

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF NOVEMBER 25, 2006**

**REQUEST FOR PROVISIONAL MEASURES
REGARDING GUATEMALA**

**IN FAVOR OF THE MEMBERS OF THE *EQUIPO DE
ESTUDIOS COMUNITARIOS Y ACCIÓN PSICOSOCIAL* (COMMUNITY STUDIES
AND PSYCHOSOCIAL ACTION TEAM) (ECAP)**

CASE OF THE PLAN DE SÁNCHEZ MASSACRE

HAVING SEEN:

1. The brief of October 15, 2006 and its Appendixes, through which the *Centro para la Acción Legal en Derechos Humanos* (Center for Legal Action in Human Rights) (hereinafter the "CALDH" or "the representatives") filed a request for provisional measures under Article 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 25 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), seeking for the State of Guatemala (hereinafter "the State" or "Guatemala") to protect the lives and physical integrity of the members of the *Asociación Civil Equipo de Estudios Comunitarios y Acción Psicosocial* (Community Studies and Psychosocial Action Team Association) (hereinafter "the ECAP"), "who are supporting the process of granting reparations to the victims and survivors of the Case of Plan de Sánchez Massacre".

2. The supporting facts upon which the CALDH sought to base its request for provisional measures, to wit:

a) the ECAP was formed on March 31, 1997 as a non-governmental, non-profit organization for promoting issues of human and academic import, aimed at helping individuals, social groups and communities to recover from the psychological, social, and cultural damage caused by political violence in Guatemala. The ECAP has offices in the City of Guatemala and in Rabinal, Baja Verapaz;

b) the ECAP has participated in the preparation of psychological expert examinations for court purposes; one of them was submitted by Nieves Gómez Dupuis during the public hearing held by the Court in the *case of Plan de Sánchez Massacre*;

* Judge Oliver Jackman did not take part in the deliberation and signature of this judgment, because he advised that, due to circumstances beyond his control, he would be unable to participate in the Seventy-second Regular Session of the Court

c) In addition to the work it had been performing for several years to determine the damage to the mental integrity of the survivors of the massacre, the ECAP became even more closely bound to the affected communities under the Court's Judgment of Reparations of November 19, 2004, pursuant to which the ECAP "must have an active involvement" in the committee created by the State, which is in charge of assessing the physical and psychological state of the victims;

d) ever since the passing of said Judgment, the ECAP has been participating in a number of activities aimed at complying with the reparation measures benefiting the survivors of these communities from the Municipality of Rabinal (hereinafter "the Municipality" or "Rabinal"), Baja Verapaz; and

e) currently, the ECAP has a psychosocial support team that assists in exhumation processes providing psychological assistance for individuals and communities seeking disappeared relatives.

3. The alleged facts upon which the request for provisional measures filed by the CALDH is based, to wit:

a) on September 13, 2006, Bonifacio Osori Ixpatá,¹ a mental health promoter at the ECAP's offices in Rabinal, was held up in Metronete, City of Guatemala, by three youngsters while waiting for the van to the ECAP's offices. He was robbed of all work records of the communities involved in the Judgment in the case of Plan the Sánchez Massacre;

b) on September 30, 2006, Bonifacio Osocio-Ixpatá was watched and followed at various points in the Municipality for several hours by an Isuzu vehicle with tinted windows and no license plate; and

c) on October 2, 2006, two copies of a note containing a death threat against the members of the ECAP were received at its offices. The notes contained the following message: "URGENT. Salamá, October 2006. This is for all of you working in this organization. You should be careful, as you're spotted for a kidnap and for something else, because some of you are working on exhumation. Take special care of the guy who's been meeting up with the people of [P]lan de [S]ánchez. Don't travel anywhere or hold meetings on October 2. I'm just doing you a favor. Don't try to find out who I am because I don't want to get into trouble. Just find out about the organization Hell's Angels. Please, pass this on to the Spanish psychologist, who is also in danger. Take care before you regret it. I hope you will return this favor in the future".

4. The arguments of the CALDH to base its request for provisional measures, including the following:

a) the threats are aimed at those in direct contact with the Plan de Sánchez community, and at the psychosocial support team assisting in exhumations. The threat mentions psychologist Nieves Gómez Dupuis, who appeared as an expert witness before the Court in the *Case of the Plan de Sánchez Massacre* and still works with the communities, and Bonifacio Osorio-Ixpatá, who regularly meets with the victims and survivors of the massacre;

b) the day the note was received, three members of the ECAP were staying at the offices in Rabinal for the night in order to travel by night, so the author of the note was aware of the movements of the members of the ECAP, both of

¹ The proper spelling of Mr. Bonifacio Osorio's second surname is Ixpatá, not "Ixtapá", as it appears in the Order of the President of the Court of October 20, 2006.

the stay of these people in the offices and of the travel scheduled for the following day;

c) the existence of a Judgment delivered by the Court, the arrival of the Spanish *Comisión Rogatoria* in Guatemala concerning the Genocide cases and subsequent determination of responsibilities of the instigators of these events, and the request for an initial hearing of General Efraín Ríos-Montt in the cases proceeding before the national courts "all demonstrate that these events of intimidation and harassment are aimed at silencing the voices of those who now dare talk and thus stopping the recovery processes under way";

d) on October 3, 2006, the CALDH reported the threats to the Rabinal *Ministerio Público* [Public Prosecutor's Office] and to the *Movimiento Nacional de Derechos Humanos* [National Human Rights Movement]; it sent a communiqué to all social organizations; it submitted the note to the *Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos* [Presidential Steering Committee for Executive Policy on Human Rights] (COPREDEH) requesting urgent action towards protecting the members of the ECAP; on October 4, 2006, it filed a complaint before the Rabinal *Procuraduría de Derechos Humanos* [Office of the Prosecutor for Human Rights]; on October 5, 2006, it reported the facts to the Spanish Embassy; and on October 6, 2006, it reported the events to the High Commissioner for Human Rights in Guatemala;

e) the facts presented demonstrate that there is imminent and serious risk of irreparable harm to the beneficiaries, since the note warns against the possibility of "a kidnap and something else", which reveals an interest to stop the processes and the progress made so far, particularly the achievements of the communities affected by the Plan de Sánchez Massacre, and evidences the intention that the petitioners become aware that they are being constantly watched, not only on account of the incident of September 30, 2006, but also because of the evident knowledge of the actions scheduled for October 2, 2006 by the members of the ECAP, and

f) it is the State's responsibility to adopt security measures to protect all individuals under its jurisdiction; this duty becomes even more evident in relation to those involved in cases proceeding before the organs of the Inter-American System for the Protection of Human Rights, such as the *Case of Plan de Sánchez Massacre*, which is still in the compliance stage.

5. Based on Article 63(2) of the American Convention, CALDH requested the Court to order the State to:

a) install a permanent post of officers from the Individual Protection Division 24 hours a day at the ECAP's offices in Rabinal, Baja Verapaz;

b) design a patrolling plan covering a number of roads across the Municipality of Rabinal, where the threatened persons travel and live, in order to identify the Isuzu vehicle and prevent any of the ECAP members from suffering "a kidnap and something else". Such plan should be consulted with the ECAP and implemented immediately; the activities and their outcomes must be informed at least every fortnight to the ECAP, the CALDH and the Court, so as to verify the efficiency of the patrolling tasks;

c) provide 24-hour, direct contact telephone lines manned by decision-making staff from the National Civilian Police and the Prosecutor's Office of the Municipalities of Rabinal, San Martín Jilotepeque, Nebaj, Santa Cruz del Quiché, Comalapa and the Capital City—all areas frequented by ECAP members—,

allowing for immediate communication to request assistance in the event of danger.

d) investigate and clarify the events reported, for which the State is requested that: agents patrolling the streets work in coordination with agents stationed in permanent posts, to prevent any intimidation episode from reoccurring or the threats from being materialized; both the Prosecutor's Office and the National Civilian Police make coordinated efforts to locate the vehicle that followed Bonifacio Osorio-Ixpatá on September 30, 2006; an inquest be carried out over the existence and composition of the "Hell's Angels organization" mentioned in the note; and the Court, the ECAP and the CALDH be informed every fortnight of the activities conducted in order to investigate and clarify the events reported; and

e) keep the measures in force for at least six months, when they shall be reviewed.

6. The Order of the President of the Court (hereinafter, "the President") of October 20, 2006, in which he decided:

1. To require the State to immediately adopt all such measures as are necessary to protect the lives and physical integrity of Nieves Gómez-Dupuis, Bonifacio Osorio-Ixpatá and other officers of the Community Studies and Psychosocial Action Team Association).

2. To require the *Centro para la Acción Legal en Derechos Humanos* (Center for Legal Action in Human Rights) to furnish this Court, within seven days as from notification of the [...] Order, with a list of the names of the officers of the *Asociación Civil Equipo de Estudios Comunitarios y Acción Psicosocial* whose favor the State must adopt such protection measures.

3. To require the State to investigate the events calling for the adoption of [...] urgent measures, identify those responsible and, where applicable, impose the appropriate punishment.

4. To require the State to take any such steps as are appropriate so that the protection measures set forth in the [...] Resolution be planned and implemented with the participation of the beneficiaries thereof or their representatives so that such measures are carried out effectively and efficiently, and generally to consistently keep them informed of the progress of their implementation.

5. To require the State to inform the Inter-American Court of Human Rights about the measures adopted pursuant to the Order, within ten days as from notification [...] thereof.

6. To request the beneficiaries of such measures or their representatives to submit to the Inter-American Court of Human Rights any comments they deem appropriate within five days as from notification of the State's report.

7. To request the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights any comments it deems appropriate within seven days as from notification of the State's report.

8. To request the State that, after submitting the report mentioned in [Order] operative paragraph five, it continues to inform the Inter-American Court of Human Rights every two months about the urgent measures adopted, and to request the beneficiaries of such measures or their representatives, and the Inter-American Commission on Human Rights, to submit their comments within four and six weeks respectively as from notification of the State's reports.

[...]

7. The brief submitted by the representatives on October 30, 2006, in which they provided the list with the names of the ECAP officers for whom the State must adopt

the protection measures, to wit: Eugenia Judith Erazo-Caravantes, Head; Leonel Meoño, Project Coordinator; Carlos Miranda, General Accountant; Evelyn Lorena Morales, clerical assistant; Dorcas Mux-Casia, general secretary; Víctor Catalan, accounts assistant; Fredy Hernández, office boy; Olga Alicia Paz, Research Support Officer; Nieves Gómez, coordinator of the torture project; Paula María Martínez, torture Project psychologist; Bonifacio Osorio-Ixpatá, torture project health promoter; Gloria Victoria Sunun, torture project health promoter; Dagmar Hilder, torture project psychiatrist; Magdalena Guzmán, torture project promoter; Susana Navarro, exhumations project coordinator; Inés Meneses, exhumation project psychologist; Olinda Xocop, exhumations project psychologist; Felipe Sarti, exhumations project psychologist; María Chen Manuel, exhumations project health promoter; Andrea González, exhumations project health promoter; María Isabel Torresi, coordinator of the Huehuetenango Project; Celia Aidé López-López, Huehuetenango Project psychologist; Jesús Méndez, Huehuetenango project health promoter; Juan Alberto Jiménez, Huehuetenango project assistant; Fernando Suazo, psychologist; Manuel Román, *Telesecundaria* (distance learning project for rural areas) promoter in Rabinal; Mónica Pinzón, coordinator of the degree program in mental health; Maya Alvarado, facilitator of the degree program in mental health; Gloria Esquit, facilitator of the degree program in mental health; Carlos Paredes, Coordinator of the Panzos project, Alta Verapaz; Santiago Tziquic, Panzos Project, health promoter; Franc Kernaj, Project Coordinator; Lidia Pretzantzin Yoc, exhumations project psychologist; Bruce Osorio, exhumations project psychologist; Paula María López, psychologist, exhumations project; Adder Samayoa, exhumation project psychologist; Glendy Mendoza, exhumations project psychologist; Jacinta de León, exhumations project health promoter; Pedro López, exhumations project health promoter; Claudia Hernández, consortium project clerical officer; Amalia Sub Chub, consortium project health promoter; Anastasia Velásquez, consortium project translator; Cruz Méndez, consortium project translator; Isabel Domingo, consortium project translator; Marisol Rodas, consortium project psychologist; Luz Méndez, consortium project coordinator; Magdalena Pedro Juan, consortium project translator; Vilma Chub, consortium project translator; Petrona Vásquez, consortium project health promoter; Mariola Vicente, disasters project psychologist; Joel Sosof, disasters project health promoter; Ana Botán, disasters project health promoter; Cristian Cermeño, disasters project psychologist; Margarita Giron, disasters project psychologist; Juan Carlos Martínez, sociological study coordinator; Daniel Barczay, sociological study field coordinator; and Evelyn Moreno, "Volens".

8. The note of November 15, 2006 of the Court's Secretariat, following the President's instructions, through which the State was requested to submit, as soon as possible, the State's report required under operative paragraph five of the President's Order of October 20, 2006, which was due on October 30, 2006.

9. The representatives' note of October 23, 2006, in which they stated their concern over the "State's inaction and failure to comply with" the provisional measures. They added that, while waiting for the measures to be implemented, new episodes of threat and intimidation have taken place, described below:

- a) On October 23, 2006, as María Orlinda Xocop-Morales, an ECAP officer, returned from the municipality of San Juan Comalapa, she noticed that she was being followed by unknown people on a red Toyota pick-up truck with tinted windows. That same day, she reported the Prosecutor for Human Rights; and
- b) on November 21, 2006, when Bonifacio Osorio-Ixpatá, mental health promoter at the ECAP, was heading towards a community in Rabinal on his

motorbike for a meeting, near Tres Cruces, just before reaching the town of Concul, three men wearing balaclavas and backpacks, two of which dressed in military clothing, tried unsuccessfully to capture him with a rope. Afterwards, they unleashed a trained German Shepherd dog, which jumped up to him, but he managed to dodge it. Mr. Osorio Ixpatá manager to escape and headed to the road to Chol. Afterwards, Mr. Osorio Ixtapá telephoned Nieves Gómez, who called the Rabinal police, where an officer told her that Chol belong to another jurisdiction, and so she should call the police station of that precinct. In Chol, a patrol was waiting for Mr. Osorio Ixtapá. They took him to the road running from Chol to Rabinal, and told him he could walk on his own from there on, as the road was safe, so Mr. Osorio-Ixtapá was forced to walk back to Rabinal without any protection.

CONSIDERING:

1. That Guatemala has been a State Party to the American Convention on Human Rights since May 25, 1978, and it acknowledged the Court's contentious jurisdiction on March 9, 1987;

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, in matters not yet submitted to it, adopt such provisional measures as it deems pertinent at the Commission's request.

3. In this regard, Article 25 of the Rules provides that:

1. At any stage of the proceeding 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.
[...]

6. The beneficiaries of provisional measures or urgent 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 this request for provisional measures has been directly filed by the victims' representatives and next of kin in a case that is currently proceeding before the Court and is at the compliance supervision stage, so the request complies with the provisions in Article 25 of the Rules of Procedure.

5. That the purpose of the provisional measures in national (domestic procedural) legal systems generally is to protect the rights of contending parties, ensuring that the execution of judgments on the merits and reparations is not hindered or impeded by their conduct.

6. That under the International Law of Human Rights, provisional measures have not only a preventive purpose, to the extent that they preserve a given legal situation, but also and fundamentally a protective purpose, inasmuch as they are intended to protect human rights, preventing individuals from suffering irreparable harm. Provided that the requisite conditions of extreme gravity and urgency and prevention of

irreparable harm to individuals are met, provisional measures become a true judicial guarantee of preventive nature.²

7. That Article 1(1) of the Convention provides for the State Parties' duty to respect the rights and freedoms enshrined therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

8. That provisional measures are not exceptional, but are ordered to satisfy protection needs and, once ordered, must remain in force for as long as the Court deems the requisite conditions of extreme gravity and urgency and prevention of irreparable harm to persons thereby protected to persist.³

9. That the provision contained in Article 63(2) of the Convention gives binding effect to the State's order adopting provisional measures as directed by this Court, inasmuch as, under the basic principle of the State's responsibility as sustained by international case law, the States must perform their conventional obligations in good faith (i.e., *pacta sunt servanda*).⁴

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10. That, pursuant to the Order of the President, the State was required, among other things, to: adopt all such measures as are necessary to protect the lives and physical integrity of Nieves Gómez Dupuis, Bonifacio Osorio-Ixpatá and other officers of the *Asociación Civil Equipo de Estudios Comunitarios y Acción Psicosocial* (Community Studies and Psychosocial Action Team Association) (*supra* Having Seen clause No. 6); in addition, the CALDH was required to submit a list with the names of the officers of the *Asociación Civil Equipo de Estudios Comunitarios y Acción Psicosocial*, in whose favor the State must adopt such protection measures, which was submitted by the representatives on October 30, 2006 (*supra* Having Seen clause No. 7).

11. That, from the information furnished by the CALDH concerning the events suffered by the members of the ECAP, it follows *prima facie* that a situation of extreme gravity and urgency persist and irreparable damage may still be inflicted on the rights to life and physical integrity of Nieves Gómez Dupuis, Bonifacio Osorio-Ixpatá and other ECAP members (*supra* Having Seen clauses No. 1, 2, 3, 4 and 9). That the *prima facie* evidence assessment standard and the appropriateness of presumptions in view of protection needs have led this Court to order provisional measures on several

² Cf. *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araquara, São Paulo*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 30, 2006, Considering clause No. 5; *Matter of Gloria Giralte de García-Prieto et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 26, 2006, Considering clause No. 7; *Matter of Gómez-Paquivauri*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering clause No. 6.

³ Cf. *Matter of Carlos Nieto et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering clause No. 6; *Matter of Marta Colomina and Lilibian Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 5; *Matter of Ramírez Hinojosa et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006, Considering clause No. 7.

⁴ Cf. *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araquara, São Paulo*. Provisional Measures, *supra* note 2, Considering clause No. 19; *Matter of Marta Colomina and Lilibian Veásquez*, *supra* note 3, Considering clause No. 6; and *Case of 19 Tradesmen*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 16.

occasions.⁵ Therefore, this Court deems it necessary to protect said persons through provisional measures, pursuant to the provisions of the American Convention.

12. That the State has the specific duty to protect all people working in non-governmental organizations and other groups or individuals working for the defense of human rights, since their work constitutes a positive contribution supplementing the efforts made by the State in its capacity as guarantor of the rights of individuals under its jurisdiction.⁶

13. That the State must use all available means to prevent the ECAP members from suffering irreparable damage. In this regard, this Court considers that the right to life and the right to physical integrity "imply not only that the State must respect them (negative obligation), but also that the State must adopt all appropriate measures to guarantee them (positive obligation) in accordance with its general obligation established in Article 1(1) of the American Convention."⁷

14. That the State must take all such steps as are appropriate so that the protection measures set forth in the [...] Resolution be planned and implemented with the participation of the beneficiaries thereof or their representatives so that such measures are carried out effectively and efficiently.

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15. That the President, in operative paragraph five of Resolution of October 20, 2006, required the State to inform the Inter-American Court of the protection measures adopted pursuant to said Resolution, and that Guatemala has so far failed to furnish such information.

16. That the State has the duty to inform the Court, through the presentation of the required reports (*supra* Having Seen clause No. 6 and *infra* Operative Paragraph No. 4). Such duty is fulfilled through the timely submission of a document including the material, specific, true, current and detailed information the State has the duty to provide,⁸ and the manner it is complying with the order issued by it.

⁵ Cf. *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araquara, São Paulo*. Provisional Measures, *supra* note 2, Considering clause No. 20; *Matter of Gloria Giralt de García-Prieto et al.* Provisional Measures, *supra* note 2, Considering clause No. 10; and *Matter of Millacura Llaipén et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of July 06, 2006, Considering clause No. 9.

⁶ Cf. *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araquara, São Paulo*. Provisional Measures, *supra* note 2, Considering clause No. 24; *Matter of Gloria Giralt de García-Prieto et al.* Provisional Measures, *supra* note 2, Considering clause No. 8; and *Matter of Mery Naranjo et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering clause No. 8.

⁷ Cf. *Matter of the Forensic Anthropology Foundation*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 13; *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 30, 2006, Considering clause No. 16; and *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 02, 2006, Considering clause No. 18.

⁸ Cf. *Matter of Carlos Nieto et al.* Provisional Measures, *supra* note 3, Considering clause No. 16; *Matter of Millacura Llaipén et al.*, Provisional Measures, *supra* note 5, Considering clause No. 20; and *Matter of Marta Colomina and Liliana Veásquez*. Provisional Measures, *supra* note 3, Considering clause No. 9.

17. That the State has failed to provided the report it should have submitted within ten days as from the notification of the Order issued by the President *supra* on October 20, 2006 in the instant case, which term expired on October 30, 2006 (*supra* Having Seen clauses No. 6 and 8). The State must urgently submit a thorough report providing detailed information about the measures it has adopted pursuant to the President's Order and the new facts alleged by the representatives (*supra* Having Seen clause No. 9), and continue to inform on a regular basis about the measures adopted (*infra* Operative Paragraph No. 4).

18. That the State has the duty to investigate the events that provided grounds for this request for provisional measures, identify those responsible and, where applicable, impose the appropriate punishment.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the powers conferred upon it under Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of the Court's Rules of Procedure,

DECIDES:

1. To ratify in whole the Order of the President of the Inter-American Court of Human Rights of October 20, 2006 and consequently to require the State of Guatemala to keep any measures adopted in force, and to immediately adopt all such measures as are necessary to protect the lives and physical integrity of the following persons: Eugenia Judith Erazo-Caravantes, Leonel Meoño, Carlos Miranda, Evelyn Lorena Morales, Dorcas Mux-Casia, Víctor Catalan, Fredy Hernández, Olga Alicia Paz, Nieves Gómez, Paula María Martínez, Bonifacio Osorio-Ixpatá, Gloria Victoria-Sunun, Dagmar Hilder, Magdalena Guzmán, Susana Navarro, Inés Meneses, Olinda Xocop, Felipe Sarti, María Chen Manuel, Andrea González, María Isabel Torresi, Celia Aidé López-López, Jesús Méndez, Juan Alberto Jiménez, Fernando Suazo, Manuel Román, Mónica Pinzón, Maya Alvarado, Gloria Esquit, Carlos Paredes, Santiago Tziquic, Franc Kernaj, Lidia Pretzantzin-Yoc, Bruce Osorio, Paula María López, Adder Samayoa, Glendy Mendoza, Jacinta de León, Pedro López, Claudia Hernández, Amalia Sub-Chub, Anastasia Velásquez, Cruz Méndez, Isabel Domingo, Marisol Rodas, Luz Méndez, Magdalena Pedro Juan, Vilma Chub, Petrona Vásquez, Mariola Vicente, Joel Sosof, Ana Botán, Cristian Cermeño, Margarita Giron, Juan Carlos Martínez, Daniel Barczay and Evelyn Moreno.

2. To require the State to investigate the events calling for the adoption of these measures, identify those responsible and, where applicable, impose the appropriate punishment.

3. To require the State to take all such steps as are appropriate so that the protection measures set forth in this Resolution be planned and implemented with the participation of the beneficiaries thereof or their representatives so that such measures are carried out effectively and efficiently, and generally to consistently keep them informed of the progress of their implementation.

4. To request the State to submit the report that was due on October 30, 2006 (*supra* Considering clauses No. 16 and 17), and to continue to inform the Inter-American Court of Human Rights every two months about the urgent measures adopted, and to request the beneficiaries of such measures or their representatives, and the Inter-American Commission on Human Rights, to submit their comments within four and six weeks respectively as from notification of the State's reports.

5. To request the Court's Secretariat to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the beneficiaries of these measures.

Judge Cançado Trindade submitted his Separate Opinion to the Court, which is attached to 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. In my separate opinion I concur with this Order of the Inter-American Court of Human Rights regarding Provisional Measures of Protection in the matter of the *Integrantes del Equipo de Estudios Comunitarios y Acción Psicosocial* (Members of the Community Studies and Psycho-social Action Team) (*Case of the Plan de Sánchez Massacre*) v. *Guatemala*. In addition, I feel obliged to state in this brief Separate Opinion —my last Separate Opinion for this Court concerning Provisional Protection Measures— my views on certain issues I have been raising before the Court over the last few months, in order to strengthen this preventive mechanism for the protection of rights. In particular, I am making reference to some problems that have arisen in the practice under the American Convention, which arose out of the fact that provisional measures ordered by the Inter-American Commission on Human Rights coexist with those ordered by the Inter-American Court, in light of the imperative of individuals' direct access to international justice. In the following sections I will briefly discuss, under the usual time constraints, my views on this subject, both *de lege lata* and *de lege ferenda*.

I. Brief Thoughts *de Lege Lata*

2. This IACHR case of the members of the *Equipo de Estudios Comunitarios y Acción Psicosocial* (Community Studies and Psychosocial Action Team) (ECAP) (case of the *Plan de Sánchez Massacre*) was commenced through a request for Provisional Protection Measures, filed with this Court on October 15, 2006, by the *Centro para la Acción Legal en Derechos Humanos* (Center for Legal Action in Human Rights) (CALDH), to protect the lives and physical integrity of the members of the *Asociación Civil Equipo de Estudios Comunitarios y Acción Psicosocial* (Community Studies and Psychosocial Action Team Organization). Ever since this Court issued its Judgment of November 19, 2004 in the case of the *Plan de Sánchez Massacre* (reparations), the ECAP has been involved in a number of activities with the survivors of the massacre in the communities of the municipality of Rabinal, Baja Verapaz, Guatemala, with an aim to follow up on the reparation measures ordered by this Court.

3. In consideration of the fact that the above-mentioned request was submitted to the Court by the representatives of the victims and their relatives in a case —i.e., the case of the *Plan de Sánchez Massacre*— proceeding before the Court in the Compliance with Judgment stage, the Court held that the request for Provisional Protection Measures met the requirements set forth in Article 63(2) of the American Convention on Human Rights and Article 25 of the Court's Rules of Procedures, and adopted the appropriate Measures through the Order of November 25, 2006.

4. Ironically, the same day the Court took cognizance of the request that originated these Protection Measures —i.e., the day before yesterday, November 23, 2006— it also received another submission concerning the case of the *Movimento dos Servidores Públicos Aposentados e Pensionistas (MOSAP)*,⁹ regarding Brazil, in which Provisional Protection Measures were being requested. The Court only informed MOSAP's representative¹⁰ that it lacked jurisdiction to hear the request,¹¹ inasmuch as

⁹. Brief of November 10, 2006 filed by MOSAP's legal representative (Mr. L. A. Costa de Medeiros).

¹⁰. Letter from the Court's Secretariat of November 24, 2006, to MOSAP's legal representative.

the case was not yet proceeding before the Court but was being heard by the Commission. On November 8, 2006, the Commission had denied a request for provisional measures by the MOSAP and, to date, it has not requested this Court to order any provisional measures in the case of the *Movimento dos Servidores Públicos Aposentados e Pensionistas*.

5. Since chronological time is not equal to biological time, the situation strikes me as revealing extreme gravity and urgency, given the old age of many pensioners, which is reflected by the fact that, ever since the MOSAP's request was received by the Commission on August 30, 2006,¹² sixty-three of them have died and eighteen others have contracted diseases that bring on incapacities. Similar situations in the most varied contexts and circumstances have been raised in prior sessions of this Court.¹³ In all of these cases I have stated my concern about and dissatisfaction with the state of defenselessness in which the persons who seek protection are left, and in this Separate Opinion of this session period of the Court I reaffirm them, in view of the ironic situation I have just described.

6. Both in joint meetings between the Inter-American Court and the Commission and in several public hearings held by this Court, and in the Court's deliberations, I have taken the opportunity to express my deep concern about the Commission's refusal to request the Court to order Provisional Protection Measures as sought by the potential beneficiaries. The situation becomes even more serious with the Commission denying the petitioners provisional measures without sufficient grounds, and the applicants unable to apply to the Court because their cases are being heard by the Commission rather than the Court.

7. It is my view that in cases like this there might be a denial of the right to access to international justice. Therefore, I will state in this Separate Opinion, my position as regards this issue, now that the last hours of my appointment as Judge of the Inter-American Court of Human Rights are approaching (*tempus fugit*). I will do so with a view to improving such an important preventive protection mechanism which is enshrined in the American Convention, and affirming my confidence in the common sense of my colleagues both from the Inter-American Court and the Inter-American Commission.

8. Firstly, in my opinion, the requirement of exhaustion of domestic remedies does not apply to requests for Provisional Protection Measures to the Court; on the contrary, such requirement is a condition for admissibility of petitions to the Commission as regards the merits of the specific case and any applicable reparations. In addition, cases involving Provisional Protection Measures are processed under the fast track procedure, in accordance with their preventive and protective nature, and to avoid prejudice of the merits of the case.

9. Secondly, in my opinion, there is no requirement for exhaustion of provisional measures from the Commission before filing a request for Provisional Protection Measures with the Inter-American Court. I have expressly stated thus in my Separate Concurring Opinion in a recent Order of the Court regarding Provisional Protection

¹¹. Under Article 63(2) of the American Convention and Article 25(2) of the Rules of Procedure.

¹². And a new petition was filed with the Commission on October 26, 2006.

¹³. Cf. note (9), *infra*.

Measures.¹⁴ In addition, the Commission's precautionary measures are based upon procedural rather than conventional provisions, and should not delay —sometimes indefinitely— the application of Provisional Protection Measures ordered by the Court, which are based upon conventional provisions.

10. As I stated in the above-mentioned Concurring Opinion, "in any and all circumstances, protection imperatives must prevail over apparent institutional zeal", even more so in the light of circumstances of "chronic violence".¹⁵ The Commission's obstinacy in its practices regarding provisional measures may, in some cases, bring about negative consequences to potential victims and cause them further hindrance. In certain cases, it might amount to denial of international justice.

11. Thirdly, a Commission's denial of provisional measures should be duly justified. The decisions of the Commission and the Court involving precautionary and provisional measures, respectively, must always be duly justified, as a guarantee of observance of the adversary principle —which is a general principle of law— so that petitioners have assurances that the issue they have brought up has been duly and carefully considered by the international instance, and so that the meaning of its decision is clear¹⁶ (even more so under alleged circumstances of extreme gravity and urgency involving the likelihood of irreparable damage to the human person).

12. A denial of precautionary measures by the Commission must always and necessarily be duly justified. Furthermore, an additional, similarly ungrounded denial of a request for Provisional Measures to the Court by the Commission provides the potential victims, as subjects of the International Law of Human Rights, with grounds for seeking relief from the Court in order to obtain such Provisional Measures. Otherwise, there could be a denial of international justice.

13. Fourthly, if the petitioner, after two denials by the Commission, seeks relief from the Court and this, in turn, fails to adopt any measure on the alleged grounds of a lack of conventional (since the case is proceeding before the Commission and not before the Court) and procedural basis —even if it does so with a view to filling this apparent legal gap and changing the current state of things (based on *praeter legem* equity considerations) — there could be a denial of international justice. In two recent opportunities, I have allowed myself to call the Court's attention to this issue.¹⁷

14. At the moment, I cannot perceive any inclination in the Commission or the Court towards making the quantum leap I propose. What is more, I think that, if the present apathy (as regards this specific issue) I perceive in the two bodies responsible for enforcing the American Convention had prevailed in 2000, perhaps some of the procedural changes towards furthering individuals' direct access to the American

¹⁴. Cf. Inter-American Court of Human Rights [IACHR], Order of November 17, 2005 *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM* regarding Brazil. Separate Concurring Opinion of Judge A. A. Cançado Trindade, Para. 3.

¹⁵. *Ibid.*, para. 5.

¹⁶. Cf. [Various Authors] *Le principe du contradictoire devant les juridictions internationales*, H. Ruiz Fabri and J. M. Sorel, eds. Paris, Pédone, 2004, pp. 14, 33, 81, 86, 118 and 168).

¹⁷. Cf. IACHR, *Matter of 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 Court's President, doc. CDH-S/1181, pp. 1-2; *matter of Loretta Ortiz Ahlf and Other Mexican Citizens v. Mexico*, Letter of September 19, 2006 from Judge A. A. Cançado Trindade to the Court's acting President, doc. Corte IDH/1641, p. 1.

Convention's international bodies —i.e., their access to international justice— would not have been achieved.

II. Brief Thoughts *De Lege Ferenda*

15. Therefore, —and, in the words of Ionesco's *Rhinoceros*, *je ne capitule pas*— I allow myself in this Separate Opinion to insist on my arguments —as I have done recently from within this Court—,¹⁸ with a view to advancing the individual's full access to international justice under the American Convention. I would like to make reference to the bases for a *Draft Protocol to the American Convention on Human Rights for Strengthening its Protection Mechanism*, which I myself drafted (as a rapporteur for the Court) and submitted (as President of the Court) to the Organization of American States [OAS] in May 2001,¹⁹ and has consistently been included in the OAS General Assembly's agenda (as reflected in the 2001 Assembly in San José de Costa Rica, the 2002 Assembly in Bridgetown/Barbados, the 2003 Assembly in Santiago de Chile and the 2004 Assembly in Quito), and is still mentioned in OAS' documents for the 2005–2006 two-year period.²⁰ My hope is that the future will bring concrete results.

16. In that document, I proposed *inter alia* that Article 77 of the Convention should be amended, so that not only any State Party and the Commission, but also the Court may present Draft Additional Protocols to the American Convention, which the Court should be empowered to do as the highest-ranking enforcing body under the Convention, with a view to increasing the number of rights protected under the Convention and strengthening the protection mechanism set out therein.²¹

17. In addition, in line with the position of the human person as subject of the International Law of Human Rights (and, in my view, of the Public International Law), I contended that the language of Article 61(1) of the Convention should be changed to:

“The States Parties, the Commission and the alleged victims shall have the right to submit a case to the Court.”²²

^{18.} In my recent Separate Opinions in the Court's Orders regarding Provisional Protection Measures both in the *Matter of Gloria Giralte de García-Prieto et al.* regarding El Salvador (of September 26, 2006) and in the previous *Matter of Mery Naranjo et al.* regarding Colombia (of September 22, 2006).

^{19.} Cf. A. A. Cañado Trindade, *Bases para un Proyecto de Protocolo a la Convención Americana sobre Derechos Humanos, para Fortalecer su Mecanismo de Protección*, vol. II, 2nd. ed., San José de Costa Rica, Inter-American Court of Human Rights, 2003, pp. 1-1015.

^{20.} OAS, document AG/RES.2129 (XXXV-0/050) of June 6, 2005, pp. 1–3; OAS, document CP/CAJP-2311/05/Rev.2 of February 27, 2006, pp. 1-3.

^{21.} In addition, I pointed out that the Statute of the Inter-American Court (1979) requires a number of amendments (which I discussed in that document). Moreover, I added that Articles 24(3) and 28 of the Statute require amending: In Article 24(3), the words “shall be delivered in public session and” should be deleted; and in Article 28, the words “shall appear as a party” should likewise be suppressed.

^{22.} Under the original and current language of Article 61(1) of the American Convention, only the States Parties and the Commission shall have the right to “submit a case” to the Court. However, in dealing with reparations, the Convention mentions “the injured party” (Article 63(1)), i.e., the victims rather than the ICHR. At the outset of 21st century, the historical reasons that led to the denial of the victims' *locus standi* have been overcome; under the European and Inter-American human rights systems, practice itself took care of revealing the failures, deficiencies and distortions of the paternalistic mechanism involved in the Inter-American Commission's liaising between individuals and the Court.

Furthermore, along the same lines, I allow myself to propose in this Separate Opinion, that the language of Article 63(2) of the American Convention be amended to read 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 the Court, it may act at the request of the Commission or the alleged potential victims.”

18. Under the American Convention’s protection mechanism, the individual right to petition shall achieve completeness when it can be exercised directly by the petitioners before the Inter-American Court of Human Rights. Hence this proposal for amending Article 62(1) of the Convention, *and also Article 63(2), in certain circumstances relating to Provisional Protection Measures*. This, in my view, is entirely justified, even more so when it comes to alleged situations of extreme gravity and urgency, where there is a likelihood of irreparable damage to the human person.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra-Alessandri
Secretary