

**Order of the  
Inter-American Court of Human Rights\*  
of January 27, 2007**

**Provisional Measures  
regarding El Salvador**

**Expansion of Provisional Measures  
in favor of Ricardo Alberto Iglesias Herrera,  
in relation to the Provisional Measures  
in favor of Gloria Giralt de Garcia-Prieto *et al.***

**Matter of Gloria Giralt de Garcia-Prieto *et al.***

**HAVING SEEN:**

1. The written brief containing pleadings, motions, and evidence presented on May 26, 2006 by the Center for Justice and International Law and the Human Rights Institute of the "José Simeón Cañas" Central American University, representatives of the alleged victims (hereinafter "the representatives") in the case of García Prieto *et al.*, according to which several witnesses and experts were offered to provide oral and expert evidence, including among them Mr. Ricardo Alberto Iglesias Herrera, who was proposed as an expert witness.

2. The Order of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Tribunal") of September 26, 2006, which required the Republic of El Salvador (hereinafter "El Salvador" or "the State") to immediately adopt the measures necessary to protect the right to life and to personal integrity of Gloria Giralt de García Prieto, José Mauricio García Prieto Hirlemann, María de los Ángeles García Prieto de Charur, José Benjamín Cuéllar Martínez, Matilde Guadalupe Hernández de Espinoza, and José Roberto Burgos Viale.

3. The communication from the representatives dated November 29, 2006 reporting that Mr. Ricardo Alberto Iglesias Herrera, "who had been [offered] by this representation as an expert witness in the [present] case[,] experienced an attack against his life and personal integrity". The representatives stated that the event occurred on November 5, 2006 at approximately 17:45, in the neighborhood of Santa Elena, municipality of Antiguo Cuscatlán, when Mr. Iglesias Herrera was driving his car with several passengers, including three young girls. According to these facts, an unknown subject driving a white, recent-model, four-wheel-drive vehicle with polarized windows, passed the car being driven by Mr. Iglesias Herrera in the right lane, tried to intercept it, and pulled in front of his vehicle in the left lane in an attempt to block his way. At first, Mr. Iglesias Herrera was able to avoid the vehicle. However, the subject driving the unknown vehicle repeated the maneuver a second time, and this time was able to make Mr. Iglesias Herrera stop his car. Then, the unknown subject got out of his vehicle with a handgun in his hand, shot several times at the ground, and then two more times directly at the occupants of the vehicle driven by Mr. Iglesias

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\* Judge Diego García-Sayán excused himself from participating in the adoption and signing of the present provisional measures.

Herrera. One of the shots hit the front windshield, but no one was injured. Later, Mr. Iglesias Herrera was able to flee. Lastly, according to the representatives, Mr. Ricardo Alberto Iglesias Herrera filed a complaint at police headquarters in the city of Santa Tecla, and the facts described were brought to the attention of the Office of the Public Prosecutor for the Defense of Human Rights of El Salvador.

4. The representatives pointed out that the characteristics of the attack “demonstrate the operating capacity in its execution” coincides with the nature of other intimidating facts, threats, and pursuits used against the members of the García Prieto family, and which led the Court to adopt provisional measures in their favor. Given the foregoing, the representatives requested the Court to assess the above situation and to urge the State to guarantee the safety of persons offered as witnesses and expert witnesses in the present case, so as to enable them to participate in this proceeding and, in particular, to guarantee the appearance of the persons summoned to participate in the corresponding public hearing.

5. The Order of the President of the Court (hereinafter “the President”) dated December 3, 2006, in which it was decided:

1. To require the State to adopt, without delay, the measures necessary to protect the life and personal integrity of Mr. Ricardo Alberto Iglesias Herrera.

2. To require the State to make all pertinent arrangements so that the protective measures called for in the present Order are planned and implemented with the participation of the beneficiaries of the Order, or their representatives, to ensure that these measures are provided in a diligent and effective manner and, in general, to keep them informed of the progress of its implementation.

3. To require the State to investigate the facts that motivated the adoption of these urgent measures, identify the responsible parties, and, if need be, impose on them the corresponding sanctions.

4. To require the State to report to the Inter-American Court of Human Rights on December 18, 2006 regarding the measures it adopted to comply with the present Order.

5. After the report indicated in the operative paragraph four, to request the State to continue informing the Inter-American Court of Human Rights every two months regarding the urgent measures adopted, along with the reports on the provisional measures ordered in favor of Gloria Giralt de García Prieto et al.

6. To request the beneficiaries of these measures, or their representatives, and the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights observations they consider pertinent on the reports of the State, together with their observations on the provisional measures ordered in favor of Gloria Giralt de García Prieto et al. For the submission of these observations, the beneficiaries of these measures or their representatives, and the Inter-American Commission on Human Rights, have a period of four weeks and six weeks, respectively, as of the date of notification of the State reports.

6. The Order of the President of December 14, 2006, which decided, wherever pertinent:

1. To require, in the exercise of the authority vested in him under Article 47.3 of the Rules of Procedure, that the witnesses José Mauricio García Prieto Hirlemann, Gloria María de los Ángeles García Prieto, Ile del Carmen García Prieto, Lourdes García Prieto de Patuzzo, Alina

Isabel Arce, María Julia Hernández, David Ernesto Morales Cruz, and Oscar Castro, as well as the expert witnesses Ricardo Alberto Iglesias Herrera and Mauricio Gaborit, proposed by the Inter-American Commission on Human Rights, by the representatives of the alleged victims, and by the State, provide their testimony and expert opinion, as the case may be, through

[ ... ]

#### EXPERTS

##### *Proposed by the representatives*

1. *Ricardo Alberto Iglesias Herrera*, who will provide his expert opinion on the alleged context of impunity in El Salvador and on the situation of the administration of justice in the case of the death of Ramón Mauricio García Prieto Giralt, as well as on the action of the Office of the Attorney General of the Republic in the inquiries undertaken in response to the alleged threats against the García Prieto Giralt family, in their search for justice in this case.

[ ... ]

7. The brief of the State dated December 18, 2006 in reference to the Order of the President of December 3, 2006 (*supra* Having Seen 5), which reported that in order to comply with said Order it had taken the following measures in favor of Mr. Ricardo Alberto Iglesias:

- a) the Office of the Attorney General of the Republic opened file 3087-UDV-06, at the Crimes Against Life Unit of the Subregional Office of Santa Tecla, which launched the inquiry by inspecting the place of the incident and collecting evidence; subsequently ratification was requested concerning the abduction of Mr. Iglesias' vehicle, and currently oversight is being exercised of the actions ordered;
- b) the Office of the Attorney General requested the Executive Technical Unit of the Justice System to institute urgent regular and extraordinary protective measures in favor of Mr. Iglesias; it was requested to apply these measures as it is the agency that administers the Victim and Witness Protection Program;
- c) Mr. Iglesias declared that he did not want police protection, that all he needed was the name of a contact within the National Civil Police and a telephone number where that person could be reached, if necessary; and
- d) Under-commissioner Alicia Orbelina Méndez Benítez, Chief of the Victim and Witness Division, was appointed to respond to any request from Mr. Ricardo Iglesias.

8. The communication from the Secretariat of the Court dated December 21, 2006 by which, on instructions of the President, it informed the representatives of the beneficiaries of the measures and the Inter-American Commission, pursuant to operative paragraph six of the Order dated December 3, 2006 that they have a period of four weeks and six weeks, respectively, to submit the observations they consider pertinent to the State report submitted on December 18, 2006.

9. The brief of the representatives dated January 12, 2007 through which they submitted the statements from Alina Isabel Arce, María Julia Hernández and the expert opinions of Ricardo Alberto Iglesias Herrera and Mauricio José Ramón Gaborit Pino, all presented by means of affidavits. The brief of the Commission issued that same day, which included the statement by David Ernesto Morales Cruz, who was offered as a witness by both the representatives and the Commission, presented by means of an affidavit.

10. The brief of the representatives dated January 18, 2007 wherein they indicated that:

a) Mr. Ricardo Alberto Iglesias Herrera, as pointed out by the State, decided "not to accept the protection offered for it consisted of being accompanied by State agents, as he considered this an invasion of privacy". Accordingly, he expressed his agreement with only having direct contact with a person with sufficient authority within the National Civil Police who can react immediately in case of emergency, and who had already been appointed by the State;

b) concerning the State's reference to the inquiry opened in file No. 3087-UDV-06, by the Crimes Against Life Unit of the Subregional Office of Santa Tecla, that Mr. Iglesias Herrera has not been informed of any steps taken or of the results of the same. The Office of the Attorney General of the Republic has not made any progress in the investigations to determine the origin and motives of the alleged facts against Mr. Iglesias Herrera, nor has it identified the responsible parties. The case is completely inactive, which demonstrates the State's lack of interest in complying with the measures ordered; and

c) they referred to the provisional measures ordered in favor of the other beneficiaries. In this connection, the representatives stated that they had offered a proposal regarding the implementation of the protective measures, and had not received a response from the State on December 7, 2006 as had been agreed, because they were informed that a response could not be given on that date. Since then, no communication has been received from the State concerning the proposal, nor has any protective mechanism been established. The beneficiaries and their representatives had "agreed to assume the risks of not having protection until a proposal was approved" in the understanding that the State would comply within the period of time agreed upon for this purpose; for this reason, as of that date "the risks to life and to personal integrity of the beneficiaries of the protective measures are the exclusive responsibility of the State [ ... ]."

11. The testimony given by Mr. Pedro José Cruz Rodríguez in the public hearing held on January 24, 2007 at the seat of the Court, at which time he stated that he lives in Guatemala City and that he was felt "fearful [ ... ] because he was providing testimony before [ ... ] the Court."

12. The Court is awaiting the observations of the Commission, the deadline for which was 1 February 2007.

### **CONSIDERING:**

1. That El Salvador has been a State party to the American Convention since June 23, 1978 and, in accordance with Article 62 of the same, recognized the contentious jurisdiction of the Court on June 6, 1995.

2. That Article 63(2) of the American Convention stipulates that, in "cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court may, with respect to cases not yet submitted to its consideration, at the request of the Commission, order whatever provisional measures it deems pertinent.

3. That with regard to this matter, Article 25 of 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 appropriate, pursuant to Article 63(2) of the Convention.

[ ... ]

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

4. That the present request for provisional measures has been submitted directly by the representatives of the alleged victims in a case before the Court; therefore, the request is consistent with Article 25 of the Rules of Procedure.

5. That Article 1(1) of the Convention establishes the general obligation that the States parties must respect the rights and freedoms enshrined in it and ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms. This underscores the position of the State as guarantor of the rights of the persons in its custody. These obligations are even more evident for persons involved in proceedings before the supervisory organs of the American Convention.<sup>1</sup>

6. That the case under which the request of the representatives was submitted is currently before the Court to determine its merits, and that, nonetheless, the adoption of provisional measures does not imply a decision as to the merits of the controversy between the petitioner and the State. In adopting provisional measures, this Court is only ensuring that the Tribunal can faithfully perform its mandate relative to the Convention in cases of extreme gravity and urgency that require protective measures to prevent irreparable harm to persons.<sup>2</sup>

7. That the State reported that it has taken several measures to comply with the Order of the President of December 3, 2006 (*supra* Having Seen 5 and 7). In their observations on the State's report, the representatives were in agreement with the State that a person had been appointed within the National Civil Police to handle any emergency request from Mr. Ricardo Iglesias Herrera (*supra* Having Seen 10(a)).

8. That the situation described by the representatives (*supra* Having Seen 3, 4 and 10) reveals *prima facie* the existence of a situation of extreme gravity and urgency that makes it necessary to prevent irreparable damage to the rights to life and to personal integrity of Mr. Ricardo Alberto Iglesias Herrera, who was offered by the representatives to serve as an expert witness in the present case, and pursuant to point one of the operative clauses of the Order of the President of December 14, 2006 his expert opinion was submitted by affidavit on January 12, 2007 (*supra* Having Seen 6 and 9). The standard of *prima facie* assessment

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<sup>1</sup> Cfr. *Matter of Gloria Giralte de García Prieto et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 26, 2006, fourth considering clause; *Case of the Gómez Paquiyauri Brothers*. Order of the Inter-American Court of Human Rights of September 22, 2006, fifth considering clause; and *Case of the 19 Tradersmen*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, seventh considering clause.

<sup>2</sup> Cfr. *Matter of Giraldo Cardona*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 20, 2006, point six of considering clause; *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 30, 2006, sixth considering clause; and *Matter of Gloria Giralte de García Prieto et al.* Provisional Measures, *supra* note 1, fifth considering clause.

of a case and the application of presumptions due to the need for protection have, on different occasions, led this President and the Court to order measures.<sup>3</sup>

9. That this Court deems it necessary to protect Mr. Ricardo Alberto Iglesias Herrera with provisional protective measures. This will keep Mr. Ricardo Alberto Iglesias Herrera safe and free from any kind of coercion or threat after having given his expert opinion by means of affidavit and presented before this Court on January 12, 2007 (Having Seen 11).

10. That, taking into account the representatives' statements, *inter alia*, in their brief of November 29, 2006 regarding their concern for the safety of the people offered as experts and witnesses in the present case, and that in the Order of December 14, 2006 David Ernesto Morales Cruz, Alina Isabel Arce, María Julia Hernández and Mauricio José Ramón Gaborit Pino were ordered to testify as witnesses and expert witnesses, as the case may be, through affidavits, which were submitted on January 12, 2007 (Having Seen 9), this Court requests the representatives to report to it, within fifteen days as of the notification of the present Order, specifically and in detail regarding the need to order provisional measures in their favor.

11. That with regard to Pedro José Cruz Rodríguez, who stated that he resides in Guatemala (Having Seen 11), the Court requests the representatives to report to it, within fifteen days as of the notification of the present Order, regarding his current situation.

12. That the State should make all the pertinent arrangements to ensure that the protective measures called for in the present Order are planned and implemented with the participation of the beneficiaries of the measures, or with their representatives, to ensure that the measures are provided in a diligent and effective manner.

13. That the Court considers it necessary for El Salvador, in its next report to the Court, pursuant to the present Order, refer to the measures it is adopting to protect the life and personal integrity of all the beneficiaries of the present measures, that is, Gloria Giralte de García Prieto, José Mauricio García Prieto Hirlemann, María de los Ángeles García Prieto de Charur, José Benjamín Cuéllar Martínez, Matilde Guadalupe Hernández de Espinoza, José Roberto Burgos Viale, and Ricardo Alberto Iglesias Herrera.

14. That the State is under the obligation to investigate the facts that gave rise to these urgent measures, to identify the responsible parties, and, if need be, to impose the pertinent sanctions.

## **NOW THEREFORE:**

### **THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

pursuant to the authority conferred upon it under Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

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<sup>3</sup> Cfr. *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo*. Provisional Measures, *supra* note 2, twentieth considering clause; *Matter of Gloria Giralte de García Prieto et al.* Provisional Measures, *supra* note 2, tenth considering clause; and *Matter of Millacura Llaipén et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of July 6, 2006, ninth considering clause.

**DECIDES:**

1. To ratify the Order of the President of the Inter-American Court of Human Rights dated December 3, 2006.
2. To require the State to maintain in force the measures it has already adopted, and to adopt, without delay, the measures necessary to protect the life and integrity of Mr. Ricardo Alberto Iglesias Herrera.
3. To require the State to maintain in force the measures necessary to protect the life and personal integrity of Gloria Giralt de García Prieto, José Mauricio García Prieto Hirlemann, María de los Ángeles García Prieto de Charur, José Benjamín Cuéllar Martínez, Matilde Guadalupe Hernández de Espinoza, and José Roberto Burgos Viale.
4. To require the representatives of the beneficiaries of the provisional measures to report, within fifteen days as of the notification of the present Order, to the Inter-American Court, specifically and in detail on the need to order provisional measures in favor of the people mentioned in the tenth considering clause, and on the current situation of Pedro José Cruz Rodríguez, pursuant to the eleventh considering clause.
5. To require both the Inter-American Commission on Human Rights and the State to submit the observations they consider pertinent in this regard within seven days of receiving the information requested in point four of the operative clauses.
6. To require the State to make all the pertinent arrangements so that the protective measures called for in the present Order are planned and implemented with the participation of the beneficiaries of the measures, or their representatives, to ensure that these measures are provided in a diligent and effective manner and, in general, to keep them informed of the progress of their implementation.
7. To require the State to investigate the facts that motivated the adoption of these provisional measures, identify the responsible parties and, if need be, impose upon them the corresponding sanctions.
8. To request the State to continue reporting to the Inter-American Court of Human Rights every two months on the provisional measures adopted, along with the reports on the provisional measures ordered in favor of Gloria Giralt de García Prieto et al.
9. To request the beneficiaries of these measures, or their representatives, and the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights, the observations they consider pertinent regarding the reports of the State, together with the observations on the provisional measures ordered in favor of Gloria Giralt de García Prieto et al. For the submission of these observations, the beneficiaries of these measures, or their representatives, and the Inter-American Commission on Human Rights have a period of four weeks and six weeks, respectively, as of the notification of the reports of the State.
10. To request the Secretariat to notify the Inter-American Commission on Human Rights, the representatives of the beneficiaries of these measures, and the State regarding the present Order.

Sergio García Ramírez  
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri  
Secretary

So ordered,

Sergio García Ramírez  
President

Pablo Saavedra Alessandri  
Secretary