

**Order of the  
Inter-American Court of Human Rights  
of January 26, 2009  
Provisional Measures  
with regard to Guatemala  
Matter of the Forensic Anthropology Foundation**

**HAVING SEEN:**

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal") of July 4, 2006, whereby the Court ordered the adoption of provisional measures for the benefit of the members of the Forensic Anthropology Foundation of Guatemala (hereinafter the "FAFG") and others.
2. The Order of the Court of November 21, 2007, in which the Tribunal decided to lift the provisional measures adopted in favor of Mr. Fernando Arturo López-Antillón, former member of the FAFG.
3. The briefs filed by the Republic of Guatemala (hereinafter "the State" or "Guatemala") on November 22, 2006; February 22, June 11, and September 24, 2007; and January 8, May 23, and September 10, 2008, in which the State provided information regarding progress in the implementation of the provisional measures in the instant matter.
4. The briefs filed by the representatives of the beneficiaries of these provisional measures (hereinafter "the representatives") on January 11, April 18, June 1, July 16 and November 5, 2007 and February 4, February 11, May 22, May 23, July 7, July 30, and October 31, 2008, whereby they submitted their comments on the information furnished by the State (*supra* Having Seen clause No. 3) and provided information on the alleged threats received by the beneficiaries of these provisional measures after their implementation.
5. The communications of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of January 12, April 26, May 29, July 24 and November 6, 2007, and February 21, May 27, July 11 and November 19, 2008, whereby the Commission submitted its comments on the information provided by the State (*supra* Having Seen clause No. 3) and on the information regarding the alleged threats received by the beneficiaries of these provisional measures.

**CONSIDERING:**

1. That Guatemala has been a State Party to the American Convention on Human Rights (hereinafter "the Convention" or "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 respect to a case not yet submitted to the Court, it may act at the request of the Commission."

3. That, as set forth in Article 25(1) of the Court Rules of Procedure, "[a]t 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, in accordance with the Order of the Inter-American Court of July 4, 2006 (*supra* Having Seen clause No. 1), the State must, *inter alia*: a) maintain the measures it has adopted and adopt, forthwith, all necessary measures to protect the rights to life and to humane treatment of the members of the FAFG and some of their relatives; b) investigate the facts that gave rise to the adoption of these provisional measures; and c) take the necessary steps to ensure that the measures of protection are planned and implemented with the participation of the beneficiaries or their representatives and, in general, to keep them informed of progress in the implementation of the measures.

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5. That, based on the requests filed by the representatives designed to make the provisional measures effective, on April 28, 2006, the State undertook, *inter alia*, to:

- a) appoint a member of the National Civil Police (hereinafter the "PNC") to be in charge of all matters relating to security at the FAFG;
- b) inform the FAFG of any change or transfer of PNC officers assigned to it;
- c) instruct only one unit of the PNC to monitor the officers assigned to provide security at the FAFG and at the homes of Fredy Peccerelli, Executive Director of the Foundation, and his next of kin;
- d) issue "a general services order" to the officers assigned to provide security to the beneficiaries in order to "identify them as members of the security forces and also as the officers assigned by the State to provide personal security to the beneficiaries;"
- e) request the Secretariat of Administrative Matters and Security (hereinafter the "SAAS") to arrange for the provision of "executive security" training for the PNC members who provide security to the beneficiaries;

f) request the SAAS to arrange for the provision of security for Ashley Corinne Peccerelli-Valle and Tristán Collin Peccerelli-Valle, children of Fredy Peccerelli; and

g) coordinate, through the Ministry of the Interior, efforts with all police substations and police departments to post uniformed officers at the sites where the FAFG conducts exhumations.

6. That, on May 31, 2007, in light of new requests filed by the representatives of the beneficiaries (*infra* Considering clause No. 13), the State undertook to:

a) increase the number of personal security officers assigned to Mr. Fredy Peccerelli and his wife, Jeannette Peccerelli;

b) increase the number of personal security officers stationed at the FAFG's main office.

c) continue to take all the necessary steps to arrange for the assignment of a security officer responsible for the implementation of the measures of protection;

d) instruct, as an alternative protection mechanism, the PNC members assigned to protect Mr. Fredy Peccerelli to conduct the investigation, and

e) continue discussions with the SAAS to coordinate the necessary actions to protect Mr. Peccerelli's children, Tristán and Ashley Corinne Peccerelli Valle.

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7. That, as regards the obligation to provide personal security to the beneficiaries of these measures, the State reported that the police security team assigned to Mr. Fredy Peccerelli, his family and the members of the FAFG is currently composed of fifteen PNC members. In this connection, Guatemala pointed out that: a) the Protection and Security Division of the PNC provides protection to the FAFG's main office through "fixed-post" security; b) perimeter and personal security is provided to Mr. Fredy Peccerelli-Monterroso, Executive Director of the FAFG and his relatives, Jeannette de Peccerelli and Bianca Peccerelli-Monterroso; and c) personal protection is provided to Mr. Omar Bertoni-Girón, head of the Forensic Anthropology laboratory at the FAFG. Guatemala also stated that efforts to provide personal security to Fredy Peccerelli Monterroso's children, Tristán Collin and Ashley Corienne Peccerelli-Valle, were hindered by "jurisdictional issues between institutions." As regards the obligation to provide security to the members of the FAFG during exhumations in different departments of Guatemala, the State initially said that the implementation of the relevant measures was being coordinated with the Ministry of the Interior and the National Civil Police. Later, Guatemala stated that coordination actions with the Technical Secretariat of Public Security were being undertaken. Finally, the State referred to several police units that provided security to the FAFG to conduct forensic activities involving exhumations in the departments of Progreso, Sololá, and Huehuetenango. Furthermore, the State asserted that "it constantly verifies that the security measures in favor of the beneficiaries are effectively implemented by the National Civil Police officers in order to ensure their safety [...]." In this regard, Guatemala reported that the Technical Secretariat of Public Security or the Personality Protection Division (hereinafter "DPP") notifies the beneficiaries of the provisional measures of any security personnel rotation in advance and, in some cases, allows the beneficiary to participate in personnel selection. Such rotation takes place when security officers do not meet the profile required by the beneficiaries.

8. That the representatives stated that they appreciated the security measures adopted by the State. However, they pointed out that the State had not provided personal security or special protection for Tristán Collin and Ashley Corienne Peccerelli-Valle; nor had it implemented a protection model including road patrolling and police escort to the site where exhumations were conducted by the FAFG. In this connection, they reported that protection was provided to the FAFG by police officers directly assigned by the police stations located in the different regions where exhumations were conducted, and that the request for such protection had been made directly by the FAFG or by the Attorney General's Office through the usual procedures.

9. That the Commission stated that it appreciated the efforts made by the State so far, as well as the commitments undertaken in that regard. Specifically, the Commission valued the protection provided through the Protection and Security Division of the National Civil Police at the FAFG's main office. However, it pointed out that the information furnished by the State is incomplete and that Guatemala should provide detailed information on the efficacy of the measures of protection implemented. In addition, the Commission expressed concern over the lack of diligence in implementing security measures in favor of Tristán and Ashley Peccerelli-Valle. Therefore, it requested that the Court remind the State of its duty to solve any operational or administrative problems in order to immediately adopt these measures of protection and report on their progress as soon as practicable. The Inter-American Commission stated that it valued the steps taken by the State to implement road patrolling and police escort services by uniformed officers during exhumations. However, it pointed out that such measures should be immediately implemented in coordination with the beneficiaries.

10. That the State should be commended for the security measures adopted in order to provide personal protection to the members of the FAFG and some relatives of its General Director. However, the Court is concerned about the fact that, after two years of the adoption of these provisional measures, the State has been unable to provide special protection for Tristán Collin and Ashley Corienne Peccerelli-Valle, children of Mr. Fredy Peccerelli, and to effectively coordinate the presence of uniformed police officers at the sites where exhumations are conducted by the FAFG.

11. That it is essential for the State to maintain the measures it has adopted and to adopt, forthwith, all necessary measures to protect the rights to life and to humane treatment of the beneficiaries of these provisional measures and, especially, of Mr. Fredy Peccerelli's children. Furthermore, the State must adopt measures to ensure that the members of the FAFG are provided with police escort not only during the exhumations carried out within the country, but also during transfers.

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12. That the Inter-American Commission and the representatives informed the Court that, on May 25 and 28, 2007; February 2, May 19 and 22, July 27, 28, 29, and 31, and August 5 and 12, 2008, Mr. Fredy Armando Peccerelli-Monterroso, Executive Director of the FAFG, and other members of the foundation received, via email and telephone, including a cell phone, messages containing serious veiled threats, couched in foul language, against some of their relatives and members of the FAFG. The representatives also informed the Court that, on May 29, 2007, a person on a motorcycle was seen taking pictures of Fredy Peccerelli and other members of the FAFG while they were leaving the office.

13. That, in relation to the referred incidents of threats and intimidation (*supra* Considering clause No. 12), the representatives: a) filed complaints with the Attorney General's Office; b)

held discussions with representatives of COPREDEH in order to expedite the necessary procedures to comply with the agreements that are still pending; c) sought to set and coordinate a date to hold a meeting with the SAAS in order to get protection for Fredy Peccerelli's children [Tristán Collin and Ashley Corienne Peccerelli-Valle], and d) sought to arrange meetings with the Ministry of the Interior and the Attorney General's Office in order to urge coordination between both institutions in relation to the investigation into the facts of the case. In addition, as regards the alleged threats, the representatives referred to "[t]he great responsibility of the State given that, despite having knowledge of the continuous threats to which members of [the FAFG and some relatives] have been subjected [...], so far, the Attorney General's Office has not provided any indication that a serious, effective, impartial and efficient investigation is underway" and that "[e]ven though there are legal procedures that must be exhausted, it is also true that the last threats have been made via email[; therefore,] the State should [...] provide an immediate response and try to locate the source of [these messages], without any excuse." The representatives reiterated the need for the Attorney General's Office to take urgent action regarding the determination of those responsible for these incidents and for the State to enhance the protection that has provided so far.

14. That the State informed the Court that, on May 31, 2007, met with Mr. Fredy Peccerelli-Monterroso, at which meeting the Minister of the Interior took on new commitments (*supra* Considering clause No. 6). Furthermore, the State pointed out that, on August 13, 2008, the Prosecutors for Human Rights Activists of the Attorney General's Office met with Mr. José Suasnávar, Deputy Director of the FAFG and informed him that the reported incidents are being investigated by the Division of Analysis of Attacks against Human Rights Activists. As regards the alleged threats received on Mr. Peccerelli's cell phone (*supra* Considering clause No. 12), they informed him that they requested the telephone company to provide the relevant telephone records in order to determine the source of the calls, but that it was "impossible to establish the identify of the person or persons who purchased the prepaid cell phones."

15. That, as regards the commitments undertaken by the State (*supra* Considering clause No. 6), the representatives stated that they were aware that one DPP officer had visited the offices of the FAFG regularly to verify the adequacy of the protection provided; therefore, this request had been satisfied. However, they pointed out that, even though the State reported that four additional officers had been assigned to protect the FAFG's main office, the number of officers currently present at the FAFG is the same as before.

16. That the Inter-American Commission indicated that while it was commendable that meetings were held between the State and the representatives of the beneficiaries, especially taking into account the increased risk facing the members of the FAFG; that a security officer was appointed as coordinator of the implementation of the measures of protection, and that the State was willing to investigate the security officers assigned to protect Mr. Fredy Peccerelli and his family, the efficacy of the measures required coordination and adequate follow-up.

17. That, even though the State took immediate action in response to the incidents reported by the representatives and the Commission (*supra* Considering clause No. 12), such action has not been effective in preventing new incidents of threats and intimidation. Furthermore, the messages sent to the cell phone and email addresses of some members of the FAFG reveal that those behind such threats have detail and up-to-date information related to the beneficiaries and their relatives, which makes the situation particularly serious and dangerous. In light of that, it is essential for the State to adopt, forthwith, such measures as may be necessary to put an end to the situation facing the beneficiaries of these provisional measures.

18. That, in its February 20, 2007 report, the State pointed out that the DPP of the PNC appointed an officer to be responsible for the efficacy of the protection mechanism implemented by said Division in relation to this matter. In subsequent reports, the State failed to indicate whether there had been any changes in such appointment.

19. That the representatives stated that Guatemala had not honored its commitment to appoint a PNC officer to be responsible for security at the FAFG, given that several officers had been in charge of security and there was no one responsible for monitoring and coordinating the necessary actions to that end. In addition, the representatives informed the Court that there had been several changes in the institutions in charge of providing protection and that; as a result, it had been difficult to work with them. In this regard, the representatives stated that it was necessary for the State to define the "coordination in relation to the provision of protection" by specifically determining the institutions responsible for providing protection and the names of the persons in charge, given the restructuring of the Ministry of the Interior.

20. That the Inter-American Commission insisted on the importance of appointing a PNC officer to be responsible for monitoring and coordinating prevention and protection measures in relation to the beneficiaries, as well as for reporting information to the beneficiaries, their representatives and the Attorney General's Office. In addition, the Commission once again stressed the need for the procedures and coordination between the different agencies of the government to be effective and to comply with the commitments made to the beneficiaries.

21. That, in furtherance of the commitments undertaken by the State, it is necessary to appoint a person to be in charge of coordinating the effective implementation of the security measures, which, as can be seen, implies the involvement of several government agencies.

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22. That, as regards the commitment to request the SAAS to provide executive security training to the PNC members that provide security to the beneficiaries, the State informed the Court that, even though it had requested the implementation of such training courses, "the requests made by the Presidential Human Rights Commission to the Secretariat of Administrative Matters and Security [had] been unsuccessful given that said Secretariat does not have adequate personnel or resources to provide such professional services." Subsequently, the State pointed out that "although [...] arrangements had been made with the National Civil Police Academy through the Ministry of the Interior, the aforesaid training had not been provided due to possible lack of coordination between the divisions of the police institution." In this connection, the State added that, on April 16, 2008, it requested the Ministry of the Interior to schedule a training course in executive security but that it was impossible to deliver the course because the instructors of the PNC Academy require at least 20 working days to train security officers. This would affect the provision of security to the beneficiaries of these measures and, therefore, it requested the Ministry of the Interior to reschedule the course taking into account the need to assign temporary substitutes for the security officers that are to take the course. In its last report (*supra* Having Seen clause No. 3), the State indicated that the training course for the personnel that provides security services to the beneficiaries, scheduled from June 3 to June 23, 2008, did not take place because, at that time, constant threats were being made to the members of the FAFG.

23. That, according to the information provided by the representatives, on June 9, 2008, they agreed with the State that before conducting the aforesaid training "the complete files of

the officers should be reviewed in order to decide whether [the] officers were the most suitable for the job or if a change was required." The representatives stated that even though Guatemala undertook to send the files of the officers assigned to security, the FAFG never received them. In addition, they pointed out that there are some logistical issues that hinder the implementation of the training courses given that the Personal Protection Division does not have officers available to substitute the officers during training, which implies that, during the training course, no protection would be provided to the beneficiaries, thereby putting them at high risk. Based on the foregoing, the representatives requested the State "to promote and facilitate all reasonable measures for the PNC officers to be duly trained [...]."

24. That the Inter-American Commission pointed out that the State has only referred to its unsuccessful efforts to provide executive security training for the officers responsible for the protection of the members of the FAFG, which shows that no results have been achieved so far.

25. That the State has acknowledged that the efforts made with other government agencies to arrange for the provision of such training have been "unsuccessful" and that there are logistical obstacles that must be overcome.

26. That in every process of implementation of provisional measures several government authorities are involved and each one has its own procedures, laws and regulations. However, these international proceedings are concerned with the review and assessment of compliance with the Orders of the Court and the results of government action, and not with the different steps taken by an entity or officer. In light of the foregoing and based on a fair assessment of the steps taken by certain government agencies, the Court notes that over two years have elapsed since the adoption of the provisional measures and the State has failed to comply with its obligations in that regard (Considering clause No. 5).

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27. That the State informed the Court of the progress and status of the judicial investigations of the facts that gave rise to these provisional measures, specifying that, initially, the complaints made by the members of the FAFG and some of their relatives were handled by the Human Rights Prosecutor's Division of the Attorney General's Office under file No. 3040-2001, and that in each of those cases, said Prosecutor's Division conducted investigation proceedings, appointed special investigators to the cases involving threats and gave specific investigation guidelines or instructions. Subsequently, the State reported that several cases regarding the FAFG were consolidated to case No. 3457-2002. In this regard, the State acknowledged that the proceedings conducted by the Attorney General's Office "[h]ave not been sufficient to resolve the case and, therefore, the measures of protection implemented by the National Civil Police are still in place" and that the security services provided to the members of the FAFG and their relatives "[h]ave surpassed the standards of protection of the Ministry of the Interior and the National Civil Police, and yet the threats against Fredy Peccerelli-Monterroso, Bianka Peccerelli and Omar Bertoni-Girón have not stopped."

28. That the representatives stated that the only progress in the investigation has been the appointment of Prosecutor Marco Tulio Escobar Orrego to lead the investigation regarding the complaints made by several members of the FAFG and their relatives, and the consolidation of the respective cases. Furthermore, they stated that: a) no information has been provided concerning specific progress in the investigation of the incidents reported since 2002; b) there is still fear that similar incidents will take place as a result of the impunity and lack of diligence in the investigation; c) any measure of protection is insufficient as long as the source of the threats is not established; and d) it is necessary that the persons that are under threat have

access to the information in the Attorney General's Office in order to be acquainted with any steps taken, including the date and results of such steps.

29. That the Commission valued the steps taken by the State, designed to consolidate the cases related to the beneficiaries of these measures into a single file and under the supervision of one prosecutor. However, it noted the lack of detailed information regarding the current status of the investigations. Furthermore, the Commission insisted on the importance of investigating the facts that gave rise to these provisional measures, especially since there is evidence that the incompetence of the investigation has been one of the key factors in the perpetuation of the threats against the beneficiaries.

30. That the Court notes that, even though the State has made reference to several steps taken in relation to the cases opened as a result of the complaints filed by different members of the FAFG, it has failed to provide information on the current status of investigations or on the specific results achieved.

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31. That the Inter-American Commission pointed out that, due to the type of threats issued against the members of the FAFG and their relatives as well as the *modus operandi* of those behind such threats, it is of paramount importance that the beneficiaries are duly informed of any changes in the measures of protection, both in connection with the method of implementation and the identification of the officers implementing them, as well as of any progress in the investigations. The Commission reiterated the importance of involving the beneficiaries in the design and implementation of adequate measures to protect their lives and safety.

32. That the case file shows that the representatives and the beneficiaries have held meetings with government authorities for the purpose of planning and evaluating the implementation of these provisional measures.

33. That it is necessary to reiterate the point expressed in considering clause number four of the Order of July 4, 2006 (*supra* Having Seen clause No. 1), as follows: "[T]he positive coordination of the State and the representatives in the implementation of the measures of protection in this case constitutes important progress in the development of the process and in the exercise of the principles that inspire the American Convention [on Human Rights]."

**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 Articles 25 and 29 of the Court Rules of Procedure,

**DECIDES:**

1. To request the State to maintain the measures it has adopted and to adopt, forthwith, all such measures as may be necessary to effectively protect the rights to life and personal integrity of the beneficiaries of these measures, as set forth in the Order of July 4, 2006 (*first operative paragraph*) and in accordance with the commitments undertaken by Guatemala (*supra* Considering clauses No. 5 and 6).

2. To call upon the State to take the necessary steps to ensure that the measures of protection ordered herein are planned and implemented with the participation of the beneficiaries thereof or their representatives so that the measures are undertaken in an effective and timely manner and, in general, to keep them informed of progress in their implementation (*supra* Considering clauses No. 31 to 33).
3. To request the State to continue providing information to the Inter-American Court of Human Rights about the provisional measures adopted every two months. In particular, it is essential that the State report on the specific results achieved, based on the individual protection needs of the beneficiaries of these measures and in accordance with the commitments undertaken by the State within the framework of these measures (*supra* Considering clauses No. 5 and 6). In this connection, the State shall report, *inter alia*, on: a) the security measures adopted for the benefit of Tristán Collin Peccerelli-Valle and Ashley Corienne Peccerelli-Valle, (*supra* Considering clause No. 10); b) the provision of police escort services during transfers as well as during the exhumations conducted by the beneficiaries (*supra* Considering clause No. 11), and c) the investigation into the facts that gave rise to the adoption of these provisional measures (*supra* Considering clause No. 30).
4. To request the representatives of the beneficiaries of these measures and the Inter-American Commission on Human Rights to submit their comments on the State reports, within a period of four and six weeks respectively, 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 of these provisional measures.

Cecilia Medina-Quiroga  
President

Diego García-Sayán

Sergio García-Ramírez

Manuel E. Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri  
Secretary

So ordered,

Cecilia Medina-Quiroga  
President

Pablo Saavedra-Alessandri  
Secretary