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Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Rosember Clemente Teheran, Armando Mercado, Nilson Zurita Mendoza, Edilberto Gaspar Rosario, Dorancel Ortiz, Leovigildo Castillo, Santiago Mendez, Zoila Riondo, Saul Lucas, Jose Guillermo Carmona, Celedonio Padilla, Eudo Mejia Montalvo, Marcelino Suarez Lazaro, Fabio Antonio Guevara, Jose Luis Mendoza, Misael Suarez Estrada, Ingilberto M. Perez, Martin Florez, Jacinto Ortiz Quintero, Juan Antonio Almanza Pacheco, Jose Carpio Beltran and Luis Felipe Alvarez Polo v. Colombia
Doc. Type:	Order
Decided by:	N/A
Dated:	19 June 1998
Citation:	Clemente Teheran v. Colombia, Order (IACtHR, 19 Jun. 1998)
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HAVING SEEN:

1. The brief of March 18, 1998, and its attachments, by which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") a request for provisional measures on behalf of twenty-two persons, pursuant to Article 63 (2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure").

In that brief the Commission requested the Court to call upon the State to undertake the following:

a. To adopt effective security measures to protect the lives and physical integrity of Rosember Clemente-Teherán, Armando Mercado, Nilson Zurita-Mendoza, 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. The protection measures shall be adopted by the Colombian State by common agreement with the persons to be protected in order to ensure that they are effective and appropriate.

b. To adopt, as an essential aspect of the duty to protect, effective measures to investigate the acts perpetrated against the members of the Zenú community listed in [the] petition, in order to identify and, where appropriate, punish those responsible for those acts.

c. To inform the Court shortly of the specific and effective measures taken to protect [the persons indicated].

2. The activities of the Zenú indigenous community of San Andrés de Sotavento (hereinafter "the Zenú indigenous community") described in the Commission's request and the acts of which its members have, by and large, been allegedly victims, which are summarized below:

a) The Zenú indigenous community Reserve (hereinafter "the Reserve") is an indigenous territorial entity of inalienable collective property. Law 55 was passed in 1905 and through it the State acceded some territory of the Indian Reserves to the municipal districts, since when this community has been involved in conflicts bearing on illegal occupation of land;

b) There have been murders, massacres, forced disappearances of persons and imprisonment of indigenous leaders connected with the dispute over the right to this territory, all of which has been confirmed in a report issued by the Office of the Ombudsman. The petitioners also informed the Commission that, in their view, paramilitary groups, acting under the umbrella of owners of large tracts of land, stockbreeders and the forces of law and order, were responsible for these grave human rights violations. According to the Commission, those paramilitary groups apparently controlled most of the territory in the Reserve;

c) In 1994 the Chief of the Reserve and three leaders were murdered, an act for which only one person was sentenced;

d) On June 4, 1996, a number of pamphlets appeared in the Reserve, demanding that the indigenous leaders abandon the Reserve, threatening them with death if they failed to do so; and

e) On March 3, 1998, the petitioners informed the Commission that alleged paramilitary agents continued to frequent the Reserve. That same day, the Advocate for Indigenous and Ethnic Affairs in the Office of the Ombudsman informed the Commission that the Zenú indigenous community's situation had not been altered since the most recent acts of violence in late 1997.

3. The individual acts of violence allegedly perpetrated against members of the Zenú indigenous community, which are summarized below:

a) On May 16, 1996 Mr. Manuel Beltrán, an indigenous leader of the Zenú community, was murdered allegedly by paramilitary troops;

b) on May 25, 1996 Mr. Alejandro Teherán, Secretary of the Upper Council of the San Andrés de Sotavento Reserve, was murdered;

c) on July 2, 1996 Mr. Saúl Baltazar, a member of the Zenú indigenous community and delegate to the Indigenous National Organization of Colombia, was murdered;

d) on October 31, 1997 Mr. Virgilio Cárdenas Feria, a member of the Zenú indigenous community and delegate to the Indigenous National Organization of Colombia, was abducted allegedly by a group of paramilitary agents traveling in two vehicles. To date, Mr. Cárdenas is still disappeared;

e) on November 1, 1997, Mr. Santiago Polo was abducted in the Department of Sucre;

f) on that same day the home of Ms. Guillermina Mendoza was raided by seven alleged paramilitary agents, who threatened her entire family and asked for Mr. Nilson Zurita, an elected alderman, and for Ms. Bernavela Riondo-Pacheco, an indigenous leader. As they were not there,

the paramilitary members went to the home of Ms. Riondo-Pacheco, whom they took away and forced into a gray pick-up truck. They later went to Mr. Zurita's home and, not finding him, assaulted his wife and brother; they then "ran away", taking Ms. Riondo-Pacheco with them. Shortly afterwards the bodies of Ms. Riondo-Pacheco and Mr. Santiago Polo were found on the highway leading from San Andrés de Sotavento to Chinu in the Department of Córdoba;

g) according to information supplied to a member of the Zenú indigenous community by an alleged member of the paramilitary group, Mr. Nilson Zurita appears on a list of seventy persons from that community earmarked for assassination by the paramilitary army. As a result, Mr. Zurita was obliged to leave the community and is currently in Bogotá;

h) on March 5, 1998, Mr. Domingo Santero was murdered at his home in the Department of Sucre by eight men allegedly armed with weapons used exclusively by the military forces.

4. The Order of the President of the Inter-American Court of Human Rights (hereinafter "the President" or "the President of the Court") of March 23, 1998, in which he decided:

1. To call upon the State of Colombia to adopt forthwith such measures as may be necessary to protect the lives and physical, psychological and moral integrity of Rosember Clemente-Teherán, Armando Mercado, Nilson Zurita-Mendoza or Nilson Zurita-Suárez, Edilberto Gaspar-Rosario, Dorancel Ortiz, Leovigildo Castillo, Santiago Méndez or Santiago Mendoza, Zoila Riondo, Saúl Lucas, José Guillermo Carmona or José Guillermo Cardona, 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 compliance with the obligation to respect and guarantee human rights, which it contracted to fulfill under Article 1(1) of the American Convention on Human Rights.

2. To call upon the State of Colombia to adopt such measures as may be necessary to protect the lives and physical, psychological and moral integrity of Mr. Nilson Zurita-Mendoza or Nelson Zurita-Suárez upon his return to Zenú indigenous community Reserve in San Andrés de Sotavento.

3. To call upon the State of Colombia to conduct an effective investigation of the acts denounced, for the purpose of obtaining results that would lead to the discovery and punishment of those responsible.

...

6. To submit this order to the Inter-American Court of Human Rights at its forthcoming regular session for its consideration and pertinent effects and so that, if it so deems appropriate, it may convene the parties to a public hearing at its seat in order to hear their points of view on the events and circumstances that gave rise to the request for provisional measures in the instant case.

5. The first report from the State of Colombia (hereinafter "the State" or "Colombia") submitted on April 15, 1998, in which it expressed its disagreement with the urgent measures adopted by the President, on the ground that, according to the State, during meetings held with the Commission, the latter never expressed its disagreement with the steps taken by the State on two occasions (June 18, 1996 and January 7, 1998) in compliance with the protective measures that had been adopted. The State further contended that the instant case did not conform to the

actual situation described in Article 63(2) of the American Convention, because it consist of a criminal situation committed with the intervention of various private individuals. The State claimed, moreover, that it had encountered practical difficulties in providing effective protection for the San Andrés de Sotavento indigenous Reserve, which covers an area of approximately 20,000 hectares of marsh, forest and jungle and a population of approximately 35,000. Lastly, the State averred that "the tragic events of recent months would appear to have no connection with the problems that gave rise to the adoption of protective measures in favor of the indigenous community."

6. The Commission's observations of June 8, 1998, in which it requested the Court to ratify the Order of its President of March 23, 1998. It explained that its observations suffered from a lack of detailed information concerning the recent events, since it had been unable to acquire that information, because the authorities of the Zenú indigenous community were now afraid due to the strong presence of paramilitary groups in the area. The Commission declared that in those circumstances "it was clear that persons who supplied information to the authorities [of the Zenú indigenous community] would be in serious danger and may therefore be reluctant to participate fully in the investigations."

7. The second report of the State, submitted on June 8, 1998, in which it reiterated that the instant case did not conform to the situation described in Article 63(2) of the American Convention and requested the Court to allow the case to continue its normal course before the Inter-American Commission, as it had requested at the hearing before the Commission on February 23, 1998.

CONSIDERING:

1. That Colombia has been a State Party to the American Convention since July 31, 1973 and that it recognized the jurisdiction of the Court on June 21, 1985.

2. That Article 63(2) of the American Convention provides that, in cases of "extreme gravity and urgency, and when necessary to avoid irreparable damage to persons", the Court, may, at the request of the Commission, take such provisional measures as it deems pertinent in matters not yet submitted to it.

3. That under Article 25(1) of the Rules of Procedure:
[a]t any stage of the proceedings involving cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order whatever provisional measures it deems appropriate, pursuant to Article 63 (2) of the Convention.

4. That Article 1(1) of the Convention signals the duty incumbent upon the States Parties to respect the rights and freedoms recognized in that treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

5. That the information submitted in this case effectively constitutes a prima facie case of urgent and grave danger to the lives and physical safety of the twenty-two persons mentioned in the Commission's request. In those circumstances, the urgent measures adopted by the President conform to the law and to the proceedings in this matter and are therefore confirmed by the Court.

6. That the Inter-American Commission has on two occasions (June 18, 1996 and January 7, 1998) adopted protective measures that have not produced the required effects. On the contrary, the recent events (Having seen 2, 3 and 6) suggest that the members of the Zenú indigenous community are in a situation of grave risk. Consequently, exceptional circumstances do exist that call for the adoption of provisional measures in order to avoid irreparable damage to them.

7. That it is the responsibility of the State to adopt security measures for all citizens, a commitment for which special pains must be taken when it concerns persons involved in hearings before organs of the Inter-American system for the protection of human rights, the aim of which is to determine whether or not the human rights enshrined in the American Convention have been violated.

8. That, likewise, Colombia has the obligation to investigate the acts that gave rise to this request for provisional measures in order to identify those responsible and punish them accordingly.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the powers conferred to it by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure.

RESOLVES:

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 Reserve of San Andrés de Sotavento.

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.