

**Order of the
Inter-American Court of Human Rights
of November 21, 2007
Case of Raxcacó-Reyes *et al* v. Guatemala
(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, whose first Operative paragraph decided:

To require that the State adopt, without delay, the measures necessary to protect the life of Ronald Ernesto Raxcacó-Reyes, Hugo Humberto Ruiz-Fuentes, Bernardino Rodríguez-Lara, and Pablo Arturo Ruiz-Almengor so that the processing of their cases before the Inter-American system for the protection of human rights is not hindered.

2. The Judgment on merits, reparations, and costs issued by the Inter-American Court on September 15, 2005 in the case of Raxcacó-Reyes against the State of Guatemala (hereinafter "the State" or "Guatemala"), in which the Tribunal decided, *inter alia*, that:

5. The State shall modify, within a reasonable time, Article 201 of the Penal Code in force, in order to define various specific crime categories that distinguish the different forms of kidnapping or abduction, based on their characteristics, the gravity of the facts, and the circumstances of the crime, with the corresponding provision of different punishments, proportionate to each category, and also the empowerment of the courts to individualize punishments in keeping with the specifics of the crime and the perpetrator, within the maximum and minimum limits that each crime category should include. This modification shall, under no circumstances, expand the list of crimes punishable with the death penalty established prior to ratification of the American Convention.

6. While carrying out the modifications indicated in the previous paragraph, the State shall abstain from applying the death penalty and executing those convicted of the crime of kidnapping or abduction, in the terms of paragraph 132 of the [...]Judgment.

[...]

15. The State's obligations within the framework of the provisional measures ordered by this Tribunal in the present case are replaced, exclusively in what refers to Mr. Raxcacó-Reyes, by those ordered in [the] Judgment, as of the date of notification of the same.

3. The Order of the Tribunal of July 4, 2006, through which it decided "to end the provisional measures ordered in favor of Mr. Hugo Humberto Ruiz-Fuentes."

4. The Order of the Court of February 2, 2007, through which it decided, *inter alia*, to:

2. Reiterate to the State that it must maintain the measures necessary to protect the life of Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor in order to avoid that the processing of their cases before the Inter-American system for the protection of human rights be hindered.

5. The reports of March 6th, May 17th, July 4th, and August 9, 2007, and their annexes, presented by the State of Guatemala.
6. The observations of April 27th, July 5th, and August 16, 2007 presented by the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission")
7. The brief of August 31, 2007, through which the Commission informed that the matter regarding Messrs. Bernadino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor is in the stage of admissibility before it.
8. The observations of April 17th and August 1, 2007, and their annexes, presented by the beneficiaries' representatives (hereinafter "the representatives").

CONSIDERING:

1. That Guatemala is a State Party to the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") since May 25, 1978 and it accepted the compulsory jurisdiction of the Court on March 9, 1987.
2. That Article 63(2) of the American Convention states 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 respect 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 states the duty of the States Parties to respect the rights and freedoms recognized in that treaty and to ensure to all persons subject to their jurisdiction their free and full exercise.
4. That provisional measures have an exceptional nature, that they are issued based on the needs for protection and, once they are ordered, they must be maintained as long as the Court considers that the basic requirements of the extreme gravity and urgency and the prevention of irreparable damages to the rights of the people protected by them subsist.¹
5. That the stipulation established in Article 63(2) of the American Convention grants an obligatory nature to the adoption, by the State, of the provisional measures ordered by this Tribunal, which corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which a State must fulfill its international treaty obligations in good faith (*pacta sunt servanda*).²

¹ Cf. *Case of the Constitutional Court v. Peru*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 14, 2001, Considering clause number three; *Matter of Carlos Nieto et al v. Venezuela*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 3, 2007, Considering clause number seven; *Matter of Monagas Judicial Confinement Center ("La Pica") v. Venezuela*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 3, 2007, Considering clause number seven.

² Cf. *Matter of James et a v. Trinidad and Tobago*. Provisional Measures. Order of the Inter-American Court of Human Rights of June 14, 1998, Considering clause number six; *Matter of Carlos Nieto et al v. Venezuela*. Provisional Measures, *supra* note 1, Considering clause number eight; *Matter of Colotenango v. Guatemala*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 12, 2007, Considering clause number five.

6. That Article 68(1) of the American Convention states that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” The conventional obligations of the States Parties are binding for all the powers and bodies of the State.

7. That the States Parties to the Convention, in view of the basic objective of the Convention to guarantee the effective protection of human rights (Articles 1(1), 2, 51, and 63(2)), must abstain from carrying out actions that may prevent the *restitutio in integrum* of the rights of the alleged victims.³

8. That pursuant to the Orders of the Court of August 30, 2004 (*supra* Having Seen paragraph 1), July 4, 2006 (*supra* Having Seen paragraph 2), and February 2, 2007 (*supra* Having Seen paragraph 4), the State is obliged to adopt the “measures necessary” to protect the lives of Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor, in order to avoid that the processing of their cases before the Inter-American system for the protection of human rights be hindered.

9. That pursuant to the reports presented by the State “through order dated February 15, 2005, [issued by] the Presidency of the Judicial Body[,] the provisional suspension of the execution of the death penalties against the convicted Bernardino Rodríguez-Lara y Pablo Arturo Ruiz-Almengor [...] was ordered.” The State adds that on May 14, 2007, the Supreme Court of Justice formed in Criminal Chambers issued an order through which it declared “[t]he revision requested by Pablo Arturo Ruiz-Almengor admissible, and therefore it ANNUL[ED] the death penalty issued by the Criminal Judgment, Narcotics, and Environmental Crimes Court of the Municipality of Mixo of the Department of Guatemala.” The Supreme Court issued a “conviction of fifty years in prison for each crime committed against Pablo Arturo Ruiz-Almengor[...], which adds up to a total of one hundred years in prison.” Based on the aforementioned, Guatemala requested that the provisional measures adopted in benefit of Mr. Ruiz Almengor be lifted, taking into account “that the matter of the same is left without effect.”

10. That the representatives in their briefs stated that the Judgment issued as a consequence of the appeal for review presented by Pablo Arturo Ruiz-Almengor, revoked the conviction to the death penalty and commuted the conviction. Therefore, the representatives pointed out that the “situation of extreme gravity and urgency with regard to the right to life of Mr. PABLO ARTURO RUIZ-ALMENGOR, has ceased, since there is no longer a risk to his life derived from the execution of the judgment.” In what refers to Mr. Bernardino Rodríguez-Lara the representatives indicated that “the conditions of extreme gravity and urgency [...] continue to be the same,” since on November 13, 2006 “the Supreme Court of Justice, Criminal Chamber, [d]eclar[ed] the request for revision INADMISSIBLE.” Thus, they expressed that “the declaration of inadmissibility of the appeal for review presented makes the situation of extreme gravity and urgency of the present measures [...] in favor of Mr. BERNARDINO RODRIGUEZ-LARA worse, since he does not have any more ordinary domestic recourses he may apply. Mr. [Rodríguez-Lara] may now only exercise his right to pardon or the measure of grace, contemplated in Article 4(6) of the American Convention. However, the exercise of this recourse is not currently possible, because

³ Cf. *Matter of James et al v. Trinidad and Tobago*. Provisional Measures, *supra* note 2, Considering clause number six.

there is no law regulating the pardon process. This results in the fact that Mr. [Rodríguez-Lara] is also being submitted to a cruel, inhuman, or degrading treatment [d]ue to the anguish and mental suffering derived from being [...] sentenced to the death penalty and awaiting the date and time for his execution."

11. That the Inter-American Commission expressed that "it observes with approval that the death penalty that was pending over Mr. Pablo Arturo Ruiz-Almengor has been revoked," however, upon denial of the appeal for review presented by Mr. Rodríguez-Lara "it is precisely the Guatemalan judicial power who must ensure the full compliance of [the] measures [...]."

12. That the Tribunal observes that, pursuant to the Judgment of the Supreme Court of Justice of May 14, 2007, the situation of extreme gravity and urgency for the life and physical integrity of Mr. Pablo Arturo Ruiz-Almengor has ceased, since the death penalty was commuted to a prison sentence. Therefore, it is not necessary to maintain the protection measures regarding Mr. Ruiz-Almengor, since his life is no longer at risk.

14. That the Court points out that the situation of Mr. Bernardino Rodríguez-Lara is different, since the appeal for review against the Judgment that sentenced him to the death penalty was declared inadmissible. Therefore, the conditions of extreme gravity and urgency regarding the right to life of Mr. Rodríguez Lara still exist. Thus, it is necessary that the State take the necessary measures to guarantee Mr. Rodríguez's rights in order to avoid that the processing of his case before the Inter-American system for the protection of human rights be hindered.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

in exercise of the authorities granted by Article 63(2) of the American Convention of Human Rights and Article 25 of its Rules of Procedure,

DECIDES:

1. To rescind the provisional measures adopted by the Inter-American Court of Human Rights in what refers to Mr. Pablo Arturo Ruiz-Almengor.

2. To reiterate to the State that it maintain the measures necessary to protect the life of Mr. Bernardino Rodríguez-Lara in order to avoid that the processing of his case before the Inter-American system for the protection of human rights be hindered.

3. To reiterate that the Inter-American Court in the Judgment issued on September 15, 2005 in the *Case of Raxcacó-Reyes et al v. Guatemala (supra* Having Seen paragraph 2) ordered non-repetition measures consisting in the State's duty to abstain from applying the death penalty and executing those convicted for the crime of kidnapping or abduction, in the terms of paragraph 132 of the mentioned Judgment.

4. To require that the State present a report on the precautions it has adopted in order to comply with the provisional measures ordered in favor of Bernardino Rodríguez-Lara, no later than February 15, 2008, in which it must include an express reference to the validity of the Order of February 15, 2005 in which the suspension of

the execution of the death penalty against Mr. Rodríguez-Lara (*supra* Considering clause number 9) was ordered; and that it continue informing the Inter-American Court of Human Rights, every four months, of the compliance with the measures adopted.

5. To require that the beneficiary of the provisional measures or his representatives present their observations to the State's reports stated in the previous paragraph in a four-week term as of their receipt, and that the Inter-American Commission on Human Rights present its observations to said State reports within a six-week term as of their receipt.

6. To order that the Secretariat of the Court notify the present Order to the State, the Inter-American Commission of Human Rights, and the beneficiary's representatives.

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