

**Order of the
Inter-American Court of Human Rights*
of July 12, 2007**

**Provisional Measures ordered by the
Inter-American Court of Human Rights
Regarding Guatemala**

Case of Colotenango

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of June 22, 1994, which, *inter alia*,:

[...]

1. Require[d] the Government of Guatemala to adopt without delay all necessary measures to protect the right to life and the personal integrity of PATRICIA ISPANEL MEDIMILLA, MARCOS GODÍNEZ PÉREZ, NATIVIDAD GODÍNEZ PÉREZ, MARÍA SALES LÓPEZ, RAMIRO GODÍNEZ PÉREZ, JUAN GODÍNEZ PÉREZ, MIGUEL GODÍNEZ DOMINGO, ALBERTO GODÍNEZ, MARÍA GARCÍA DOMINGO, GONZALO GODÍNEZ LÓPEZ, ARTURO FEDERICO MÉNDEZ ORTIZ and ALFONSO MORALES JIMÉNEZ.

2. Request[ed] the Government of Guatemala to adopt all necessary measures to ensure that the aforementioned persons may continue to reside at or return to their homes in Colotenango, providing them the assurances that they shall not be persecuted or threatened by agents of the Government or by individuals.

2. The Order of the Court of December 1, 1994, which expanded the provisional measures adopted to protect Mrs. Francisca Sales Martín and required the Government of Guatemala (hereinafter "the State" or "Guatemala"), "to use all the means at its disposal to enforce the arrest warrants issued against the 13 patrol members charged as suspects in the case before the Second Trial Court of Huehuetenango involving the criminal acts which took place on August 3, 1993, in Colotenango."

3. The Order of the Court of February 1 1996, which called upon the State of Guatemala, further to the measures already in place, to institute mechanisms of control and vigilance over the civil patrols operating in Colotenango.

4. The March 13, 1997 Report No. 19/97, in which the Case of Colotenango was resolved using the Inter-American Commission's friendly settlement mechanism.

5. The Order of the Court of April 16 1997, which ordered the State to "to maintain the provisional measures [adopted] in the instant case as long as the circumstances [of extreme gravity and urgency which provoked the adoption of such measures] persist."

* Due to reasons beyond his control, Judge Diego García-Sayán did not participate in the deliberations or the signing of the present ruling.

6. The Order of the Court of September 19, 1997, which:

[...]

2. Call[ed] upon the State of Guatemala to expand the measures adopted in this Case for the purpose of ensuring the right to life and physical integrity of Andrés Ramos Godínez, Rafael Vásquez Simón, Juan Mendoza Sánchez, Julia Gabriel Simón, Miguel Morales Mendoza, Lucía Quila Colo, and Fermina López Castro.

3. Call[ed] upon the State of Guatemala to investigate the facts denounced by the Inter-American Commission on Human Rights and punish those responsible.

4. Call[ed] upon the State of Guatemala to continue to report every two months on the provisional measures in this case, and, specifically, on any measures it may have taken on behalf of Juan Mendoza Sánchez and Julia Gabriel Simón.

[...]

7. The Order of the Court of November 27, 1998, which:

1. Call[ed] upon the State of Guatemala to include a detailed description of the measures of protection provided to Lucía Quila Colo, Fermina López Castro and Patricia Ispanel Midimilla, in its next report.

2. Call[ed] upon the State of Guatemala to include information on the investigation and punishment of those responsible for the facts that motivated the adoption of the provisional measures in its next report and, specifically, on the alleged threats to Alberto Godínez and María García Domingo.

8. The Order of the Inter-American Court of June 3, 1999, which:

1. Call[ed] upon the State of Guatemala to continue the measures required to protect the life and safety of the persons on whose behalf the Inter-American Court of Human Rights ordered provisional measures in its decisions of June 22 and December 1, 1994, and September 19, 1997.

2. Call[ed] upon the State of Guatemala to investigate the events that led to the adoption of those provisional measures, with a view to ascertaining the identity of those responsible and punishing them.

3. Call[ed] upon the State of Guatemala to urgently report on the alternative mechanisms necessitated by the events of April 30, 1999, and adopted in order to effectively carry out the provisional measures ordered by the Inter-American Court of Human Rights.

4. Call[ed] upon the State of Guatemala to involve the claimants in the planning and execution of the measures referred to in the preceding paragraph and, in general, to keep them informed of the progress made with the measures ordered by the Inter-American Court of Human Rights.

[...]

9. The Order of the Inter-American Court of February 2, 2000, which:

1. Call[ed] upon the State of Guatemala to maintain the measures necessary to protect the life and integrity of the persons protected by the orders of the Inter-American Court of Human Rights of June 22 and December 1, 1994, and September 19, 1997.

2. Call[ed] upon the State of Guatemala to expand the measures adopted in the instant case in order to ensure the right to life and integrity of Viviana Rucux Quilá.

3. Call[ed] upon the State of Guatemala to provide information urgently on the specific measures that are adopted to comply effectively with the provisional measures ordered by the Inter-American Court of Human Rights.

4. Call[ed] upon the State of Guatemala to continue allowing the petitioners to take part in the planning and execution of the measures and, in general, to keep them informed about the progress of the measures ordered by the Inter-American Court of Human Rights.

5. Call[ed] upon the State of Guatemala to include information on the investigation and punishment of those responsible for the facts that led to the adoption of the provisional measures in its next report and also on the status of the investigations into the alleged threats against Francisca Sales Martín, Natividad Pérez, María García Domingo, Alberto Godínez, Marcos, Juan and Ramiro Godínez Pérez, Alfonso Morales Jiménez and Arturo Federico Méndez Ortiz.

6. Call[ed] upon the State of Guatemala to include a detailed description of the measures of protection provided to Patricia Ispanel Medimilla y Fermina López Castro, Gonzalo Godínez López, Arturo Federico Méndez Ortiz and Juan Mendoza in its next report.

[...]

10. The Order of the Inter-American Court of September 5, 2001, which decided:

1. To call upon the State to maintain the provisional measures so as to protect the life and integrity of the persons protected under the Orders of the Inter-American Court of Human Rights of June 22 and December 1, 1994, September 19, 1997 and February 2, 2000.

2. To call upon the State of Guatemala to inform the Inter-American Court of Human Rights of any specific measures adopted to effectively comply with the provisional measures ordered by the Court.

3. To call upon the State of Guatemala to continue to involve the petitioners in the planning and implementation of the measures and, in general, to keep them informed of the progress of the measures ordered by the Inter-American Court of Human Rights.

4. To call upon the State of Guatemala to include in its next report information concerning the investigation and punishment of those responsible for the events that prompted adoption of provisional measures and on the status of the investigations into the threats and acts of intimidation allegedly targeted at Francisca Sales Martín, Natividad Pérez, María García Domingo and Alberto Godínez, Marcos, Juan and Ramiro Godínez Pérez, Alfonso Morales Jiménez and Arturo Federico Méndez Ortiz; information on any progress made in the case against Colonel Felipe Miranda Trejo, former commander of Military Base No. 19 at Huehuetenango, and information on the progress made in the investigation into the break-ins at the office of the National Coordinator of Widows of Guatemala.

5. To call upon the State of Guatemala to include in its next report detailed information on the measures of protection afforded to Fermina López Castro and Juan Mendoza Sánchez.

6. To call upon the State of Guatemala to continue to submit, every two months, reports on the provisional measures taken, and to call upon the Inter-American Commission [...] to present its comments on those reports within six weeks of receiving them.

11. The twenty second to forty first reports presented by the State between September 2001 and May 2005, the State's report on September 29, 2006, the comments by the Commission and the representatives of said reports, and the submissions of the representatives and the Commission of November 4 and 24, 2005, respectively.

CONSIDERING:

1. That Guatemala has been Party to the American Convention on Human Rights since May 25, 1978 and recognized the contentious jurisdiction of the Court 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 shall adopt such provisional measures, as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

3. That, in the terms of Article 25 of the Rules of Procedure of the Court,

1. At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention. [...]

4. That Article 1(1) of the Convention highlights the obligation of State Parties to respect the rights and freedoms recognized in the Convention and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms. The State is thus required to adopt the necessary measures to preserve the life and integrity of those persons whose rights may be threatened. This duty becomes even more evident when it pertains to those undergoing proceedings before the supervisory bodies of the American Convention.

5. That the States party to the Convention must fulfill their conventional obligations in good faith, which is a basic principle of the law of international responsibility of States (*pacta sunt servanda*).¹ They must also guarantee the effects of such provisions (*effet utile*).²

6. That the purpose of provisional measures in domestic legal systems (domestic procedural law) is, in general, to preserve the rights of the litigant parties, thereby ensuring that the execution of the eventual judgment on the merits will not be prejudiced by the litigants' actions *pendente lite*. The purpose of provisional measures under international human rights law is more far-reaching: although essentially preventive in nature, they also effectively protect fundamental rights in that they seek to avoid irreparable harm to persons³.

7. That by virtue of the Court's Orders between June 1994 and September 2001 (*supra*, paragraphs 1 to 3 and 5 to 10 under "*Having Seen*"), the State has an obligation to take the measures of protection necessary to preserve the life and integrity of the beneficiaries of the measures.

¹ Cfr., inter alia, *Matter of Adrián Meléndez Quijano et al.*. Provisional measures. Order of the Inter-American Court of Human Rights of May 12, 2007, sixth considering clause; *Matter of The Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006, seventh considering clause, and the *Case of Raxcacó Reyes et al.* Provisional measures. Order of the Inter-American Human Rights Court of February 2, 2007, fifth considering clause.

² Cfr., inter alia, *Case of Ivcher Bronstein*. Competence. Judgment of September 24, 1999, paragraph 37; *Case of "The Last Temptation of Christ"* (Olmedo Bustos et al), *supra* note 38, paragraph 87. See Also *Case of La Cantuta*, *supra* note 7, paragraph 171, and *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, paragraph 205.

³ Cfr. *Matter of the Persons Imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary*. Provisional measures. Order of the Inter-American Human Rights Court of September 30, 2006, fourth and fifth considering clauses; *Matter of Mery Naranjo et al.* Provisional Measures. Order of the Inter-American Human Rights Court of September 22, 2006, fourth and fifth considering clauses, and *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional Measures. Order of the Inter-American Human Rights Court of March 30, 2006, fourth and fifth considering clauses,

8. That on various occasions the State failed to present its reports or did not provide sufficient information, making it difficult for the Court to determine the actual circumstances of the beneficiaries of the measures ordered. This creates a situation of uncertainty that is incompatible with the preventative and protective nature of provisional measures.

9. That this Court has already made clear that it is the State's duty to provide sufficient information on the measures adopted,⁴ and that the General Assembly of the OAS has reiterated that, in order for the Tribunal to be able to comply satisfactorily with its obligation to report as to the compliance with its rulings, State Parties must provide them with the information they require in a timely fashion.⁵

10. That through notes provided in October and November of 2005 as well as January 2006, all parties were asked to provide their comments regarding the persistence of a situation of extreme gravity and urgency and the possibility of irreparable damages that could justify upholding the provisional measures. This was requested taking into consideration that one of the main reasons for the implementation of the provisional measures was to comply with one of the agreements in the friendly settlement report issued by the Commission.

11. That after 13 years of having ordered the provisional measures, the main point of controversy in regards to these remains the potential danger to the beneficiaries if the apprehension orders against the former patrol officers, who escaped from prison in April 1999, are not enforced. Furthermore, the reports from the State as well as the comments from the Commission and the representatives have revolved around the investigation into the facts which gave rise to the current provisional measures as well as the effectiveness of the implementation of security measures directed towards the beneficiaries, particularly in regards to the frequency in which foot and vehicle patrols have or have not occurred, in order to protect the boundaries of the community.

12. That Case No. 11.212 (Juan Pablo Chanay et al), which led to the present provisional measures, was resolved in Report No. 19/97 using the Commission's Friendly Settlement mechanism on March 12, 1997 through Report No. 19/97 which established that, *inter alia*:

[T]he agreement stipulates that the State of Guatemala shall provide communal assistance to the affected communities of Colotenango, in accordance with a program of projects agreed upon by the parties (to be executed by FONAPAZ.) The State shall pay Q 300,000, to be divided among the citizens directly affected by the events in question, and to be used to cover the medical and legal costs the petitioners deem pertinent. The petitioners shall provide the names of the individuals concerned to the Commission, and a list of the precise portion of the total each is to receive. The Inter-American Commission shall ensure that the specified amounts are delivered to the petitioners. The petitioners acknowledge that all their claims arising in respect of this case have been satisfied. *The Government shall take the measures necessary to assure that justice is done in this case, including through the investigation of the facts; continued efforts to detain those implicated who remain at liberty and to punish those responsible, in accordance with the international norms in effect in the State so that those found responsible are not left in impunity.*

⁴ Cfr. *Matter of Carlos Nieto et al.* Provisional Measures. Order of the Inter-American Human Rights Court of September 22, 2006, fifteenth and sixteenth considering clauses; *Matter of the Communities Jiguamiandó and Curbaradó.* Provisional Measures. Order of the Inter-American Human Rights Court of February 7, 2006, sixteenth and seventeenth considering clauses, and *Matter of the Peace Community of San José de Apartadó.* Provisional Measures. Order of the Inter-American Human Rights Court of February 2, 2006, sixteenth considering clause.

⁵ General Assembly Order AG/RES. 2292 (XXXVII-O/07) approved during the fourth plenary session on June 5, 2007 entitled "Comments and Observations regarding the Annual Report of the Inter-American Human Rights Court".

A Commission of Verification and Follow-up shall monitor compliance with each of the agreed upon provisions, and submit a written report to the Commission twice a year. *[(emphasis added)]*

13. That according to the aforementioned (*supra* Considering 11), the main point of controversy regarding the effective implementation of the provisional measures is an obligation of the State, which has already been resolved before the Commission. Thus, according to the Convention, the effective investigation and sanction of those responsible for the facts is an obligation of the State and this obligation is also explicitly referred to in the friendly settlement report issued by the Commission (*supra* Considering 12).

14. That removing these provisional measures does not mean that the State has complied with its conventional obligations specified in Report No. 19/97 of the Inter-American Commission, nor that the State shall no longer be held responsible for its conventional obligations to continue with the investigations at the domestic level to identify and, if the case may be, sanction those responsible for the facts described. It is the responsibility of the Inter-American Commission to verify the effective compliance with what is outlined in this report.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

Pursuant to the authority conferred upon it Under Article 63(2) of the American Convention and Article 25 of its Rules of Procedure,

DECIDES:

1. To lift the provisional measures ordered by the Inter-American Court of Human Rights in favor of the beneficiaries in its Orders of June 22 and December 1, 1994, September 19, 1997, February 2, 2000 and September 5, 2001, for the reasons outlined in the paragraphs above.

2. To clarify that the lifting of the provisional measures does not mean that the State has complied with its conventional obligations specified in the Inter-American Commission Report No. 19/97, nor is the State removed from its obligations to continue the investigations to find and sanction those responsible for the facts. It is the Inter-American Commission's responsibility to verify the effective compliance with these obligations.

3. To notify the State of Guatemala, the Inter-American Commission of Human Rights and the representatives of the beneficiaries of 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