

Order of the Inter-American Court of Human Rights
Case of Raxcacó-Reyes *et al.*
February 2, 2007
(Request for the Broadening of Provisional Measures)

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court", or "the Tribunal") issued on August 30, 2004, operative paragraph number one of which sets forth:

1. The State shall adopt, without delay, all measures necessary to protect the life of Ronald Ernesto Raxcacó-Reyes, Hugo Humberto Ruiz-Fuentes, Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor to avoid hindering proceedings under their respective cases before the Inter-American System of Human Rights Protection.

2. The Judgment on the merits, reparations, and costs delivered by the Inter-American Court on September 15, 2005, in the *Case of Raxcacó-Reyes v. Guatemala* (hereinafter "the State" or "Guatemala"), whereby the Court ordered, among other things, that:

[...]

9. The State shall adopt, within a reasonable time, the necessary measures to adapt prison conditions to the corresponding international standards.

[...]

15. The obligations of the State within the scope of the provisional measures ordered by this Court in the instant case shall be superseded by, exclusively with regard to Raxcacó-Reyes, the measures ordered in this Judgment, from the date notice of the Judgment is served upon it.

3. The Order of the President of the Inter-American Court (hereinafter "the President") issued on April 20, 2006, ordering:

1. To dismiss the request for expansion of the provisional measures ordered in favor of Mr. Tirso Román Valenzuela-Ávila, filed by the representatives of the beneficiaries of the provisional measures.

[...]

4. The Order of the Inter-American Court issued on July 4, 2006, whereby the Court decided:

1. To consider the provisional measures adopted for the benefit of Mr. Hugo Humberto Ruiz-Fuentes closed.

2. To require the State to submit a report on the steps taken to comply with the provisional measures adopted for the benefit of Mr. Bernardino Rodríguez-Lara and Mr. Pablo Arturo Ruiz-Almengor [...].

5. The brief submitted by the State on October 25, 2006, stating, *inter alia*, that:
- a) by means of a decision rendered on February 15, 2005, the *Corte Suprema* (Guatemalan Supreme Court) "ordered the temporary stay of execution of [...] Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor's death sentences;"
 - b) Mr. Ruiz-Almengor "was transferred to the Zone 18 Detention Center for Men from the Escuintla maximum security prison, in the custody of the *Juzgado Primero de Ejecución Penal* (First Court of Criminal Sentence Execution) for the crimes of escape, kidnapping or abduction[; he i]s being held in a cell of approximately two by three meters; his health status is stable and is not taking any special medication; the cell contains a mattress and blankets[;] he receives balanced meals three times a day, does handicraft work, displays good behavior toward inmates and prison staff, receives visits on Thursdays, [and] his cell has natural ventilation and natural and artificial light," and
 - c) Mr. Rodríguez-Lara "is being held in Sector B-3 of the Escuintla Maximum Security Center. His health status is stable and is not taking special medication; his cell contains a concrete bed with a mattress and blankets; he receives three balanced meals a day, does handicraft work and makes shampoo, cream, talcum powder and lotions; in addition, he practices the Catholic religion and receives visits on Sundays; his cell has ventilation and natural and artificial light."

6. The brief submitted by the representatives of the beneficiaries of the provisional measures (hereinafter "the representatives") on November 24, 2006, notifying that they filed appeals for review in the criminal proceedings against Mr. Rodríguez-Lara and Mr. Ruiz-Almengor; however, the *Corte Suprema de Justicia* (Guatemalan Supreme Court of Justice) "[has] not ruled on [these] appeal[s...]" and [maintain[s] the death sentence imposed on both beneficiaries." According to the representatives, maintaining the death sentence "constitutes [*per se*] a cruel, inhuman or degrading treatment, [...] prolongs the psychological stress of the convicts, thereby violating Article 5 of the American Convention."

In addition, the representatives stated that in Guatemala "there is still no [...] legislation in force governing applications for executive clemency or pardon," which means that Messrs. Rodríguez-Lara and Ruiz-Almengor may not avail themselves of such remedy.

As regards the prison conditions under which the beneficiaries are being held, their representatives indicated that "the current prison regime to which they are subject is extremely severe, imposing serious restrictions on their fundamental rights." In particular:

- a) Mr. Ruiz-Almengor "is held in a one by three meter cell," which does not have a bed or sanitary facilities and he only has access to the sanitary facilities located outside his cell during daytime; "he has not had access to work or education either." The space provided for recreation and leisure is "non-existent;" he is not allowed to go out in the sun "at any time [, and is under] a 24-hour continuous confinement regime;"

- b) Mr. Rodríguez-Lara "cannot leave the cellblock in [which] he is housed, [...] he is confined 24 hours a day[, and does not] have access to any work, educational or recreational activity," and
- c) none of them receive direct sunlight during the day, "[t]he ventilation in [their] cells is inadequate and overcrowding is a constant problem."

Based on the foregoing, the representatives requested the Court, *inter alia*, to order the State to "adopt such measures as may be necessary for the beneficiaries to be held under decent prison conditions, in accordance with international standards," and to "allow audiovisual material as evidence of the current prison conditions facing the beneficiaries."

7. The brief of the State of November 30, 2006, stating, *inter alia*, that:

- a) the *Corte Suprema de Justicia* (Guatemalan Supreme Court of Justice) rendered a decision on February 15, 2005, ordering "the temporary stay of execution of the death sentences imposed on the beneficiaries;
- b) on October 5, 2006, the "*Ley del Régimen Penitenciario*" (Prison System Law) was enacted and, on November 28, 2006, the "*Reglamento Interno de las Granjas Modelo de Rehabilitación y Cumplimiento de Condenas a Cargo de la Dirección General del Sistema Penitenciario*" (Internal Rules of the Model Farms for Rehabilitation and Service of Sentence under the Prison System General Office) were adopted for the purpose of enhancing prison conditions;
- c) Mr. Rodríguez-Lara has suffered from common diseases, such as fever and the flu and from stress. He was examined by "the center's nurse on duty" and received treatment. "[H]e has a good relationship with his fellow inmates as well as with the prison staff;"
- d) Mr. Ruiz-Almengor is "in good health[,] he only suffers from stress and mild anxiety due to confinement. He is held in a solitary confinement room of approximately 1.5 meters wide by 5 meters long in sector 11 and [...] has a small yard. He spends the day in that yard and, at night, he stays in the solitary confinement room," and
- e) "the State does not object to maintaining" the provisional measures ordered in favor of the beneficiaries.

8. The communication of the Commission of December 14, 2006, whereby, after having been granted an extension, the Commission submitted its comments on the State report (*supra* Having Seen clause No. 5). In that regard, the Commission reiterated its position "on the importance for the courts of criminal sentence execution in charge of the execution of [Messrs.] Rodríguez-Lara and Ruiz-Almengor's sentences to adopt provisional measures by means of court orders so as to ensure full compliance with the provisional measures ordered by the Court." In relation to prison conditions, the Commission stated that "the State itself indicates that prison conditions are poor and that there is overcrowding and lack of basic furnishings, such as beds for the beneficiaries."

9. The communication of the representatives of December 13, 2006, whereby they submitted their comments on the last report filed by the State (*supra* Having Seen

clause No. 7). They pointed out that the legislative measures mentioned by the State "do not have a direct impact" on Messrs. Ruiz-Almengor and Rodríguez-Lara inasmuch as "the special regime to which they are subject has not been modified." In particular, as regards the prison conditions under which Mr. Rodríguez-Lara is serving his sentence, they stated that they "are the same as those that the Court [...] found to be incompatible with Article 5 of the Convention [...] in the *Case of Fermín Ram[í]rez*," and; therefore, as a provisional measure, "the State should be ordered to adopt the necessary measures for such conditions to cease and for the beneficiaries to be provided with a work, education [and] outdoor exercise program." As regards Mr. Ruiz-Almengor, the representatives stated, *inter alia*, that "it is not true" that his cell "has a yard; therefore, he is kept in total and continuous confinement 24 hours a day."

10. The communication of the representatives of December 19, 2006, whereby they submitted a compact disc "which contained pictures of sector 11 of the zone 18 detention center for men and the solitary confinement cells where Ronald Ernesto Raxcacó-Reyes and Pablo Arturo Ruiz-Almengor are being held."

11. The note of the Secretariat of December 21, 2006, whereby, following the President's instructions, the parties were notified that it is not possible to fully appreciate the actual conditions under which Mr. Ruiz-Almengor is being held from the pictures submitted by the representatives. Therefore, the State was required to appoint a public official whose acts command full faith and credit to conduct an inspection of the detention centers where Messrs. Ruiz-Almengor and Rodríguez-Lara are held to certify: i) the condition of their cells, especially their size, the number of inmates being housed in such cells, the ventilation and access to natural light, and the fixtures and furnishings of the cells; ii) the sanitary facilities available for the beneficiaries, access to them, their condition, the water supply to the beneficiaries for drinking and personal hygiene and the articles provided to them for personal hygiene; iii) food supply, especially quality and quantity of meals and meal times; iv) medical care and medication provided to the beneficiaries; v) work, educational, sport and recreational activities performed by the beneficiaries, and vi) any other aspect as the public official may deem relevant.

12. The communication of the State of January 15, 2007, and its appendixes, whereby it submitted: i) a report prepared by the Prison System General Office regarding prison conditions under which Messrs. Ruiz-Almengor and Rodríguez-Lara are serving their sentences; ii) two certificates showing that Mr. Ruiz-Almengor "is registered in the work assignment and control records," but "he is not registered in the educational program record," and iii) certified documents issued by a public official whose acts command full faith and credit, as requested by the President of the Court (*supra* Having Seen clause No. 11), certifying the prison conditions under which both prisoners are being held.

13. The communication of the representatives of January 23, 2007, whereby they pointed out several inconsistencies between the report prepared by the Prison System Office and the certified documents issued by the aforesaid public official (*supra* Having Seen clause No. 12). In addition, they requested the Court to order the State to "[...] improve, without delay," the prison conditions facing the beneficiaries.

14. The communication of the Inter-American Commission of January 23, 2007, requesting that "a date be set for the submission of comments on this matter, following receipt of the [comments] submitted by the beneficiaries."

15. The note of the Secretariat of January 25, 2007, whereby, following the President's instructions, the Commission was informed that it was not possible to satisfy its request (*supra* Having Seen clause No. 14) given that the period for the submission of comments on the communication of the State (*supra* Having Seen clause No. 12) was independent of the submission of comments by the representatives of the beneficiaries.

16. The communication of January 25, 2007, whereby the State submitted a compact disc containing pictures of the prison centers where the beneficiaries are held.

CONSIDERING:

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

2. That Article 63(2) of the American Convention provides that "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With regard to a case not yet submitted to the Court, it may act at the request of the Commission."

3. That Article 1(1) of the Convention establishes the general obligation of the States Parties 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.

4. That provisional measures are exceptional in nature; they are adopted on the basis of the need for protection and, once ordered, they shall remain effective as long as the Court deems that the basic requirements of extreme gravity and urgency and the need to prevent irreparable damage to the rights of the persons protected by them continue to be satisfied.¹

5. That, pursuant to Article 63(2) of the Convention, it is mandatory for the State to adopt such provisional measures as this Court may order, insofar as the basic principle of the Law of State Responsibility, upheld by international case law, provides that States must fulfill their treaty obligations in good faith (*pacta sunt servanda*).²

6. That, pursuant to Article 68(1) of the American Convention, "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any

¹ Cf. *Case of the Plan de Sánchez Massacre*. Urgent Measures. Order of the President of the Inter-American Court of Human Rights of November 25, 2006, Considering clause No. 8; *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; and *Matter of the Forensic Anthropology Foundation*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 7.

² Cf. *Case of the Plan de Sánchez Massacre*, *supra* note 1, Considering clause No. 9; *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo, Brazil*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 30, 2006, Considering clause No. 19; and *Case of the 19 Tradesmen*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 16.

case to which they are parties." The treaty obligations of States Parties are binding on all State powers and organs.

7. That the obligation to comply with the judgment of the Court conforms to a basic principle of the Law of International Responsibility of States, upheld by international case law, under which States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by this Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States may not invoke the provisions of its internal law to escape their pre-established international responsibility.³ Otherwise, the rights enshrined in the American Convention would be devoid of effective protection or *effet utile* under the domestic law of States Parties.

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8. That, in accordance with the Orders of the Court of August 30, 2004 (*supra* Having Seen clause No. 1) and July 4, 2006 (*supra* Having Seen clause No. 4), the State is under the obligation to adopt all "measures necessary" to protect the life of Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor so as to avoid hindering the proceedings before the Inter-American Human Rights Protection System.

9. That the information provided by the State, which was not disputed by the representatives or the Commission, indicates that on February 15, 2005, the *Corte Suprema de Justicia* (Guatemalan Supreme Court of Justice) ordered the "temporary stay" of the execution of the death sentences imposed on Messrs. Rodríguez-Lara and Ruiz-Almengor (*supra* Having Seen clauses No. 5 and 7).

10. That, in relation to the aforesaid temporary stay, the Commission stated that in order to ensure compliance with the order of the Court, the courts in charge of criminal sentence execution should adopt the relevant provisional measures by means of court orders. In addition, the representatives pointed out that the appeals for review filed in the criminal proceedings brought against Ruiz-Almengor and Rodríguez-Lara in order to have their death sentences reversed, and a new sentence issued, imposing punishment "proportional to the nature and severity of the offense," are still pending (*supra* Having Seen clauses No. 6 and 8).

11. That, in the opinion of this Court, the obligation of the State is to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, bearing in mind the specific purpose of such measures, which, in the instant case, is to protect the life of the beneficiaries.

12. That the States may decide, in accordance with their respective domestic law, the best way to comply with the measures ordered by the Court, on the understanding that it would be inadmissible to subject the mechanism provided for in the American

³ Cf. *Case of Yatama*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 29, 2006, Considering clause No. 5; *Case of Cesti-Hurtado*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering clause No. 7; and *Case of Ricardo Canese*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering clause No. 6.

Convention to restrictions which could render the function of the Court and, therefore, the human rights protection system enshrined in the Convention, inoperative.⁴

13. That the decision of the *Corte Suprema de Justicia* (Guatemalan Supreme Court of Justice) of February 15, 2005 has been the mechanism selected by the State to comply with the orders of the Court in these provisional measures, and that, so far, it has proved effective and has complied with the purpose of protecting the life of the beneficiaries.

14. That, without intending to minimize the importance of such measure, the Court notes that the decision of the *Corte Suprema de Justicia* (Guatemalan Supreme Court of Justice) orders "the temporary stay" of execution of the death sentences imposed on the beneficiaries. In other words, it is not in itself a final measure; therefore, the circumstances of extreme gravity and urgency involving the likelihood of irreparable damage are still present. As a result, these measures must be maintained in effect until a final decision modifying the death sentences is rendered, as may result from the appeals for review currently pending before said Court, or until the conclusion of the proceedings before the Inter-American system.

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15. That the comments made by the representatives in connection with the lack of legislation governing the application for executive clemency or pardon (*supra* Having Seen clause No. 6) in Guatemala, relate to the monitoring of compliance with the Judgments rendered in the *Case of Raxcacó Reyes*⁵ and the *Case of Fermín Ramírez*,⁶ and not to these provisional measures; therefore, the Court will not rule on such allegations in this precautionary proceeding.

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16. That the representatives requested, as a provisional measure, that the State be ordered to adopt such measures as may be necessary for Messrs. Ruiz-Almengor and Rodríguez-Lara to be held under decent prison conditions, in accordance with international standards. The representatives based their request on their assessment of the current prison conditions facing both beneficiaries (*supra* Having Seen clauses No. 6 and 9).

⁴ Cf. *Matter of Marta Colomina*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 11, *Matter of Lilliana Ortega et al.*, *Matter of Luisiana Rios et al.*, *Matter of Luis Uzcátegui*, *Marta Colomina and Lilliana Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of May 4, 2004, Considering clause No. 8; *Matter of Luis Uzcátegui*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 20, 2003, Considering clause No. 13.

⁵ Cf. *Case of Raxcacó-Reyes*. Judgment of September 15, 2005. Series C No. 133, operative paragraph no. 7.

⁶ Cf. *Case of Fermín Ramírez*. Judgment of June 20, 2005. Series C No. 126, operative paragraph no. 10.

17. That the foregoing constitutes a request for expansion of the provisional measures presently in force so as to encompass the protection of Messrs. Rodríguez-Lara and Ruiz-Almengor's right to humane treatment.

18. That, based on said request and on the need to obtain more information, the Secretariat, following the President's instructions, requested the State to appoint a public official whose acts command full faith and credit in order to inspect the detention centers and certify specific aspects relating to the prison conditions under which Messrs. Rodríguez-Lara and Ruiz-Almengor are serving their sentences (*supra* Having Seen clause No. 11).

19. That this Court notes with some concern that there are discrepancies between the report prepared by the Prison System Office and the one prepared by the aforesaid public official, especially with regard to the size of holding cells (*supra* Having Seen clause No. 12).

20. That, however, it is important to note that in operative paragraph number nine of the Judgment on the merits, reparations, and costs delivered on September 15, 2005, this Court decided that the "State shall adopt, within a reasonable time, the necessary measures to adapt prison conditions to the corresponding international standards" (*supra* Having Seen clause No. 2). Said judgment is being monitored for compliance.

21. That, after examining the grounds for this request of expansion of provisional measures (*supra* Having Seen clauses No. 6 and 9), the Court finds that the purpose of the representatives' request is related to the obligation imposed on the State in operative paragraph number nine of the aforesaid Judgment. Consequently, the issue raised in relation to the prison conditions does not fall within the scope of the provisional measures pursuant to Article 63(2) of the Convention; rather, it is partly related to the monitoring of compliance with the Judgment rendered in the *Case of Raxcacó Reyes et al.*

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

by virtue of the authority vested in it by Article 63(2) of the American Convention on Human Rights and Article 25 of the Court Rules of Procedure,

DECIDES:

1. To dismiss the request for expansion of provisional measures filed by the representatives.

2. To reiterate to the State the need to maintain the measures adopted to protect the life of Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor so as to avoid hindering the proceedings before the Inter-American Human Rights Protection System.

3. To call upon the State to submit a report on the steps taken to comply with the provisional measures ordered for the benefit of Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor by March 5, 2007 and, thereafter, to continue providing information to the Inter-American Court of Human Rights about the provisional measures adopted every two months.

4. To request the beneficiaries of the provisional measures or their representatives to submit their comments on the State reports within four weeks following receipt thereof, and the Inter-American Commission on Human Rights to submit its comments on said reports within six weeks following receipt thereof.

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

Sergio García-Ramírez
President

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary