

**Order of the
Inter-American Court of Human Rights
of August 30, 2004
Provisional Measures regarding Guatemala
Case of Raxcacó *et al.***

HAVING SEEN:

1. The brief of August 16, 2004, and its attachments, in 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, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") and "7[4]" of the Rules of Procedure of the Commission, "to be adopted urgently so that the Republic of Guatemala (hereinafter 'the State' or ['Guatemala']) takes the necessary measures to preserve the lives and physical integrity, including suspension of the execution, of Ronald Ernesto Raxcacó-Reyes, Hugo Humberto Ruiz-Fuentes, Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor, who have been sentenced to death, so as not to hinder the processing of their cases before the inter-American system; before the Commission under files Nos. 12.402, P-652/04, P-169/04 and P-17/04, respectively, and, possibly, before the Court."

2. The grounds indicated by the Commission in its request for provisional measures (*supra* Having Seen paragraph 1), which are summarized below:

(a) At the date on which the request for provisional measures was submitted, Ronald Ernesto Raxcacó-Reyes, Hugo Humberto Ruiz-Fuentes, Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor, all of Guatemalan nationality, were in prison waiting for a date to be established for execution of the final judgments sentencing them to death for the crime of kidnapping or abduction embodied in article 201 of the Guatemalan Penal Code;

(b) The First and Second Judges for execution of criminal judgments have announced in the media that they will proceed to execute the individuals who have been sentenced to death. They indicated that they were awaiting information from the Supreme Court of Justice and the Constitutional Court on whether there were any pending appeals, before they established the date and time of the executions. Although the date of the executions has not been set, "it is evident from the public declarations of the judges for execution of criminal judgments that the date of the execution will be established imminently";

(c) The four men who have been condemned to death and whose names are indicated in subparagraph (a) of this paragraph, have resorted to the

inter-American system alleging that the State has violated Article 4(2) of the American Convention, because it imposed the death penalty for a crime for which this penalty was not contemplated when the State ratified the American Convention;

(d) On June 25, 2004, the Center for Justice and International Law (hereinafter "CEJIL") and the *Instituto de la Defensa Pública Penal* [Institute for Public Defense in Criminal Matters] requested the Commission to order the adoption of precautionary measures and to request the Inter-American Court to order provisional measures in favor of the four men who have been condemned to death and who are mentioned in subparagraph (a) of this paragraph, in order to preserve their lives and personal integrity;

(e) The four men who have been condemned to death and who are mentioned in subparagraph (a) of this paragraph have exhausted domestic remedies in their respective cases. Their status of their respective cases is described below:

(e)(1) **Ronald Ernesto Raxcacó-Reyes** was condemned to death on May 14, 1999, together with Hugo Humberto Ruiz-Fuentes and another two individuals, for the crime of abducting a child. Mr. Raxcacó-Reyes' defense lawyer filed appeals for annulment, for dismissal, and for *amparo* (protection), all of which were rejected. On January 28, 2002, CEJIL, the *Instituto de Estudios Comparados en Ciencias Penales de Guatemala* (ICPG) [Guatemalan Institute for Comparative Studies on Criminal Science] and the *Instituto de Defensa Pública Penal* filed a petition before the Commission because the State had imposed the death penalty on Mr. Raxcacó-Reyes, allegedly in violation of Articles 1(1), 2, 4, 5, 8, 10 and 25 of the American Convention. Regarding this petition, on October 9, 2002, the Commission issued Admissibility Report No. 73/02, and on October 8, 2003, Merits Report No. 49/03. The period for complying with the decisions contained in the latter has been suspended, following two extensions granted by the Commission to the State, because the State had expressed its willingness to submit draft laws to Congress that would annul the death penalty in general, and also the specific laws that provide for it, so as to halt execution of the death penalty;

(e)(2) **Hugo Humberto Ruiz-Fuentes** was condemned to death by a judgment of May 14, 1999, for the crime of abduction. The appeals for annulment, for dismissal, and for *amparo* filed against his conviction were denied; "consequently, the remedies under domestic law have been exhausted." On December 16, 2003, Mr. Ruiz-Fuentes' defense lawyer filed a request for executive clemency before the President of the Republic, which "up until July 14, 2004, the date of the last communication sent to the Commission, had not been decided." In the brief with final arguments in the case of Ronald Ernesto Raxcacó-Reyes, his representatives requested that Hugo Humberto Ruiz-Fuentes should be included in this case; the State objected to this request. In Merits Report No. 49/03, the Commission considered the request unfounded and ordered that an independent petition should be processed; this was initiated on July 26, 2004;

(e)(3) **Bernardino Rodríguez-Lara** was sentenced to death on November 28, 1997, as the author of the crime of abduction. Mr. Rodríguez-Lara's defense lawyer filed an appeal for annulment; this was admitted by the respective Chamber, which sentenced him to the immediately inferior penalty (50 years' imprisonment). The Attorney General's office (*Ministerio Público*) filed a special appeal for reversal of that ruling; this was admitted by the Supreme Court of Justice, which once again imposed the death penalty on Mr. Rodríguez-Lara. The defense lawyer filed two further appeals, for *amparo* and for review, both of which were denied. Finally, on November 24, 2003, Mr. Rodríguez-Lara's representatives filed a request for executive clemency before the President of the Republic, which is still pending a decision. The Commission received a petition against the State on March 3, 2004, for the alleged violations committed against Mr. Rodríguez-Lara. This petition is being processed before the Commission; and

(e)(4) **Pablo Arturo Ruiz-Almengor** was sentenced to death as author of the multiple offenses of kidnapping or abduction and aggravated theft on November 29, 1999. Appeals for annulment, for dismissal, for *amparo*, and for review were filed against his conviction, all of which were denied, and the sentence was ratified. A petition filed on March 3, 2004, by the *Instituto de Defensa Pública Penal* in favor of Mr. Ruiz-Almengor is being processed before the Commission.

3. The considerations of the Commission in which it indicated that the series of alleged facts constitute a situation of extreme gravity and urgency that could cause irreparable damage to the four persons included in the request for provisional measure, since execution of the death sentence of the four prisoners included in the request for provisional measures "would make it impossible to effect the eventual *restitutio in integrum* of [their] rights." The Commission also stated that the situation was "particularly grave" since, on two different occasions in the past, the State failed to comply with the precautionary measures ordered by the Inter-American Commission in similar circumstances to those of this request for provisional measures.

In light of the above, the Commission requested the Court to call upon the State of Guatemala:

1. To take the necessary measures to preserve the lives and personal integrity, including the suspension of the execution of Ronald Ernesto Raxcacó-Reyes, Hugo Humberto Ruiz-Fuentes, Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor, so as not to hinder the processing of their cases before the Inter-American system.
 2. That the Guatemalan State should inform the Court of the measures taken to comply with the [...] request.
4. The note of the Secretariat of the Court (hereinafter "the Secretariat") of August 17, 2004, in which, on the instructions of the President of the Court (hereinafter "the President"), it requested the Commission to report on the real imminence of the application of the death penalty in the case of Ronald Ernesto Raxcacó-Reyes, Hugo Humberto Ruiz-Fuentes, Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor.

5. The communication of August 19, 2004, in which the Inter-American Commission forwarded the information requested and indicated that “the imminence of damage in the cases of Ronald Ernesto Raxcacó-Reyes, Hugo Humberto Ruiz-Fuentes, Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor arises from the final nature of the judgments convicting them.” It also stated that, according to the relevant provisions of the laws of Guatemala, if no appeal for *amparo* was pending a decision, the judge for execution of sentences would indicate the date and time for executing the death penalty and that, “[i]n this context, the adoption of provisional measures by the Court is the appropriate means of avoiding the imminent irreparable damage and ensuring the appropriate processing of the petitions filed before the inter-American system.”

6. The note of the Secretariat of the Court of August 20, 2004, in which, on the instructions of the President, it requested the State to forward its observations on the request for provisional measures submitted by the Commission (*supra* having seen paragraph 1).

7. On August 24, 2004, the State transmitted its observations on the request for provisional measures submitted by the Inter-American Commission, and indicated that various actions promoted by the Government “guarantee the protection of the lives of those condemned to death, as regards suspending execution of the death penalty while the appeal for clemency is decided at the domestic level, so that sentences can be postponed or annulled by the exercise of the right to clemency.” In this respect, it stated that the execution of Ronald Ernesto Raxcacó-Reyes, Hugo Humberto Ruiz-Fuentes and Pablo Arturo Ruiz-Almengor had been suspended for five years and of Bernardino Rodríguez-Lara for seven years. The State also provided information on the measures being taken to reform the application of the death penalty, through the preliminary draft laws: “Annulment of the death penalty in the case of all crimes that contemplate this penalty in the Republic of Guatemala,” “Draft law annulling laws that contemplate the death penalty,” and “draft law on the signature and ratification of the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.” In addition, the State indicated that Messrs. Raxcacó-Reyes, Ruiz-Fuentes and Rodríguez-Lara had filed appeals for commutation of sentence before the Ministry of the Interior, which were pending a decision. The State also advised that, in the case of Mr. Ruiz-Almengor “[t]he appeal for review was pending a decision and the defense lawyer had not yet filed the appeal for clemency.” Regarding the appeal for clemency or commutation of sentence, the State indicated that this “is in force in Guatemala[; however,] a law is required regulating the procedure, process and body that should hear the appeal.” Finally, the State referred to the detention conditions of those condemned to death.

CONSIDERING:

1. That Guatemala has been a State Party to the American Convention on Human Rights since May 25, 1978, and accepted the obligatory jurisdiction of the Court on March 9, 1987.

2. That Article 63(2) of the American Convention establishes that:

In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

3. That, in the terms of Article 25 of the Rules of Procedure of the Court:

1. At 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 such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

6. The beneficiaries of urgent measures or provisional measures ordered by the President may address their comments on the report made by the State directly to the Court. The Inter-American Commission of Human Rights shall present observations to the State's report and to the observations of the beneficiaries or their representatives.

[...]

4. That Article 1(1) of the Convention establishes the general obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure the free and full exercise of those rights and freedoms to all persons subject to their jurisdiction.

5. That, in particular, as the Court has already stated, it is the State's obligation to adopt measures of security to protect all persons subject to its jurisdiction¹ and this obligation becomes even more apparent in relation to those who are involved in proceedings before the supervisory organs of the American Convention.²

6. That, in general, under domestic legal systems (internal procedural law), the purpose of provisional measures is to protect the rights of the parties in dispute, ensuring that the judgment on merits is not prejudiced by their actions *pendente lite*.

7. That, under international human rights law, the purpose of urgent and provisional measures goes further because, in addition to their essentially preventive nature, they protect fundamental rights, since they seek to avoid irreparable damage to persons.

8. That, in this case, the purpose of the measures that have been requested is to ensure that there is no obstacle to the possibility of complying with an eventual decision of the bodies of the Inter-American system for the protection of human rights concerning the existence of a violation of Article 4 of the American Convention.

¹ Cf. *Case of Carlos Nieto et al.*. Provisional measures. Order of the Inter-American Court of Human Rights of July 9, 2004, fourth considering paragraph; *the Matter of the Pueblo indígena de Sarayaku*. Provisional measures. Order of the Inter-American Court of Human Rights of July 6, 2004, fourth considering paragraph; and *the Matter of "El Nacional" and "Así es la Noticia" Newspapers*. Provisional measures. Order of the Inter-American Court of Human Rights of July 6, 2004, fourth considering paragraph.

² Cf. *Case of Gómez-Paquiyaury*. Provisional measures. Order of the Inter-American Court of Human Rights of May 7, 2004, sixth considering paragraph; *the Case of the Urso Branco Prison*. Provisional measures. Order of the Inter-American Court of Human Rights of April 22, 2004, fifth considering paragraph; *the Case of the Urso Branco Prison*. Provisional measures. Order of the Inter-American Court of Human Rights of August 29, 2002, fifth considering paragraph; and *Matter of the Peace Community of San José de Apartadó*. Provisional measures. Order of the Inter-American Court of Human Rights of June 18, 2002, tenth considering paragraph.

9. That, should the State execute the alleged victims, this would produce an irreparable situation and the State would have committed an action incompatible with the Convention's object and purpose.³

10. That the situation described by the Commission in this case (*supra* having seen paragraph 2) reveals *prima facie* the possible existence of a situation of extreme gravity and urgency, and makes it necessary to avoid irreparable damage to the right to life of Ronald Ernesto Raxcacó-Reyes, Hugo Humberto Ruiz-Fuentes, Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor. The principle of *prima facie* assessment of a case and the application of assumptions in cases when protection is required has led the Court to order provisional measures on many occasions.

11. That the merits of the case referred to in the Commission's request have not been submitted to the Court. Consequently, the adoption of provisional measures does not imply a decision on the merits of the existing dispute between the petitioners and the State. By adopting provisional measures, this Court is merely ensuring that it may faithfully exercise the mandate entrusted to it by the Convention in cases of extreme gravity and urgency requiring measures of protection to avoid irreparable damage to persons.⁴

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

in exercise of the authority conferred by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

DECIDES:

1. To require the State to adopt forthwith the necessary measures to protect the lives of Ronald Ernesto Raxcacó-Reyes, Hugo Humberto Ruiz-Fuentes, Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor so as not to hinder the processing of their cases before the inter-American system for the protection of human rights.

2. To require the State to provide the Inter-American Court of Human Rights with information on the measures it has adopted to comply with this order, within 15 days of its notification.

3. To require the representatives of the beneficiaries of the provisional measures to submit their observations on the State's report within one week of receiving it, and on the Inter-American Commission on Human Rights to submit its observations

³ Cf. *Case of James et al.*. Provisional measures. Order of the Inter-American Court of Human Rights of November 26, 2001, twelfth considering paragraph.

⁴ Cf. *Case of Carlos Nieto et al.*. Provisional measures. Order of the Inter-American Court of Human Rights of July 9, 2004, tenth considering paragraph; *Matter of the Pueblo indígena de Sarayaku*. Provisional measures. Order of the Inter-American Court of Human Rights of July 6, 2004, twelfth considering paragraph; and *Matter of "El Nacional" and "Así es la Noticia Newspapers*. Provisional measures. Order of the Inter-American Court of Human Rights of July 6, 2004, twelfth considering paragraph.

on the State's report within two weeks of receiving it.

4. To require the State, following its first report (*supra* second operative paragraph), to continue reporting to the Inter-American Court of Human Rights every two months on the measures adopted, and on the representatives of the beneficiaries of the provisional measures and on the Inter-American Commission on Human Rights to submit their observations on the State's reports within four and six weeks, respectively, of receiving them.

5. To notify this order on provisional measures to the State, the Inter-American Commission on Human Rights, and the representatives of the beneficiaries.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado-Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary