

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF SEPTEMBER 22, 2006**

**REQUEST FOR PROVISIONAL MEASURES SUBMITTED BY THE INTER-
AMERICAN COMMISSION ON HUMAN RIGHTS
REGARDING THE REPUBLIC OF COLOMBIA**

IN FAVOR OF MERY NARANJO *ET AL.*

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of July 5, 2006, in which it decided:

1. To require the State to adopt forthwith the necessary measures to protect the rights to life and personal integrity of the following persons: Mery Naranjo Jiménez and her next of kin, Juan David Naranjo Jiménez, Alejandro Naranjo Jiménez, Sandra Janeth Naranjo Jiménez, Alba Mery Naranjo Jiménez, Erika Johann Gómez, Javier Augusto Torres Durán, Heidi Tatiana Naranjo Gómez, Sebastián Naranjo Jiménez, María Camila Naranjo Jiménez, Aura María Amaya Naranjo and Esteban Torres Naranjo, and also María del Socorro Mosquera Londoño.

2. To require the State to adopt forthwith the necessary measures to protect the rights to life and personal integrity of Luisa María Escudero Jiménez.

3. To require the Inter-American Commission on Human Rights and the beneficiaries or their representatives to provide the Inter-American Court of Human Rights with information on the current situation of the child, Luisa María Escudero, within ten days of notification of [the] Order so that the Court may duly evaluate whether to maintain the measures adopted in her favor.

4. To require the State to ensure that the measures of protection are not provided by the "security units" which, according to the beneficiaries, were involved in the reported facts; consequently, the beneficiaries or their representative should participate in the designation of those who will provide security.

5. To require the State to provide the permanent protection measures necessary to ensure security for the residence of Mery Naranjo Jiménez and her family, in the terms of the thirteenth considering paragraph of [the] Order.

6. To require the State to adopt the necessary measures for María del Socorro Mosquera Londoño, who has been forced to move, to return home safely, and to adopt all necessary measures to protect her life and personal integrity. If she cannot return home, the Inter-American Commission on Human Rights and the beneficiaries or their

* Judge Oliver Jackman did not take part in the deliberation and signature of this Order, because he informed the Court that, for reasons beyond his control, he would be unable to take part in the seventy-second regular session of the Court.

representative are required to inform the Inter-American Court of Human Rights of the location of Mrs. Mosquera Londoño, within ten days of notification of [the] Order, so that the State can provide the appropriate protection in her place of residence.

7. To require the State to investigate the facts that gave rise to the adoption of these provisional measures and, if applicable, identify those responsible and impose the corresponding sanctions.

8. To require the State to take the necessary steps to ensure that the measures of protection decided in [the] Order are planned and implemented with the participation of the beneficiaries or their representative, so that these measures are provided diligently and effectively and, in general, they are kept informed about progress in the implementation of the measures.

9. To require the State to report to the Inter-American Court of Human Rights on the measures it has adopted to comply with [the] Order, within ten days of its notification.

10. To request the beneficiaries of these measures or their representative to present any observations they deem pertinent to the Inter-American Court of Human Rights, within five days of notification of the State's report.

11. To request the Inter-American Commission on Human Rights to present any observations it deems pertinent to the Inter-American Court of Human Rights, within seven days of notification of the State's report.

12. To request the State, following the report indicated in the ninth operative paragraph, to continue reporting to the Inter-American Court of Human Rights every two months on the provisional measures adopted, and to request the beneficiaries of these measures or their representative, and also the Inter-American Commission on Human Rights, to submit their observations within four and six weeks, respectively, of notification of the State's reports.

13. To request the Secretariat to notify [the] Order to the Inter-American Commission on Human Rights, the representative of the beneficiaries of these measures, and the State.

2. The communication of July 17, 2006, of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") in response to the sixth operative paragraph of the said Order of the Court of July 2006, advising that "in order to coordinate measures of protection in favor of [María del Socorro] Mosquera [Londoño], the State [of Colombia (hereinafter "the State" or "Colombia")] should contact her through her representative, the *Grupo Interdisciplinario por los Derechos Humanos* [...]."

3. The communication of July 21, 2006, of the Secretariat of the Court, on the instructions of the President of the Court (hereinafter "the President"), requesting the Commission to present, as soon as possible, the information requested in the third operative paragraph of the Order of the Court of July 5, 2006, concerning the situation of the child, Luisa María Escudero Jiménez. Also, on the instructions of the President, it asked the representatives of the beneficiaries of the measures (hereinafter "the representatives") to present, as soon as possible, the information requested in the third and sixth operative paragraph of this Order, concerning the situation of the child, Luisa María Escudero Jiménez, and of María del Socorro Mosquera Londoño.

4. The brief of the representatives of July 31, 2006, in which they indicated that the child, Luisa María Escudero Jiménez, was in a stable condition and that it was necessary to ensure: "(1) that the child [...] receives prompt and appropriate medical and psychological care, and (2) that she can register [in school] once again to

continue her studies, and also [that] a safe mechanism [be established] so that she can travel to the establishment." Furthermore, the representatives indicated that on July 19, 2006, a meeting had been held with representatives of the State, in which the delegate of the Prosecutor's Office had advised that no progress had been made in the investigation into the facts that occurred on February 14, 2006, and that no charges had been laid against anyone, even though there was a complete list of the members of the Army who had taken part in the facts. Lastly, it was agreed to change the Prosecutor in charge of the investigation. The representatives considered that the most effective protection for the persons at risk was the investigation into the facts and the punishment of those responsible, before entering into discussions with the State about the actual measures of protection. Lastly, it indicated that Mery Naranjo Jiménez and her family continued to be without any judicial protection and with the "unreliable protection they had been granted before the provisional measures were ordered."

5. The note presented on August 4, 2006, by the Commission, indicating that, based on the information received from the representatives, "it had found no evidence to conclude that the minor [Luisa María Escudero Jiménez] was not in danger." It also referred to the place of residence of Mery Naranjo Jiménez and the vicinity of her family group, which included other beneficiaries of the measures and her next of kin, and reiterated the "need to provide protection to the place of residence of the beneficiary." It also indicated that "owing to their specificity, it was fundamental to ensure constant, updated coordination between the State and the beneficiaries in the planning of the measures."

6. The communication presented by the State on August 11, 2006, in which it informed the Court about the different actions it had adopted to safeguard the life and personal integrity of Mery Naranjo Jiménez and her family, including:

- (a) Mery Naranjo Jiménez had been provided with "an Avantel means of communication" to use with the Police Commander at the El Corazón Police Station, so that she could be in permanent contact with the National Police, and a three-month extension had been approved for support for temporary relocation, which is paid monthly;
- (b) Authorization had been given to issue tickets on the route Medellín-Bogotá-Medellín to the beneficiaries of the provisional measures, Mery Naranjo Jiménez, Alba Mery Naranjo and María del Socorro Mosquera Londoño, so that they could attend the meetings to coordinate the measures;
- (c) The National Police, the entity responsible for providing security, had proposed that a study be conducted as a necessary formality for continuing the protection scheme. The beneficiaries and their representatives had refused this; nevertheless, the National Police had maintained the protection it provided to the residence of Mery Naranjo Jiménez and her family;
- (d) Regarding María del Socorro Mosquera Londoño, the petitioners considered that the presence of the security service at her residence was unnecessary;
- (e) A meeting to coordinate measures had been held with the beneficiaries of the measures, in compliance with the provisions of the eighth operative paragraph of the Court's Order of July 5, 2006. It was attended by representatives of various State institutions and by Mery Naranjo Jiménez and María del Socorro Mosquera Londoño. At this meeting, the material measures of protection and the political measures requested by the beneficiaries were reviewed, and

- (f) The Prosecutor General's Office reported that investigation No. 2169 was in the preliminary stages and that, to date, two of those involved had been identified. Regarding the facts that occurred on February 13 (*sic*), 2006, it indicated that the 10th Special Prosecutor of Medellín was conducting various investigatory activities to clarify the facts and identify those responsible.

7. The communications of August 16, 2006, from the representatives, in which they reported, among other matters:

- (a) Concerning María del Socorro Mosquera Londoño:
 - i) She had not lived in Commune XIII for almost two years; she had moved to another part of Medellín owing to the danger she faced if she remained in her residence; this made her an intra-urban displaced person. She remained President of the Las Independencias Women's Association (AMI), and for financial reasons had been obliged to leave her children in her family home; however, she remained in contact with them and with the women in the district. María del Socorro Mosquera Londoño requested that the State adopt "effective measures resulting in a genuine dismantling of the paramilitary groups that still control the zone and jeopardize the life of the leaders who do not accept their orders, and also that the threats she has received, the acts that gave rise to the murder of Teresa Yarce, and the joint actions between members of the Army and the paramilitary groups against the residence of Mery Naranjo and her family be the object of a judicial investigation, and
 - iii) She requested the Court to order the State to implement the necessary measures to enable the beneficiary to return home safely and, meanwhile, that she be provided with protection and material support in keeping with her situation as an intra-urban displaced person.
- (b) Concerning the observations on the State's report:
 - i) The protection scheme provided to Mery Naranjo Jiménez through the Ministry of the Interior and Justice was inadequate, taking into account the gravity of the facts that preceded the adoption of provisional measures;
 - ii) During the meeting with the State's representatives on July 19, 2006, the representatives of the beneficiaries requested that, before discussing the material measures of protection for the beneficiaries, the State should inform them why no progress had been made in the judicial investigation into the illegal search of the residence of the Naranjo family and the attack against the life and personal integrity of some of its members. They have not received a satisfactory, coherent reply about progress in the investigation;
 - iii) It is not true that the beneficiaries and petitioners have refused to accept the risk study proposed by the National Police as a requisite for maintaining the protection scheme. This requirement was imposed by the Ministry of the Interior and Justice as a prerequisite for providing the beneficiaries with the precautionary measures ordered by the Commission, and the protection material they required for displacements. They added that, as they had indicated in the communication of April 6, 2006, "the National Police reported that the result of the risk study [on] the situation of Mery Naranjo [Jiménez] was NORMAL; in other words, similar to that of any other citizen" and that "consequently, the Ministry of the Interior had stated that, in view of this result, Mery Naranjo [Jiménez] and her family could not be beneficiaries of measures of protection under the program operated by that entity." This was one of the reasons for the request for provisional measures;

- iv) It is true that they have requested that permanent security measures should not be provided to the family of María del Socorro Mosquera Londoño, but this does not mean that the beneficiary does not require other material measures of protection, owing to her situation as an intra-urban displaced person and her high level of vulnerability, and
- v) The State has disregarded the Court's order that it adopt the necessary measures to protect the life and personal integrity of the beneficiaries; investigate the facts that put them at risk, prosecuting and punishing those responsible, and adopt the necessary measures to ensure such facts cease and are not repeated.

CONSIDERING:

1. That Colombia has been a State Party to the American Convention on Human Rights (hereinafter "the Convention") since July 31, 1973, and accepted the compulsory jurisdiction of the Court on June 21, 1985.
2. That Article 63(2) of the Convention establishes that "in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," at the request of the Commission, the Court may adopt such provisional measures as it deems pertinent, in matters that are not yet submitted to its consideration.
3. That, in this regard, Article 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") establishes that:
 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.

[...]
4. That, under domestic legal systems (domestic procedural law) in general, the purpose of provisional measures is to preserve the rights of the parties in dispute, ensuring that the judgment on merits is not prejudiced or prevented by their actions *pendente lite*.
5. That, under international human rights law, provisional measures are not merely preventive, in that they preserve a juridical situation, but rather they are essentially protective, since they protect human rights, inasmuch as they seek to avoid irreparable damage to persons. Provided that the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met, provisional measures become a real jurisdictional guarantee of a preventive nature.¹

¹ Cf. *Matter of María Leontina Millacura Llaipén et al.* Provisional measures. Order of the Inter-American Court of Human Rights of July 6, 2006, fifth considering paragraph; *Matter of Mery Naranjo et al.* Provisional measures, *supra* note 1, fifth considering paragraph; *Case of the 19 Tradesmen.* Provisional measures. Order of the Inter-American Court of Human Rights of July 4, 2006, sixth considering paragraph.

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

7. That the adoption of provisional measures does not imply a decision on the merits of the dispute that exists between the petitioners and the State. By adopting provisional measures, the Court is merely ensuring that it can exercise its mandate faithfully, pursuant to the Convention, in cases of extreme gravity and urgency that require measures of protection to avoid irreparable damage to persons.²

8. That the States should grant effective and sufficient guarantees to the defenders of human rights so that they may carry out their activities freely, and should pay particular attention to actions that limit or hinder their work, since this work makes a positive and complementary contribution to the State's efforts as guarantor of the rights of those subject to its jurisdiction.³

9. That, pursuant to the Order of the Inter-American Court (*supra* Having seen paragraph 1), the State was required, among other matters: to adopt measures to protect the life and personal integrity of Mery Naranjo Jiménez and her next of kin: Juan David Naranjo Jiménez, Alejandro Naranjo Jiménez, Sandra Janeth Naranjo Jiménez, Alba Mery Naranjo Jiménez, Erika Johann Gómez, Javier Augusto Torres Durán, Heidi Tatiana Naranjo Gómez, Sebastián Naranjo Jiménez, María Camila Naranjo Jiménez, Aura María Amaya Naranjo, Esteban Torres Naranjo; of María del Socorro Mosquera Londoño, and of the child, Luisa María Escudero Jiménez; to investigate the facts that gave rise to the adoption of the provisional measures in order to identify those responsible and, if applicable, punish them; to allow the beneficiaries or their representatives to take part in the planning and implementation of the measures of protection and keep them informed about progress in the measures ordered by the Court, and to submit the required reports to the Court.

10. That, from the information provided by the Commission and the representatives (*supra* Having seen paragraphs 4, 5, 6 and 7) concerning the need to maintain these measures of protection in favor of Mery Naranjo Jiménez and her family, the Court finds it necessary to reiterate to the State that it should adopt and implement, forthwith and effectively, all necessary measures to guarantee the protection of the life and personal integrity of the said beneficiaries of these provisional measures. Consequently, the Court reiterates that the State should maintain permanent protection of the place of residence of Mery Naranjo Jiménez and her family.

11. That, in its Order of July 5, 2006, the Inter-American Court required the Inter-American Commission and the beneficiaries or their representatives to inform the Court about the current situation of the child, Luisa María Escudero Jiménez, so

² Cf. *Matter of Mery Naranjo et al.* Provisional measures, *supra* note 1, seventh considering paragraph; *Matter of Guerrero Gallucci and Martínez Barrios.* Provisional measures, *supra* note 3, fourteenth considering paragraph; *Matter of Yare I and Yare II Capital Region Penitentiary Center.* Provisional measures, *supra* note 1, seventh considering paragraph.

³ Cf. *Matter of Mery Naranjo et al.* Provisional measures, *supra* note 1, eighth considering paragraph; *Matter of the Forensic Anthropology Foundation.* Provisional measures. Order of the Inter-American Court of Human Rights of April 21, 2006, ninth considering paragraph, and *Matter of the Monagas Judicial Confinement Center ("La Pica").* Provisional measures. Order of the Inter-American Court of Human Rights of February 9, 2006, fourteenth considering paragraph.

that the Court could duly assess whether to maintain the measures adopted in her favor (*supra* Having seen paragraph 1). Based on the information provided by the Inter-American Commission and the representatives about the child, Luisa María Escudero Jiménez, niece of Mrs. Naranjo Jiménez, the Court considers that the life and personal integrity of the minor are still in danger; hence it is advisable to maintain the provisional measures adopted in her favor (*supra* Having seen paragraphs 4 and 5).

12. That, with regard to María del Socorro Mosquera Londoño, the Commission and the representatives have reported that she is an intra-urban displaced person and that, owing to the danger that exists, it has been decided to keep information on her current place of residence confidential; moreover, at the present time, she has no plans to return to her family home (*supra* Having seen paragraph 7). Consequently, the Court considers that when María del Socorro Mosquera Londoño returns to her home and the State is informed about her location, it should immediately adopt all necessary measures to protect her life and personal integrity.

13. That, in accordance with the Court's Order of July 5, 2006 (*supra* Having seen paragraph 1), the Court reiterates that the State should ensure that the measures of protection are not provided by the "security units" which, according to the beneficiaries, were involved in the reported facts; consequently, the beneficiaries or their representative should participate in the designation of those who will provide security.

14. That the State has the obligation to investigate the facts that gave rise to and justified the maintenance of these provisional measures, identify those responsible and, if applicable, impose the corresponding sanctions.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority conferred by Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of its Rules of Procedure,

DECIDES:

1. To reiterate the Order of the Inter-American Court of Human Rights of July 5, 2006.

2. To reiterate to the State that it should maintain the measures adopted and order, forthwith, those necessary to protect effectively the life and personal integrity of the following persons: Mery Naranjo Jiménez and her next of kin: Juan David Naranjo Jiménez, Alejandro Naranjo Jiménez, Sandra Janeth Naranjo Jiménez, Alba Mery Naranjo Jiménez, Erika Johann Gómez, Javier Augusto Torres Durán, Heidi Tatiana Naranjo Gómez, Sebastián Naranjo Jiménez, María Camila Naranjo Jiménez, Aura María Amaya Naranjo and Esteban Torres Naranjo.

3. To reiterate to the State that it should maintain the measures it has adopted and order, forthwith, those necessary to protect effectively the life and personal integrity of the child, Luisa María Escudero Jiménez.
4. To require the State, when María del Socorro Mosquera Londoño returns to her residence and the representatives inform the State or when the State is advised about her location, to adopt, forthwith, all necessary measures to protect her life and personal integrity, in accordance with the twelfth considering paragraph.
5. To reiterate to the State that it should ensure that the measures of protection are not provided by the "security units" which, according to the beneficiaries, were involved in the reported facts; consequently, the beneficiaries or their representative should participate in the designation of those who will provide security.
6. To reiterate to the State that it should maintain and, if applicable order, forthwith, the necessary measures of permanent protection to ensure the safety of the place of residence of Mery Naranjo Jiménez and her family.
7. To require the State to investigate the facts that gave rise to the adoption of these provisional measures and, if applicable, identify those responsible and impose the corresponding sanctions.
8. To reiterate to the State that it should allow the beneficiaries of these measures to take part in their planning and implementation and, in general, keep them informed about progress in implementation of the measures ordered by the Inter-American Court of Human Rights.
9. To reiterate to the State that it should continue reporting to the Inter-American Court of Human Rights every two months on the provisional measures adopted, and to require the beneficiaries of these measures or their representative to submit their observations within four weeks of notification of the State's reports, and the Inter-American Commission on Human Rights to submit its observations within six weeks of reception of the State's reports.
10. To request the Secretariat to notify this Order to the Inter-American Commission on Human Rights, the representative of the beneficiaries of these measures, and the State.

Judge Antônio A. Cançado Trindade informed the Court of his Separate Opinion, which accompanies this Order.

Sergio García Ramírez
President

Alirio Abreu Burelli

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

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I have voted in favor of the adoption of this Order on provisional protection measures of the Inter-American Court of Human Rights in *Mery Naranjo et al. v. Colombia*; however, I feel obliged to attach this separate opinion with my brief reflections on some concerns that I have been expressing to the Court in recent months, with a view to strengthening this preventive mechanism for the safeguard of human rights. I refer, in particular, to some difficulties that have emerged from this practice under the American Convention, arising from the co-existence of the precautionary measures of the Inter-American Commission on Human Rights and the provisional measures of the Inter-American Court, in light of the imperative of ensuring the individual's direct access to the international instances. Constrained by the merciless pressure of time, I will now present my brief reflections *lex lata* and *lege ferenda* in this regard.

I. Brief reflections *lex lata*.

2. In its original request to the Court of July 3, 2006, for provisional measures in the case of *Mery Naranjo et al.*, the Inter-American Commission on Human Rights mentioned the "ineffectiveness" of its own precautionary measures in this case.⁴ The situation of the beneficiaries of the measures had deteriorated, to the point that the Commission finally decided to request the Court to order provisional protection measures. This has occurred in numerous other cases in which the Commission insisted in ordering its precautionary measures and only later, when the situation of the petitioners had exacerbated, submitted requests for provisional measures to the Court *in extremis*. The well-know cases relating to the death penalty in Trinidad and Tobago (e.g., *James et alii*), among many others, are classic examples of this situation.

3. In recent joint meetings between the Inter-American Court and Commission as well as in numerous public hearings before the Court, and in the Court's deliberations, I have expressed my profound concern regarding this practice and have indicated that, in certain cases, it would be better to send requests for provisional protection measures *directly* to the Court without the Commission previously insisting on its precautionary measures. The situation is even worse when the Commission refuses to order precautionary measures for the petitioners without providing sufficient justification for its decision, since the petitioners are unable to resort to the Court, because their cases are pending before the Commission rather than before the Court.

4. I consider that such cases could constitute a denial of the right to international justice. Hence, I wish to record my position in this regard in this separate opinion, since I perceive the approach of the twilight of my time as a judge of the Inter-American Court of Human Rights (*tempus fugit*). I do so with a view to enhancing this important preventive protection mechanism of the American Convention, while recording my vote of confidence in the common sense of my colleagues of both the Inter-American Court and Commission.

⁴. Part V.III, paragraph 40.

5. *First*, in my opinion, the requirement of the prior exhaustion of domestic remedies is not applicable in requests to the Court for provisional protection measures. This requirement is a condition for the admissibility of petitions to the Commission as regards the merits (and possible reparations) of a specific case. Moreover, the provisional protection measures have a brief procedure, in keeping with the nature of this preventive and protective juridical mechanism, and because it in no way prejudices the merits of the case.

6. *Second*, I consider that there is no requirement for the Commission's precautionary measures to be exhausted before recourse can be had to the Inter-American Court to request provisional protection measures and I expressly indicated this in my concurring opinion to a recent Order of the Court on provisional protection measures.⁵ Moreover, the Commission's precautionary measures are based on Rules of Procedure rather than on the Convention and cannot delay – at times indefinitely – the application of the Court's provisional protection measures, which are Convention-based.

7. As I added in the above-mentioned concurring opinion, "in all circumstances, the imperatives of protection should have primacy over apparent institutional rivalries," particularly in the midst of situations of "chronic violence."⁶ The Commission's insistence in its practice with regard to prior precautionary measures may, in some case, have negative consequences for the potential victims and create one more obstacle for them. In certain cases, it can constitute a denial of justice at the international level.

8. *Third*, in cases in which the Commission denies precautionary measures, this decision should be duly justified. The decisions of the Commission and the Court concerning both precautionary and provisional measures, respectively, should always be motivated, as a guarantee of respect for the *adversary principle* – which is a general principle of law – so that the petitioners have certainty that the matter they submitted has been duly and carefully considered by the international instance, and so that the meaning of the decision taken by the latter is clear⁷ (especially, in an alleged situation of extreme gravity and urgency with the presumed probability of irreparable damage to persons).

9. A decision by the Commission that denies precautionary measures must necessarily be duly justified always. Moreover, an additional negative by the Commission to request the Court to order provisional measures, also without justification, legitimizes the potential victims, as subjects of international human rights law, to resort to the Court to seek the granting of these provisional measures; otherwise, there could be a denial of justice at the international level.

⁵. Cf. Inter-American Court of Human Rights [ICourtHR], Order of November 17, 2005, in the *Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM v. Brazil*, concurring opinion of Judge A.A. Cançado Trindade, para. 3.

⁶. *Ibid.*, para. 5.

⁷. Cf. [Several authors] *Le principe du contradictoire devant les juridictions internationales* (eds. H. Ruiz Fabri and J.-M. Sorel), Paris, Pédone, 2004, pp. 14, 33, 81, 86, 118 and 168.

10. *Fourth*, if the individual petitioner in question, faced by the double negative of the Commission, resorts to the Court and the latter abstains from taking any measures, owing to the alleged lack of basis in the Convention (because the case is pending before the Commission and not before the Court) and in the Rules of Procedure – even to fill this apparent legal vacuum and change the actual situation (based on considerations of equity *praeter legem*) – there could be a denial of justice at the international level. In two recent cases, I cautioned the Court in this regard.⁸

11. At the present time, I do not detect any receptiveness on the part of either the Commission or the Court to make this qualitative leap that I am proposing. Furthermore, I consider that, if the current lack of receptiveness (on this specific point) that I detect in the two organs of supervision of the American Convention had prevailed in 2000, we might not have achieved some of the regulatory changes that strengthened the direct access of individuals to the international instances of the American Convention; in other words, their access to international justice.

II. Brief reflections de lege ferenda.

12. Therefore – and, like Ionesco’s rhinoceros, *je ne capitule pas* – in this separate opinion, I wish to insist on my line of reasoning – as I have recently within the Court – in favor of the individual’s full access to international justice within the framework of the American Convention. Allow me to refer here to the *draft protocol to the American Convention on Human Rights to strengthen its protection mechanism*, which I drafted (as the Court’s rapporteur) and submitted (as President of the Court) to the Organization of American States (OAS) in May 2001,⁹ and which has invariably appeared on the agenda of the OAS General Assembly (for example, the Assemblies of San José, Costa Rica, in 2001, Bridgetown, Barbados, in 2002, Santiago, Chile, in 2003, and Quito, Ecuador, in 2004), and remains present in OAS documents for the biennium 2005-2006.¹⁰ I hope that, in the near future, it will have concrete results.

13. In this document, I proposed, *inter alia*, that *Article 77* of the Convention should, in my opinion, be amended so that not only any State Party and the Commission, but also the Court, can present draft additional protocols to the American Convention – as naturally corresponds to the highest-ranking organ of supervision of the Convention – in order to expand the list of rights protected by the Convention and strengthen the protection mechanism established in the Convention.¹¹

⁸. Cf. ICourTHR, *the Brothers Dante, Jorge and José Peirano Basso v. Uruguay*, letter of July 7, 2006, from Judges A.A. Cançado Trindade and M.E. Ventura Robles to the President of the Court, doc. CDH-S/1181, pp. 1-2; *Loretta Ortiz Ahlf et al. Mexican citizens v. Mexico*, letter of September 19, 2006, from Judge A.A. Cançado Trindade to the acting President of the Court, doc. Corte IDH/1641, p. 1.

⁹. Cf. A.A. Cançado Trindade, *Bases for a Draft Protocol to the American Convention on Human Rights to Strengthen Its Mechanism for Protection - Volume II*, 2a. ed., San José, Costa Rica, Inter-American Court of Human Rights, 2003.

¹⁰. OAS, document AG/RES.2129 (XXXV-0/050), of June 7, 2005, pp. 1-3; OAS, document CP/CAJP-2311/05/Rev.2, of February 27, 2006, pp. 1-3.

¹¹. In addition, I stated that the Statute of the Inter-American Court (1979) also requires a series of amendments (which I indicated in the said document). I added that Articles 24(3) and 28 of the Statute needed to be amended: in Article 24(3), the words “shall be delivered in public session” should be

14. Furthermore, always recalling the status of the individual as a subject of international human rights law (and, in my opinion, of public international law also), I maintain that *Article 61(1)* of the Convention should, significantly, be amended as follows:

"The State Parties, the Commission *and the alleged victims* shall have the right to submit a case to the Court."¹²

And, following the same line of thought, I would like to add in this separate opinion, the supplementary proposal to the effect that *Article 63(2)* of the American Convention should, in an equally significant manner, be amended as follows:

"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 its consideration, it may act at the request of the Commission *or of the alleged potential victims.*"

15. In the protection mechanism of the American Convention, the right of individual petition will attain its maximum expression when it can be exercised by the petitioners directly before the Inter-American Court of Human Rights. Hence this proposal to amend Article 61(1) of the Convention, *extended also to Article 63(2), in certain circumstances, with regard to provisional protection measures.* I consider that this is fully justified, particularly in the case of alleged situations of extreme gravity and urgency, with the alleged probability of irreparable damage to persons.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra Alessandri
Secretary

eliminated so that the first sentence of the article reads "The decisions, judgments and opinions of the Court shall be notified to the parties in writing"; and in Article 28, the words "as a party" should also be eliminated.

¹². In its actual and original wording, Article 61(1) of the American Convention establishes that only the States Parties and the Commission shall have the right to "submit a case" to the Court. But the Convention, when referring to reparations, also refers to "the injured party" (Article 63(1)), i.e., the victims and not the Commission. Today, at the beginning of the twenty-first century, the historical reasons that led to denying this *locus standi* to the victims has been overcome; in the European and inter-American human rights systems, practice revealed the inadequacies, shortcomings and biases of the paternalist mechanism of the Commission's intermediation between the individual and the Court.