁSQUEZ-MORALES, RAFAELA CAPIR-PÉREZ, MANUEL SUY-PEREBAL, JOSÉ SUY-MORALES, AMILCAR MÉNDEZ-URIZAR, JUSTINA TZOC-CHINOL, MANUEL MEJÍA-TOL, MIGUEL SUCUQUI-MEJÍA, JUAN TUM-MEJÍA, CLAUDIA QUIÑONES, PEDRO IXCAYA, ROBERTO LEMUS-GARZA and MARÍA ANTONIETA TORRES-ARCE, in strict compliance with its obligation to respect and guarantee human rights under Article 1(1) of the Convention.
2. To convene a session of the Inter-American Court of Human Rights July 29 to 31, 1991, at its seat in San José, Costa Rica, in order to take up the Commission's request for provisional measures and this order.
3. To convoke the Government of Guatemala and the Inter-American Commission of Human Rights to appear, through their representatives, at a public hearing to be held on this matter at 3:00 p.m. on July 29, 1991, at the seat of the Court.

This order was transmitted to the Commission, and to the Government of Guatemala (hereinafter "the Government") through its Embassy in San José, Costa Rica.

3. The Government addressed a note to the President on July 24, 1991, regarding the order transcribed above. In that note, the Government declared that "for the last thirty years Guatemala has experienced armed internal conflict which has concentrated primarily on the highlands of the country, an area comprising several Departments. One of these is El Quiché, which has probably been the area most affected by the violence that the aforementioned armed conflict has generated." The note added that the community of Chunimá is located in the fighting zone "where the guerrillas conduct their war offensives and terrorist acts with greatest intensity."

Guatemala argued that a "fundamental objective" of its Government is to achieve peace throughout the nation and that it is "actively seeking a resolution of the armed internal conflict and the reincorporation into peaceful political life" of the irregular groups.

Guatemala declared that "in order to be able to give a full and accurate accounting to the Inter-American Court of Human Rights as part of the proceedings for provisional measures requested by the Inter-American Commission," it needs to conduct a thorough investigation, obtain reports, hear from the inhabitants and carry out related efforts, all of which will require time. Consequently, the Government asked the Court for a postponement of the July 29 hearing for a period of at least 30 days.

With regard to the Order of the President of July 15, 1991, the Guatemalan note states that "in compliance with Your Excellency's order, the Government of Guatemala has intensified the security measures of the Chunimá area in order to provide its inhabitants with better protection."

This note was followed by another, dated two days later, in which Guatemala repeated its request for a postponement of the hearing and reported that "[a]s regards the emergency measures ordered by the President of the Court, the Government, aware of their nature and of the fact that such measures can be emitted without a hearing of the parties, finds them to be reasonable . . . " Guatemala added, furthermore, that it had

received with the greatest attention the order for provisional measures issued by the President of the Court and had adopted provisions in addition to those included in its general policy of respect for human rights in order to comply with it. [The Government indicated that the authorities have again been ordered to] provide concrete, specific protection to the persons listed, in such a way that they themselves may freely specify the type of protection they desire [and to] proceed with the arrests ordered by the courts in the course of the investigation of the facts related to the consolidated case 10.674.

4. On July 29, 1991, at 9:30 hours, the Court met to decide on the notes submitted by Guatemala on July 24 and 26 requesting the postponement of the hearing convened for 15:00 hours that day.

The Court ordered the public hearing to be held on July 30, in order to hear the arguments of Guatemala and the Commission with regard to the postponement sought and to likewise learn what measures had been taken by that country in order to comply with the President's order of last July 15.

The public hearing was held at 15:00 hours on July 30, 1991, at the seat of the Court. There appeared before the Court:

For the Government of Guatemala:

Lic. Manuel Villacorta-Mirón, Vice-Minister of Foreign Affairs,
Licda. Miriam Cabrera-Passarelli, Ambassador of Guatemala to Costa Rica,
Lic. Mario Marroquín-Nájera, General Director for Multilateral Affairs, Ministry of Foreign Affairs,

For the Inter-American Commission on Human Rights:

Dr. Patrick Robinson, President of the Commission,
Christina M. Cerna, Attorney,
Anne Manuel, Adviser.

At the hearing, the Agent for Guatemala renewed his request for a postponement and stated that Manuel Perebal-Ajtzalam III and Manuel León-Lares, according to the petitioners the chief protagonists of the violent actions that gave rise to the request for provisional measures, had been arrested and were at the disposal of the competent judicial authority. As for the measures ordered by the President, the Agent reiterated his Government's willingness to fully comply with them and added that he considered that "the measures to protect those persons pursuant to point 1" of the aforementioned order "must be continued."

The representative of the Commission, on his part, expressed dissatisfaction with the Government's actions. According to the Commission, the Government had not indicated what type of concrete measures had been specifically taken to protect each of the persons. As for the

arrest of the alleged perpetrators, the Commission's representative stated that, in his opinion, the information provided needed to be verified.

* *

5. In this case, the Court must decide on the provisional measures requested by the Commission and on the holding of a hearing, originally scheduled for July 29, which the Government has requested to be postponed for a period of no less than 30 days.

First of all, it is important to clearly establish a distinction between the provisional measures that the Court can adopt under Article 63(2) of the American Convention on Human Rights (hereinafter "the Convention") and the emergency measures that Article 23(4) of the Rules empowers the President to order the parties in the interim, so as to permit any decision that the Court may eventually take to have the appropriate effect; in other words, so that the Court may not find itself facing a *fait accompli*.

6. The provisions in force set forth certain requirements that must be met for the Court to be able to adopt provisional measures at the request of the Commission. These include the following:

a. Article 29(2) of the Regulations of the Commission provide that "when it becomes necessary to avoid irreparable damage to persons, [it] may request that provisional measures be taken to avoid irreparable damage in cases where the denounced facts are true." It is thus not a question of fully determining the truth of the facts; rather, the Commission must have a reasonable basis for assuming them to be true.

In this case, the Commission has not fulfilled the above requirement, inasmuch as its request merely transcribes the facts reported by the petitioner.

The Government, on its part, in its note of last July 24 acknowledged the existence of an "internal armed conflict" over the last thirty years and the violent acts that are occurring in the area. Such a blanket acknowledgement does not imply acceptance that the facts denounced are true; however, it does lead to the presumption that a situation exists which could bring about irreparable damage to persons.

b. Article 63(2) of the Convention authorizes the Court to adopt provisional measures "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons." The wording used indicates that we are dealing here with an extraordinary instrument, one which becomes necessary in exceptional circumstances.

7. The request for provisional measures before us refers to a case "not yet submitted to the Court." This means that the Court lacks information regarding the facts and circumstances surrounding the case, which information must be at the disposal of the Commission. The latter must, consequently, transmit such information together with the corresponding petition, in order to provide the Court with the facts necessary to enable it to arrive at a decision.

* *

8. The Court finds that the order of the President of July 15, 1991, was properly adopted and that it has achieved its purpose of enabling the Court to study the matter while avoiding irreparable actions.

According to statements made by the Government at the hearing of July 30, 1991, the two principal actors identified by the petitioners as being the persons responsible for the acts of violence occurring in Chunimá have been arrested in Guatemala. The Government subsequently transmitted to the Court facsimiles of the newspapers reporting that information.

The Court is of the opinion that the measures taken on behalf of the persons listed in the President's order must be extended, a position with which the Government concurred at the hearing. The Court also believes that the Government must specify what protection it is granting or offering each of these persons.

* *

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

RESOLVES:

1. To confirm the Order of July 15, 1991, issued by the President of the Court and to extend its effect until December 3, 1991.
2. To order the Government of Guatemala to promptly specify to the President of the Court what measures have been taken to protect each of the persons listed in the President's Order.
3. To order the Inter-American Commission on Human Rights and the Government of Guatemala to keep the President of the Court duly informed regarding the implementation of this Order.

Done in Spanish and in English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this 1st day of August, 1991.

Héctor Fix-Zamudio
President

Orlando Tovar-Tamayo
Thomas Buergenthal
Rafael Nieto-Navia
Policarpo Callejas-Bonilla
Sonia Picado-Sotela
Julio A. Barberis

Manuel E. Ventura-Robles

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Secretary