

**ORDER OF THE PRESIDENT
OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JULY 21, 2010**

PROVISIONAL MEASURES REGARDING GUATEMALA

**MATTER OF THE GUATEMALAN FORENSIC
ANTHROPOLOGY FOUNDATION**

HAVING SEEN:

1. The Orders of the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court," or "the Tribunal") of July 4, 2006 and November 21, 2007, whereby it ordered the adoption of provisional measures and their continued enforcement in favor of the members of the Guatemalan Forensic Anthropology Foundation (hereinafter "FAFG") and others.

2. The Order of January 26, 2009 in which the Tribunal decided:

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[. The S]tate shall report, inter alia, on: a) the security measures adopted for the benefit of Tristán Collin Peccerelli-Valle and Ashley Corienne Peccerelli-Valle [...], b) the provision of police escort services during transfers as well as during the exhumations conducted by the beneficiaries [...], and c) the investigation into the facts that gave rise to the adoption of these provisional measures [...].

[...]

3. The briefs filed by the Republic of Guatemala (hereinafter "the State" or "Guatemala") on January 28, June 1, and December 11, 2009; and March 26, 2011, in which it presented information on progress in the implementation of provisional measures this case.

4. The briefs filed by the representatives of the beneficiaries of these provisional measures (hereinafter "the representatives") on February 20, 2009, January 28 and May 20, 2010, in which they presented their comments on the information furnished by the State (*supra* Having Seen 3) and submitted information on alleged threats received by the beneficiaries occurring

during the enforcement period of these measures.

5. The communications of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of April 14 and July 31, 2009, as well as April 22, 2010, in which it presented its comments on the information submitted by the State and the representatives (*supra* Having Seen 3 and 4) along with other information on the alleged threats received by the beneficiaries.

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. 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. With regards to this issue, Article 27 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or "the Rules")¹ establishes in relevant part that:

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

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

9. The Court, or its Presidency if the Court is not sitting, may convene the Commission, the beneficiaries of the measures or their representatives, and the State to a public or private hearing on provisional measures.

[...]

4. The provision established in Article 63(2) of the Convention confers an obligatory character to the State's adoption of the provisional measures ordered by this Tribunal, as the basic legal principal of international State liability, supported by international jurisprudence, provides that States must fulfill their treaty obligations in good faith (*pacta sunt servanda*).²

5. Under international human rights law, in addition to their preventive nature in that they preserve a juridical situation, the purpose of provisional measures is essentially preventive, since they protect human rights, inasmuch as they seek to avoid irreparable damage to persons. Provided the basic requirements of extreme gravity and urgency and the prevention of

¹ Rules of Procedure of the Court approved during its LXXXV Regular Session held from November 16-18, 2009.

² Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, Considering clause six; *Matter of Ramirez Hinojosa et al.* Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of February 3, 2010, Considering clause five; and *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of May 26, 2010, Considering clause five.

irreparable damage to persons are met, provisional measures become a real jurisdictional guarantee of a preventive nature.³

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6. Regarding the obligation to maintain any previously enacted measures and to immediately take such steps as may be necessary to protect the beneficiaries' rights to life and humane treatment (*Operative Paragraph 1 of the Order of January 26, 2009, supra* Having seen 2), the State reported that on February 18, 2009, it removed 12 of the 16 agents assigned to the protection of Fredy Peccerelli, Executive Director of the FAFG, and his family. The State noted that the Ministry of Governance decided "to vary the type of security measures provided them" due to "significant advances in the investigations into the case" and for the "the human resource deficit that the National Civil Police is presently facing." The State also noted that security in place at the two headquarters of the FAFG is being provided under the auspices of eight agents from the National Civil Police in groups of four agents per shift; "security measures had also been assigned to the residences [of Messrs.] Omar Bertoni and Leonel Paiz." Later, in its report of March 26, 2010, the State declared that it had 10 total security officers (including all shifts) providing protection in the following manner: one agent for each of two shifts for Tristán and Ashley Peccerelli Valle and Ms. Jeannette de Peccerelli, the children and wife of the FAFG Executive Director; one agent for each of two shifts for Ms. Bianka Peccerelli, the Director's sister; and six agents for "the protection of Mr. Fredy Armando Peccerelli and the employees of the [FAFG], [...] with two at the main headquarters and two at the annex for each of two shifts, along with two others who relieve them." The State stressed that "despite varying the number of assigned agents, it has not ceased providing protection to the beneficiaries."

7. The representatives declared, among other things, that pursuant to a verbal order of the Ministry of Governance of February 17, 2009, "12 of the 16 individuals [...] who were providing personal protection to Mr. Fredy Peccerelli, his family, and to [Mr.] Leonel Paiz were removed," and that "the option was given to keep four of those individuals who, at Mr. Peccerelli's request, were assigned to [his] sister and wife [...] with the main intention of protecting his minor children." The representatives noted that since the four agents work in shifts, [in] reality only one agent accompanies them per shift." In their January 28, 2010 comment referring to the State's contention that 10 agents are assigned to the beneficiaries' protection, the representatives indicated that "there are really only six agents [...], for reasons of shift assignment." In their brief of May 20, 2010, the representatives declared that "at this moment, neither Mr. Fredy Peccerelli nor Mr. Omar Girón have personal protection," which "has been repeatedly requested ever since the last threat and the events of April 13, 2010." The representatives are of the position that these actions on the part of the State "detail [...] the lack of compliance [...] concerning its obligations before the Court." They also noted that they have requested "greater perimetric support and the assignment of more agents to relieve the current personnel." In this regard, the representatives requested that the State clarify the information it furnished on the "Security Protection Scheme" and the risk assessment study ostensibly carried out on the beneficiaries. In particular, they sought information on: the identity of the person in charge of the study's risk analysis, the procedure followed for its implementation, how much prior notice is given to the beneficiary, the notification procedure for the analysis, the parameters utilized, and the general action strategy in response to these

³ Cf. *Case of "La Nación" Newspaper*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering clause four; *Case of Caballero-Delgado and Santana*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 3, 2010, Considering clause four; and *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico, *supra* note 2, Considering clause four.

results. Finally, the representatives requested that the Court “urge the State of Guatemala to comply with its commitments to provide adequate protection to the petitioners,” and “that it assign more personnel to the protection of FAFG members.”

8. The Commission observed that “there are profound discrepancies [in] the information provided by the parties” and expressed its concern regarding the State’s withdrawal of police protection. The Commission noted that the State “has substantially reduced the beneficiaries’ protection and that [...] there is no information showing them to be in agreement with this step [...].” Taking into account this substantial reduction along with the reoccurrence of threats (*infra* Considering 20-21), the Commission remarked that “the protective measures have been neither sufficient nor effective, keeping the beneficiaries in a situation of extreme gravity and urgency.” The Commission moved the Court to require that the State “act quickly to provide the necessary security measures in order to guarantee the beneficiaries’ rights to life and to humane treatment, [as well as] to delineate a complete protection program naming the person in charge of its coordination and execution.”

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9. Concerning the security measures adopted in favor of the minors Tristán and Ashley Peccerelli Valle, children of the FAFG Executive Director (*Operative Paragraph 3 of the Order of January 26, 2009; supra* Having Seen 2), the State indicated in its March 26, 2010 brief that both children “have one security agent per shift, with two shifts provided on an eight day rotation[.] [These agents] are in charge of the security of the children [...] and [...] Mrs. Jeannette de Peccerelli [...],” and have been assigned to them since January 2009.

10. Regarding the State’s March 26, 2010 brief, neither the Inter-American Commission nor the representatives presented observations on this point.

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11. As for the security in place for transfers to and from the exhumations (*Operative Paragraph 3 of the Order of January 26, 2009; supra* Having Seen 2), the State in its brief of March 26, 2010 communicated that, according to information from the Ministry of Governance, these transfers will be coordinated with the Deputy Director General for Operations to provide “security in the mountains” and that the local police should be consulted for coordinating the exhumations. The State also indicated that it was “going to hold a meeting with the beneficiaries in order to coordinate eventual protective measures with them and to obtain a schedule of transfers and exhumations that are currently pending.”

12. The representatives noted accordingly that the “security in the mountains” constitutes an “obstacle for the project’s development[,] as the mechanism consists in changing security units (patrols) according to the territorial boundaries and local police jurisdiction as assigned to each police unit,” leading to the inconvenient result that agents will not always be available as they are not specifically designated to provide protection to the FAFG. According to the representatives, “this mechanism is ineffective because it does not provide for backup units to cover the entire route.” Regarding the State’s remarks on coordinating exhumations, the representatives noted that the State does not indicate who is to perform coordination nor the manner in which it is to be conducted; the representatives also stated that the FAFG “does not have authority over the various local police in order to request this coordination.” The representatives suggested that “based on the bi-weekly *Schedule of Activities* that FAFG gives to -COPREDEH-, the Ministry of Governance issue direct orders of superior authority to the

respective local police departments so that they provide security during the exhumation process."

13. The Inter-American Commission did not make any observations on this point.

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14. Regarding the State's obligation to inform the Court as to its investigation into the facts underlying the adoption of the present provisional measures (*Operative Paragraph 3 of the Order of January 26, 2009; supra* Having Seen 2), the State indicated that "there have been difficulties in determining the origin" of the threats aimed at members of the FAFG because of the "technical means utilized in their commission," and that all "appropriate means of clarifying the facts" have been exhausted. In this regard, the State has given an account in its briefs of a series of actions and activities carried out in relation to the alleged threats received during 2008 and 2009. In its briefs of June 1, 2009; December 11, 2009; and March 26, 2010, the State referred to actions conducted in order to investigate the threats received by Mr. Fredy Peccerelli in January 2009. According to the information proffered by the State, this investigation linked Mr. Gianni Peccerelli, Fredy Peccerelli's brother, to the threats and he was called to give a statement on the matter. The State also referred to the representatives' request to have access to progress in the conduct of the investigations.

15. Concerning the aforementioned actions and activities on the part of the State, the representatives indicated that "it would appear to be the case that [the State] hopes to name Mr. Gianni Peccerelli as the one responsible for all the threats received over the past seven years without there being more evidence at present to confirm this besides the material contained on [one] video." They later added that Mr. Gianni Peccerelli made a statement before a competent tribunal on May 17, 2010 and that this court "totally ruled him out from the process" in concluding that the Public Prosecutor's information did not constitute any proof that he was responsible for the threats. The representatives also noted that after more than seven years of reporting these threats "at present, there must be in existence some analysis to establish the threat patterns and their provenance relating to the political context of each at the time the threats were made[; also that] the threats mainly show an attack aimed at the organization's work." The representatives referred to the lack of information from the Public Prosecutor on advances in the investigation, particularly with respect to the complaint filed on April 14, 2010 on the events of the previous day (*infra* paras. 20-21). They added that the State "by way of its criminal justice system has not demonstrated its compliance in conducting a serious, efficient, and effective investigation capable of drawing specific conclusions."

16. For its part, the Commission noted that "the State has not presented detailed, specific information capable of showing that it is complying with its obligation to investigate the facts giving rise to these provisional measures as well as those facts that continue to emerge." The Commission remarked that "it is necessary to establish a clear and coherent investigative line of inquiry regarding the facts and corresponding liability, and the interest parties should have access to it."

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17. In relation to the obligation to take the necessary steps to ensure that the protective measures are planned and implemented with the participation of the beneficiaries or their representatives and, in general, to keep them informed of progress in their implementation

(*Operative Paragraph 2 of the Order of January 26, 2009; supra* Having Seen 2), the State referred to a meeting held on December 16, 2008 between State representatives and members of the FAFG which mainly dealt with the matter of “coordinating actions for training security forces.” In its March 26, 2010 brief, the State also declared that it was “meeting with the beneficiaries in order to coordinate with them regarding the protective measures that will be provided to them [during the transfers to the exhumation site and during these exhumations] and to obtain a schedule for the transfers and exhumations that they are currently pending.”

18. The representatives indicated that “a dialogue was held” with State representatives in which they made proposals, requests, and certain coordination actions, but that this dialogue has been characterized by incomplete information for which “the results have been poor and uncertainty reigns” regarding the threats. In this regard, they highlighted that the last working meeting took place in November 2009. The representatives also noted that they “have met with two agents on different dates who informed them that they are undertaking [a] ‘risk assessment study,’” but that neither the FAFG nor the representatives have been informed or provided with the results of this study.

19. The Commission moved the Court to require that the State adopt all mechanisms necessary to guarantee the participation of the beneficiaries and the representatives in the structuring and execution of these provisional measures.

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20. In its April 22, 2010 brief, the Inter-American Commission sent the Court a recent public communication issued by the FAFG which gives detailed information on new threats that occurred on April 13, 2010. According to this communication, on that morning a driver parked his truck next to Mr. Omar Bertoni Girón, Chief of the FAFG Forensic Laboratory, while Mr. Girón was at a gas station buying coffee. A person proceeded to break into his car, shattering the glass and stealing a briefcase containing his laptop computer. The incident was allegedly captured by the filling station’s security cameras. The communication also indicated that on the evening of that same day Mr. Fredy Peccerelli received a threatening letter which made reference to what had happened to Mr. Girón. The text of these threats was published in the communication. In this regard, in the representatives’ brief of May 20, 2010, they commented that they are aware of no advances in the investigation into the theft of Mr. Girón’s computer “despite the existence of surveillance footage at the moment of the robbery” and moved the Court to require that the State undertake this investigation. In addition, representatives highlighted that the security measures provided “do not comply with either Mr. Fredy Peccerelli’s or Mr. Omar Girón’s needs at the present time” and regarded it as important “to strike a balance between the personnel assigned to the protection of [FAFG] members and their families, and the institution’s two headquarters.”

21. The Commission expressed “alarm” over the theft of Mr. Omar Bertoni Girón’s computer and the threat against the FAFG Executive Director, emphasizing that its concern “does not only refer to the incident against Mr. Girón, and the information obtained from his computer, but rather extends the threat to the Executive Director, his entire family, and the FAFG members.” In the Commission’s opinion, “the threat shows that the actions required of the Guatemalan State have not been effectively implemented.”

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22. The President confirms that the parties have provided the Court with divergent information on the implementation of the present provisional measures, above all regarding the reduction in the number of agents providing security to the beneficiaries. The President further believes the impact of this reduction on the measures' effectiveness in protecting the beneficiaries is of concern, as is the impact on the coordination and implementation of effective security during transfers to and during the exhumations. The President deems it necessary that the State particularly address the representatives' proposal and observations regarding the coordination and implementation of protection during transfers to and during the exhumations, as well as the results of the actions Guatemala indicated that it would carry out in order to coordinate implementation on this point. The President finds it necessary that the Court be provided with comments from the representatives and the Inter-American Commission regarding the State's report on the security measures ostensibly provided to the minors Tristán and Ashley Peccerelli Valle. The President also notes that it is important the Court receive information from the State as soon as possible regarding the alleged robbery and threats of April 13, 2010.

23. By virtue of the foregoing, the President deems it necessary to hold a public hearing in order to receive updated and specific information from the State as well as observations from the representatives and the Inter-American Commission on the status of implementation of the provisional measures, pursuant to Operative Paragraphs 1-3 of the Court's Order of January 26, 2009 (*supra* Having Seen 2).

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

In the exercise of the powers conferred by Article 63(2) of the American Convention on Human Rights and Articles 4, 15(1), 27(2), 27(9), and 31(2) of the Rules of Procedure of the Court,

DECIDES:

1. To convene the Inter-American Commission on Human Rights, the representatives of the beneficiaries of provisional measures, and the State of Guatemala to a public hearing that will be held at the seat of the Inter-American Court of Human Rights on September 2, 2010 from 5:00 to 6:30 pm. The goal of the hearing will be for the Tribunal to receive information and observations on the implementation of the provisional measures it has ordered in favor of the beneficiaries pursuant to Considering clauses 22 and 23 of the present Order.

2. To serve notice of this Order on the Inter-American Commission on Human Rights, the representatives of the beneficiaries of these provisional measures, and the State of Guatemala.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary