

**Order of the
Inter-American Court of Human Rights
of September 8, 2004
Provisional Measures regarding Guatemala
Case of Plan de Sánchez Massacre**

HAVING SEEN:

1. The public hearing held on April 23 and 24, 2004 before the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") with regard to the *Case of the Plan de Sánchez Massacre v. the State of Guatemala* (hereinafter "the State" or "Guatemala"), in which Juan Manuel Jerónimo, Narcisca Corazón Jerónimo, and Buenaventura Manuel Jerónimo appeared as witnesses.
2. The judgment on the merits issued by the Inter-American Court on April 29, 2004 in the *Case of the Plan de Sánchez Massacre*, in which the Court found, in accordance with the terms of the acknowledgment of international responsibility made by the State, that it violated the rights set forth in Articles 5(1) and 5(2) (Right to Humane Treatment); 8(1) (Right to Fair Trial); 11 (Right to Privacy); 12(2) and 12(3) (Freedom of Conscience and Religion); 13(2) subparagraph a and 13(5) (Freedom of Thought and Expression), 16(1) Freedom of Association), 21(1) and 21(2) (Right to Property) and 25 (Right to Judicial Protection) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"); and that it did not fulfill the obligation to respect rights set forth in Article 1(1) of that same Convention.
3. The July 20, 2004 note by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") and its attachments, in which it forwarded information published in the press that same day, regarding certain threats against one of the survivors of the Plan de Sánchez massacre.
4. The July 21, 2004 brief by the representatives of the beneficiaries of the measures (hereinafter "the representatives"), in which –based on Articles 63(2) of the American Convention and 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure")- they filed before the Inter-American Court a request for provisional measures to protect the life, the right to humane treatment, and the personal liberty of Salvador Jerónimo Sánchez, Prudencia Cajbon, Faustina Tojom, Juan Manuel Jerónimo, and Buenaventura Manuel Jerónimo, "who are linked to the case of the Plan [d]e Sánchez [Massacre]."
5. The pleadings of the representatives are based on the following alleged facts:
 - a) Salvador Jerónimo Sánchez, Prudencia Cajbon, Faustina Tojom, Juan Manuel Jerónimo, and Buenaventura Manuel Jerónimo live in the community of Plan de Sánchez, Rabinal, in the Department of Baja Verapaz in Guatemala. Salvador Jerónimo Sánchez, Juan Manuel Jerónimo, and

Buenaventura Manuel Jerónimo are witnesses in the proceeding for genocide before Guatemalan Courts against the high command of the Government of Efraín Ríos Montt; Juan Manuel Jerónimo and Buenaventura Manuel Jerónimo also testified at the public hearing on April 23, 2004 before the Inter-American Court regarding the case of the Plan de Sánchez Massacre. Salvador Jerónimo Sánchez, Prudencia Cajbón, and Faustina Tojom attended said public hearing as observers;

b) as witnesses they are also members of the Asociación para la Justicia y Reconciliación (AJR). This civil association is an ancillary complainant in the cases for genocide, crimes against humanity and war crimes being heard by the Guatemalan courts against the high military commanders of the military regimes of former Presidents Fernando Romeo Lucas García and José Efraín Ríos Montt. In effect, on February 21, 2002 Salvador Jerónimo Sánchez testified before the Public Prosecutor's Office on the massacre that took place in Plan de Sánchez;

c) during the early hours of Saturday, July 17, 2004, one day before remembrance of the Plan de Sánchez massacre that took place on July 18, 1982, Salvador Jerónimo Sánchez was inside his house, resting, and he heard a motorcycle park in front of his house at 01:00 a.m. Afterwards, at 03:00 a.m. he heard steps in his yard. Fearing for his personal safety, he did not get up to verify what was happening. At 06:15 a.m. he got up and went out into the yard and saw a cardboard box by the window. He then went for Buenaventura Manuel Jerónimo and Juan Manuel Jerónimo, and together they opened the box. Inside there was a folder with the following message: "FOR SALVADOR P.B. A GIFT." Inside the folder there was an anonymous letter with a death threat that read: ""SALVADOR YOU WILL SOON BE KILLED FOR BEING A WITNESS OF THE PLAN DE SANCHEZ MASSACRE AND FOR BEING RESPONSIBLE FOR THE JUDGMENT AGAINST THE STATE OF GUATEMALA. THIS IS THE PRIZE YOU WANTED. SOON YOU WILL BE MURDERED. HAPPY JULY 18th ANNIVERSARY;"

d) Salvador Jerónimo Sánchez, who knows some military codes, because he had to do his military service in the eighties, immediately knew that "P.B" meant "Peligro Bomba" [Bomb Threat], for which reason he called the police and they found a tear gas grenade inside the box. Members of the National Civil Police asked Salvador Jerónimo Sánchez whether anyone in the community worked for the police, as this type of weapons are used exclusively by the police; and

e) the steps taken in connection with said facts were:

i. On Saturday, July 17, 2004, at 09:00 o'clock [Salvador Jerónimo Sánchez] called the Police at Rabinal to report the facts. On Saturday, July 17, 2004, at 09:50 the police reached the village to gather the evidence, conduct the first investigations, and make a report on the facts, which was sent to the magistrate at Rabinal.

ii. At approximately that same time he called [the Centro para la Acción Legal en Derechos Humanos] and reported the fact. He also requested their support as legal counsel.

iii. In response to a request by [the Centro para la Acción Legal en Derechos Humanos] and by members of the community, Hugo Martínez, who

was in charge of the Departamento de Defensores de Derechos Humanos and Luis Cáceres, Director of the Legal Area of the Comisión Presidencial de Derechos Humanos (COPREDEH), who attended the commemoration, went to the National Civil Police station at the municipal seat in Rabinal to inquire about steps taken by the Police.

iv. On July 20 [2004], Salvador Jerónimo Sánchez went before the Magistrate at Rabinal to inquire about the status of the case and that judge sent him to testify before the Public Prosecutor's office in Salamá, the capital of the department of Baja Verapaz.

In view of the above, given the alleged urgency of the aforementioned situation, the representatives asked the Court:

i [...] pursuant to Article 63(2) of the Convention, to take such measures as it deems appropriate. Specifically, the applicants ask the Court to request perimeter surveillance by the National Civil Police for Salvador Jerónimo Sánchez, Juan Manuel Jerónimo, Buenaventura Manuel Jerónimo, Prudencia Cabjón, Faustina Tojom and their families.

ii. [...] to order the State of Guatemala to take such measures as may be necessary to ensure the petitioners' lives and their right to humane treatment and to ensure respect for their rights, regulated by the American Convention on Human Rights.

iii. [...] to order the State to investigate the facts reported that gave rise to the instant measures, with the aim of discovering and punishing those responsible.

6. The July 26 and 27, 2004 notes by the Secretariat of the Court (hereinafter "the Secretariat"), in which, under instructions by the President of the Court (hereinafter "the President"), it granted the State and the Inter-American Commission, respectively, 48 hours to submit their observations on the representatives' request for provisional measures.

7. The July 28, 2004 brief by the State, in which it submitted its observations on the request for provisional measures made by the representatives. In said brief, the State pointed out that "there are serious grounds of extreme gravity and urgency that endanger the life, safety and personal liberty of Salvador Jerónimo Sánchez, Prudencia Cabjón, Faustina Tojom, Juan Manuel Jerónimo, and Buenaventura Manuel Jerónimo." In this regard, the State reported that, "due to the facts reported, [the] Coordinator of the Unidad Coordinadora de Protección para Defensores de Derechos Humanos and [the] Deputy Agent and Director of the Legal Department of the Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos (hereinafter "COPREDEH") went to sub-station 5221, in the municipality of Rabinal, Department of Baja Verapaz, with the aim of providing follow-up on police and judicial actions regarding the fact stated in the complaint." The State also mentioned that a meeting was held on July 23, 2004 among the Legal Director of the Centro de Acción Legal en Derechos Humanos (CALDH), representatives of the Ministerio de Gobernación [Interior Ministry], and the Unidad Coordinadora de Protección para Defensores de Derechos Humanos "with the aim of coordinating, in an agile and effective manner, the mechanism for preventive protection of Salvador Jerónimo Sánchez and [the] other members of the Community of Plan de Sánchez, Rabinal, Baja Verapaz, until the [...] Inter-American Court [...] rules on the request for provisional measures filed before it." Finally, the State reported that the Police Station for the Department of Alta Verapaz, together with the regional office of COPREDEH, are in charge of verifying "protection of Salvador Jerónimo Sánchez when he goes from his home [...] toward his work."

8. The July 29, 2004 note by the Inter-American Commission, in which it submitted its observations on the request for provisional measures made by the representatives and stated that it "endorsed" the request. In this regard, the Commission pointed out that the situation described by the representatives in their request for provisional measures demonstrates that the current situation of Salvador Jerónimo Sánchez, Prudencia Cabjón, Faustina Tojom, Juan Manuel Jerónimo, and Buenaventura Manuel Jerónimo is "*prima facie* one of extreme gravity and urgency, since they are witnesses and/or survivors of a massacre committed in the framework of a genocidal policy." The Commission also stated that, based on the text of the threat received by Salvador Jerónimo Sánchez, it is "a reprisal against the next of kin of the victims of the massacre who came before the Inter-American Human Rights System seeking the truth and comprehensive reparations[, as well as] a reaction against the judgment of the [...] Court on the merits and a warning with respect to possible reparations." Finally, the Commission asked the Court to order the provisional measures requested by the representatives in the instant case.

9. The July 30, 2004 Order of the President, in which he asked the State, *inter alia*, to:

1. [...] adopt, forthwith, such measures as [might] be necessary to safeguard and protect the life, right to humane treatment, and personal liberty of Salvador Jerónimo Sánchez, Prudencia Cajbon, Faustina Tojom, Juan Manuel Jerónimo, and Buenaventura Jerónimo, one of these measures being protection of the perimeter of their homes.

2. [...] allow the beneficiaries of these measures or their representatives to participate in their planning and implementation and, in general, to inform them of progress regarding implementation of the measures ordered by the Inter-American Court of Human Rights.

3. [...] investigate the facts that gave rise to these urgent measures, with the aim of identifying those responsible and punishing them as appropriate.

4. [...] report to the Inter-American Court of Human Rights, within ten days after notification of the instant Order, on the urgent measures adopted to comply with it.

[...]

10. The August 2, 2004 brief by the representatives, in which they reported a new written threat sent on August 1, 2004 to Salvador Jerónimo Sánchez, "extensive to his family, to members of the community, to international supporters, and to members of the Centro para la Acción Legal en Derechos Humanos."

11. The August 4, 2004 note by the Secretariat, in which, under instructions by the President, it asked the State to refer, in the report it must submit pursuant to the July 30, 2004 Order of the President (*supra* Having Seen 9), to the new situation brought up by the representatives.

12. The representatives' August 4, 2004 note, in which they submitted additional information on the July 17, 2004 events (*supra* Having Seen 4 and 5), which gave rise to the request for provisional measures.

13. The August 26, 2004 note by the the Secretariat, in which, under instructions by the President, it reminded the State that it must submit the report required by operative paragraph four of the President's July 30, 2004 Order (*supra* Having Seen 9).

14. The August 27, 2004 brief by the State, in which it reported on the steps it has taken to implement the measures ordered in the President's July 30, 2004 Order (*supra* Having Seen 9). In said brief, the State pointed out that on August 3, 2004, COPREDEH officials visited the village of Plan de Sánchez to coordinate actions with the National Civil Police, to station two police agents at the home of Salvador Jerónimo Sánchez, Prudencia Cabjón, Faustina Tojom, Juan Manuel Jerónimo, and Buenaventura Manuel Jerónimo, and also that an agreement was reached regarding rounds of the perimeter of the village of Plan de Sánchez; that on August 5, 2004, COPREDEH officials met with the District Attorney of the Public Prosecutor's Office, with the aim of obtaining preliminary information on conduct of the investigation on the threats to the beneficiaries of the measures; that on August 11 and 19, 2004 the President of COPREDEH met with the Minister of the Interior to coordinate and implement actions to provide protection and security for the village of Plan de Sánchez; that on August 18, 2004, officials of COPREDEH and of the Unidad de Protección para Defensores de Derechos Humanos [Protection Unit for Human Rights Advocates] met with the beneficiaries and their representatives to inform them of the steps taken to investigate the threats that they received; and that on August 25, 2004, COPREDEH officials met with the Ministers of the Interior and of Defense to hear from them about progress in the investigation into the threats against the beneficiaries and other members of the community of Plan de Sánchez.

The State also indicated that, for security reasons that it is unaware of, the representatives of the beneficiaries transferred Salvador Jerónimo Sánchez to another community. Finally, the State mentioned that the Special Prosecutor for Human Rights has been asked to report on progress of the investigations into the facts stated in the complaint.

15. The representatives' September 7, 2004 note, in which they submitted their observations on the report by the State regarding steps taken to implement the measures ordered in the President's July 30, 2004 Order. Said representatives pointed out that the National Civil Police in the Municipality of Rabinal, Baja Verapaz "does not have sufficient officers to provide the patrol services to the community of Plan de Sánchez, as well as to establish fixed surveillance posts at the residence of Salvador Jerónimo Sánchez." They added that, during the period from August 30 to September 3, 2004, the security agents appointed by the National Civil Police of Rabinal "were not at their assigned posts, leaving the beneficiaries and the community of Plan de Sánchez in a vulnerable and risky situation."

16. The September 8, 2004 brief by the Inter-American Commission, in which they submitted their observations on the report by the State and on the brief by the representatives of the beneficiaries of the measures. In this regard, the Commission stated its concern regarding the lack of security guards at the Community of Plan de Sánchez for five days, which is "a serious negligence that the State must ensure does not happen again." Therefore, the Commission asked the Court to order the State to develop a security plan with participation by the beneficiaries and their representatives, to set a schedule for the security agents assigned to protect said community, and to report on the number of agents assigned.

WHEREAS:

1. Guatemala is a State Party to the American Convention on Human Rights and on March 9, 1987 it accepted the adjudicatory jurisdiction of this Court, pursuant to Article 62 of the Convention.

2. Article 63(2) of the American Convention sets forth that, “[i]n 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. Article 25(1) of the Rules of Procedure of the Court sets forth that, “[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 such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.”

4. Article 1(1) of the Convention sets forth the duty of the States Party to respect the rights and liberties recognized in that treaty and to ensure their free and full exercise by all persons subject to their jurisdiction.

5. The purpose of provisional measures, in the domestic legal systems (domestic procedural law) in general, is to protect the rights of the parties in a controversy, ensuring that the Judgment on the merits is neither obstructed nor impeded by their actions, *pendente lite*.

6. In International Human Rights Law, urgent and provisional measures also serve the purpose of protecting fundamental human rights, avoiding irreparable damage to persons.

7. The case of the Plan de Sánchez Massacre is in the reparations stage before the Court.

8. The Court has examined the facts and circumstances that were the basis for the President’s July 30, 2004 Order (*supra* Having Seen 9), which it ratifies because it finds it to be in accordance with the legal and factual merits of the case.

9. The background submitted by the representatives and by the Inter-American Commission in this case -taking into account, also, the acceptance of the fact by the State itself- reveal *prima facie* a threat to the life, right to humane treatment, and personal liberty of Salvador Jerónimo Sánchez, Prudencia Cajbon, Faustina Tojom, Juan Manuel Jerónimo, and Buenaventura Jerónimo (*supra* Having Seen 4, 5, 7 and 8). The standard for *prima facie* assessment in a case and application of presumptions regarding the need for protection have led the Court to order provisional measures a number of times.¹

¹ See, *inter alia*, *Matter of the “Globovisión” television station*. August 3, 2004 Order of the President, Whereas six; *Case of the 19 Tradesmen*. July 30, 2004 Order of the President, Whereas eight; and *Case of the Plan de Sánchez Massacre*. July 30, 2004 Order of the President, Whereas nine.

10. To effectively ensure the rights set forth in the American Convention, the State Party has the *erga omnes* obligation to protect all persons under its jurisdiction. This means, as the Court has stated, that said general obligation applies not only with respect to the power of the State, but also with respect to actions by private third parties.² This Court notes that, given the special circumstances of the instant case, there is a need to protect, through provisional measures, the life, right to humane treatment, and personal liberty of Salvador Jerónimo Sánchez, Prudencia Cajbon, Faustina Tojom, Juan Manuel Jerónimo, and Buenaventura Manuel Jerónimo, in light of the provisions of the American Convention.

11. It is appropriate to recall that the Court has established that

[t]he right to life is a fundamental human right, the enjoyment of which is a prerequisite for enjoyment of all the other human rights. It is not respected, all the other rights are meaningless. In view of the fundamental nature of the right to life, approaches that restrict it are inadmissible. Essentially, the right to life encompasses not only the right of every human being not to be arbitrarily deprived of life, but also the right not to be denied access to conditions that ensure a decent existence. The States have the obligation to ensure the establishment of the conditions required to avoid violations of this basic right, and specifically the duty to ensure that its agents do not abridge it.³

12. Adoption of provisional measures of protection by the Court in favor of Salvador Jerónimo Sánchez, Prudencia Cajbon, Faustina Tojom, Juan Manuel Jerónimo, and Buenaventura Manuel Jerónimo, does not involve a decision on reparations in the case of the Plan de Sánchez Massacre, which is being heard by the Inter-American Court against Guatemala. In adopting provisional measures, this Court is merely ensuring that the Court can fully exercise its mandate according to the Convention in cases in which there is a situation of extreme gravity and urgency and special protection measures are necessary to avoid irreparable damage to individuals.

13. The State also has the obligation to investigate the facts that gave rise to this request for provisional measures, with the aim of identifying those responsible and punishing them as appropriate.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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

² See, *inter alia*, *Matter of the "Globovisión" television station*. August 3, 2004 Order of the President, Whereas eleven; *Case of the Plan de Sánchez Massacre*. July 30, 2004 Order of the President, Whereas ten; and *Matter of Luisiana Ríos et al.*. July 27, 2004 Order of the President, Whereas twelve.

³ See *inter alia*, *Matter of Carpio-Nicolle et al.*. Provisional Measures. July 8, 2004 Order of the Inter-American Court of Human Rights, Whereas nineteen; *Matter of the Pueblo indígena de Sarayaku*. Provisional Measures. July 6, 2004 Order of the Inter-American Court of Human Rights, Whereas eleven; and *Matter of the Pueblo indígena de Kankuamo*. Provisional Measures. July 5, 2004 Order of the Inter-American Court of Human Rights, Whereas twelve.

DECIDES:

1. To ratify, in its entirety, the President's July 30, 2004 Order.
2. To order the State to maintain such measures as may be necessary to safeguard and protect the life, right to humane treatment, and personal liberty of Salvador Jerónimo Sánchez, Prudencia Cajbon, Faustina Tojom, Juan Manuel Jerónimo, and Buenaventura Jerónimo, one of these measures being the protection of the perimeter of their homes.
3. To order the State to allow participation of the beneficiaries of these measures or their representatives in their planning and implementation, and in general to inform them of progress regarding implementation of the provisional measures ordered by the Inter-American Court of Human Rights.
4. To order the State to investigate the facts that gave rise to these provisional measures, with the aim of identifying those responsible and punishing them as appropriate.
5. To order the State to continue reporting to the Inter-American Court of Human Rights every two months on the provisional measures adopted, and to call upon the beneficiaries of these measures or their representatives to submit their observations within one month of when they receive the reports by the State, and the Inter-American Commission on Human Rights to submit its observations to submit its observations on said reports by the State within six weeks of when it receives them.
6. To notify the instant Order to the State, to the Inter-American Commission on Human Rights and to 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