

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 22, 2011**

PROVISIONAL MEASURES WITH REGARD TO GUATEMALA

**MATTER OF THE FORENSIC ANTHROPOLOGY
FOUNDATION OF GUATEMALA**

HAVING SEEN:

1. The Orders of the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) of July 4, 2006, November 21, 2007, and January 26, 2009, in which it ordered the adoption of provisional measures and the maintenance of those existing in favor of the members of the Forensic Anthropology Foundation of Guatemala (hereinafter “FAFG” or “the Foundation”) and eight family members of Fredy Armando Peccerelli, Executive Director of the Foundation. In the last of these orders, the Court 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 established in the Order of July 4, 2006 (*first operative paragraph*) and in accordance with the commitments made by Guatemala [...].

2. To call upon the State to take the necessary steps to ensure that the measures of protection ordered in the Order are planned and implemented with the participation of the beneficiaries or their representatives so that the measures are undertaken promptly and effectively and, in general, to keep them informed of progress in the implementation of the measures [...].

3. To require the State to continue reporting to the Inter-American Court of Human Rights every two months about the provisional measures adopted. In particular, it [was] 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 made by the State in the context of these measures. [...T]he State must report, *inter alia*, on: (a) the security measures adopted in favor of the children Tristán Collin Peccerelli Valle and Ashley Corienne Peccerelli Valle [...]; (b) the provision of police escort services during transfers and during the exhumations conducted by the beneficiaries [...], and (c) the investigation into the facts that led to the adoption of the provisional measures [...].

[...]

2. The briefs of January 28, June 1 and December 11, 2009, March 26, July 8, September 22 and November 9, 2010, and January 14, 2011, of the Republic of Guatemala (hereinafter “the State” or “Guatemala”) in which it referred to the implementation of these provisional measures; and also the brief of September 2, 2010, and its attachments, presented during the public hearing held in the instant case (*infra* sixth having seen paragraph).
3. The briefs of February 20, 2009, January 28, May 20, October 25 and December 13, 2010, and February 18, 2011, and their attachments, in which the representatives of the beneficiaries of these provisional measures (hereinafter “the representatives”) submitted their observations on the information forwarded by the State, and also the brief of September 16, 2010, and its attachments, whereby they forwarded their observations on the report presented by the State during the public hearing (*supra* second having seen paragraph), and additional information in response to a request by the Court at the end of the said hearing (*infra* sixth having seen paragraph).
4. The communications of the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) of April 14 and July 31, 2009, April 22 and August 27, 2010, and February 17, 2011, in which it presented its observations on the information forwarded by the State and the representatives (*supra* third and fourth having seen paragraphs) and information on alleged threats received by the beneficiaries of these provisional measures.
5. The Order of the President of the Court of July 21, 2010, in which he convened a public hearing in this matter, in order to hear precise updated information from the State, together with the observations of the representatives and the Inter-American Commission concerning specific aspects relating to the implementation of these provisional measures.
6. The arguments of the parties at the public hearing on these provisional measures held at the seat of the Court on September 2, 2010.¹

CONSIDERING THAT:

1. 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 compulsory jurisdiction of the Court on March 9, 1987.
2. Article 63(2) of the Convention requires that three conditions must be met for the Court to order provisional measures in a specific case: (i) “extreme gravity,” (ii) “urgency,” and (iii) the need “to avoid irreparable damage to persons.” This provision is, in turn regulated by Article 27 of the Rules of Procedure of the Court² (hereinafter “the Rules of Procedure”). These three conditions must

¹ There appeared at this hearing: (a) for the State: Marco Tulio Escobar Orrego, María Elena de Jesús Rodríguez López, Hugo Enrique Martínez Juárez and Rafael Eduardo Bran Paz; (b) for the Inter-American Commission: Lilly Ching Soto, and (c) for the representatives of the beneficiaries: Juan Francisco Soto Forno, Héctor Estuardo Reyes Chiquin and Fredy Armando Peccerelli.

² Rules of Procedure of the Court approved during its eighty-fifth regular session held from November 16 to 28, 2009.

coexist and persist for the Court to maintain the protection ordered; if one of them is no longer valid the Court must assess the pertinence of maintaining the protection ordered.³

3. The provision established in Article 63(2) of the Convention signifies that the provisional measures ordered by this Court are compulsory, because a basic principle of international law, upheld by international jurisprudence, indicates that the States must comply with their international treaty-based obligations in good faith (*pacta sunt servanda*).⁴

4. Under international human rights law, provisional measures are not only precautionary in nature, in that they preserve a legal situation, but they are also protective, because they protect human rights, inasmuch as they seek to avoid irreparable damage to persons. The measures are applied provided that the basic requirements of extreme gravity and urgency and the need to avoid irreparable damage to persons are met. In this way, provisional measures become a true jurisdictional guarantee of a preventive nature.⁵

5. The Court finds that the hearing held on September 2, 2010 (*supra* sixth having seen paragraph) was extremely useful to learn the actual situation of the provisional measures ordered in this matter.

6. The purpose of this hearing was to receive the arguments of the State, the representatives, and the Commission regarding: (i) the reduction in the number of agents who provided security to the beneficiaries, its impact on the effectiveness of the measures ordered, and the measures of protection provided to the minors Tristán and Ashley Peccerelli Valle; (ii) the coordination and implementation of protection measures during the transfers to the exhumation sites and during the exhumations, and (iii) the alleged new threats that occurred in April 2010.

A. Regarding the reduction in the number of agents, its impact on the effectiveness of the measures, and the protection services provided to the minors Tristán and Ashley Peccerelli Valle and, in general, the measures of protection adopted for all the beneficiaries

7. In its report of June 1, 2009, the State advised that, as of February 18, 2009, it had withdrawn 12 of the 16 security agents assigned to Fredy Peccerelli, Executive Director of the FAFG, for his personal protection and that of his family. It indicated that the Ministry of the Interior had decided

³ Cf. *Case of Carpio Nicolle*. Provisional measures with regard to Guatemala. Order of the Court of July 6, 2009, fourteenth considering paragraph; *Case of the Mapiripán Massacre*. Provisional measures with regard to Colombia. Order of the Court of September 2, 2010, twenty-sixth considering paragraph, and *Matter of Mery Naranjo et al.* Provisional measures with regard to Colombia. Order of the Court of November 25, 2010, second considering paragraph.

⁴ Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, sixth considering paragraph; *Matter of María Lourdes Afiuni*. Provisional measures with regard to Venezuela. Order of the President of the Court of December 10, 2010, fourth considering paragraph, and *Matter of José Luis Galdámez Álvarez et al.* Provisional measures with regard to Honduras. Order of the President of the Court of December 22, 2010, third considering paragraph.

⁵ Cf. *Case of the "La Nación" Newspaper*. Provisional measures with regard to Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, fourth considering paragraph; *Matter of María Lourdes Afiuni*, *supra* note 4, sixth considering paragraph, and *Matter of José Luis Galdámez Álvarez et al.*, *supra* note 4, sixth considering paragraph.

“to change the type of security measures provided,” because of “significant progress in the investigations in the case” and owing to “the lack of human resources that the National Civil Police” was facing.

8. Subsequently, during the public hearing held in September 2010 (*supra* sixth having seen paragraph), the State reiterated that, since February 18, 2009, the protection and security measures had been reduced and currently consisted of four police escorts assigned to Fredy Armando Peccerelli, who were relocated at the latter’s request, so that two of them were “assigned to the protection and safeguard of his wife [Jeanette] del Valle and the other two [worked] as protection agents for his sister Bian[k]a Peccerelli,” and these same agents protected and safeguarded the children Tristán and Ashley Peccerelli del Valle, “because they were part of the same protected group.” The State indicated that this escort service was provided “in shifts of 8 days on duty and 8 days off.” Subsequently, in its report of January 14, 2011, Guatemala indicated that “there was still no possibility of assigning specific escorts to the children Tristán and Ashley Peccerelli.” Regarding the security of the FAFG premises, it indicated that security measures were provided by means of a guardhouse, “for which three agents had been appointed, who provide services 24 hours a day, working shifts of seven days on duty and four days off,” and that security was also provided “to the Foundation’s annex [...] by three agents, under the same arrangement.”⁶ Lastly, it added that the Chief of Police of Station 11 of the National Civil Police had been ordered to reinforce the security around the perimeter of the Foundation’s premises.

9. In their observations of February 23, 2009, the representatives stated that, based on the verbal orders of the Ministry of the Interior of February 17, 2009, “12 of the 16 agents [...] who provided personal protection to Fredy Peccerelli and his family, and also to Leonel Paiz” were withdrawn, and that “he was given the option to keep four of [them;] based on Mr. Peccerelli’s decision they were assigned to [his] sister and wife [...] with the main purpose that the [...] children receive this protection.” They indicated that, since the four agents work in shifts, “[i]n reality only one agent accompanies them during each shift.” In their observations of January 28, 2010, they indicated that, regarding the State’s claim that 10 agents were assigned to the protection of the beneficiaries, “in fact, only [six] agents are assigned for their protection, due to the shifts and how the agents are assigned.” In addition, they asked the State to clarify the information provided on the risk assessment that it had allegedly made; specifically as regards who was responsible for the risk assessment, what procedure was being followed, how much advance notice was given to the beneficiary, what was the procedure for notifying the results of this assessment, what parameters were used, and what was the general action strategy based on the results.” In their brief of May 20, 2010, the representatives indicated that “at this time neither Freddy Peccerelli nor Omar Girón has personal protection,” which “has been requested repeatedly since the [...] threats and the [...] incident that occurred on April 13,

⁶ In its report of June 1, 2009, the State had advised that the guardhouses for the two FAFG premises were staffed by eight agents of the National Civil Police, who worked in groups of four agents per shift and that, in addition, “perimeter security [was provided] to the homes of Omar Bertoni and Leonel Paiz.” In its report of March 26, 2010, it advised that there were 10 security agents in total (including all work shifts), assigned as follows: one agent per shift for the protection of the children Tristán and Ashley Peccerelli Valle and Jeannette de Peccerelli, children and wife of the FAFG Executive Director, with two shifts; one agent per shift for the protection of Bianka Peccerelli, the Director’s sister, with two shifts; six security agents for “the protection of Fredy Armando Peccerelli and the employees of the [FAFG], [...] with two agents guarding the Foundation’s headquarters and two agents per shift guarding the annex, and another two other agents who relieve the shifts.”

2010.” In addition, they stated that they have demanded “increased perimeter support and the designation of more agents to relieve those assigned.”

10. Subsequently, during the public hearing and in their observations of September 2010, the representatives indicated that, owing to the decrease in the number of agents ordered by the Ministry of the Interior in February 2009, which allegedly represented 75% less protection compared to the previous year, only Fredy Peccerelli still had four security agents, and they were reassigned at his request to the protection of Jeannette Peccerelli and their two children, and another agent for Bianka Peccerelli and Antonella Girón Peccerelli. They emphasized that three of these five individuals are minors and that, “when the mothers separate from their children, the latter are left unprotected,” or they have to decide who should be protected, since one agent must protect several people. They stressed that, for the children to be protected, “they must always be together, which was not coherent because they have activities in different geographical areas.” They also underlined that “[n]one of the beneficiaries was asked whether they agreed with [the] decision [to decrease the number of agents] or, above all, informed of the reasons.” Regarding the guardhouse at the FAFG premises, they stated that, since September 2010, there were eight security agents; that is two more than those assigned in February 2009; however, they indicated that the “FAFG has not been informed of the perimeter security assigned to both its offices, and is unaware of how it functions.” In this regard, they specified that they were unaware of what it consists of or how frequently it is carried out, or whether this type of security was assigned to the homes of Omar Bertoni Girón, Fredy Peccerelli and other beneficiaries. They also presented various observations regarding the agents who provide the security systems. They considered that: (i) the personnel is not permanent and is changed without prior notice; (ii) there is no analysis of their police career; (iii) they do not have specific training; (iv) they are unaware of the reason for their presence or need; (v) they have no means of communicating with their superiors, although the Foundation provides them with “radios with a relay station to be able to communicate among themselves and with the FAFG;” (vi) they are not given guidance by the Ministry of the Interior to be able to form part of the investigation team; (vii) the agents assigned to personal security (escorts) are not supervised; (viii) they have nowhere safe to leave their weapons during their time off, hence they leave them at the beneficiaries’ homes or take them home; (ix) they have no place to rest or use the restroom, so the beneficiaries have to provide accommodation, and (x) they are not given a food allowance, so the FAFG “based on human decency [...] provides them with food and a per diem.”

11. Regarding the Foundation’s other employees, in their observations of September 2010, the representatives indicated that, of the 61 FAFG employees protected by these provisional measures, 23 of them⁷ no longer work for the Foundation; they therefore asked that the protection measures in favor of those individuals be “withdrawn,” and that the measures be “extended” to 58 individuals⁸

⁷ These individuals are: Adriana Gabriela Santos Bremme, Alan Gabriel Robinsón Cañedo, Álvaro Luis Jacobo González, Carlos René Jacinto, Dania Marianela Rodríguez Martínez, Elder Rodolfo Urbina Urizar, Erick Oswaldo Duque Hernández, Estuardo Guevara, Fernando Arturo López Antillon, Flavio Abel Montufar Dardon, Gillian Margaret Fowler, Gustavo Cosme Godínez, Irma Yolanda Morales Bucu, José Fernando Alonzo Martínez, Juan Carlos Patzán Morales, Liesl Marie Cohn de León, Lourdes Lorena Herrera Sipaque, Lourdes Sofía Chew Pazos, Manuel Antonio Meneses Ruiz, María Raquel Doradea, Mynor Alexander Urizar Chavarría, Myrna Graciela Díaz Gularte and Reina Patricia Ixcot Chávez.

⁸ The individuals for whom the extension of the protection of these provisional measures was requested are: Alberto Orantes Castillo, Ana Inés Samayoa Cruz, Ana María Jiménez, Andrea Cárcamo Roma, Basilia Gabriela López, Beatriz Irlanda Calderón Díaz, Carla Paola Leysan, Carlos Alberto Espigares Luarca, Carlos Cristóbal Cax Méndez,

who started working for the FAFG after the provisional measures had been granted, and thus were not included in the measures.

12. In relation to the risk assessment, during the above-mentioned public hearing, Guatemala advised that the National Police had carried out a risk assessment of Fredy Peccerelli and his family, as well as of the Foundation's premises. Regarding the representatives' observations (*supra* considering paragraph 10), the State explained that the main method used for these assessments was to interview the beneficiaries in order to learn their needs; it indicated the parameters used to make these assessments and the procedure followed, and that they were carried out by agents of the Division for the Protection of Persons and Security of the National Civil Police, who contacted the FAFG Director by telephone previously in order to agree on the time and date. It added that "[t]he results of the risk assessment are reflected in the implementation of the measures." Furthermore, in relation to the representatives' comments concerning the accommodation, food and per diem of the agents assigned to protect the beneficiaries (*supra* considering paragraph 10), Guatemala indicated that "it has never conditioned the provision of protection to the beneficiary having to provide [these expenses] related to the logistics of the service." It added that "most [agents ...] do not have an allowance to obtain [these items] because, owing to the shift system, the Ministry of the Interior considers that they work around 14 or 15 of the 30 days, [so that] it does not provide those mechanisms." In addition, it insisted that the decrease in the number of agents had been notified to the FAFG Director on February 17, 2009.

13. Regarding the information on the risk assessment submitted by the State, during the public hearing, the representatives indicated that it focuses "a great deal on the issue of the family," but "there is no real assessment of the work being done by the Foundation, [... or] a comparison [...] between the work being carried out and the increase in the threats"; in other words, an assessment of "who [the] exhumations may be making nervous." Subsequently, they indicated that, starting in October 2009, members of the National Civil Police had come to Fredy Peccerelli's house and the FAFG offices to make a risk assessment, but each time "the agents were unaware of the reason for or the incidents that had led to the said assessment"; that "[w]hen these agents arrived to make the assessment, they did not have the complaints concerning the incidents, which [were] provided by the beneficiaries"; that the said police agents merely asked a few questions about "the situation of the beneficiaries," and never inspected the Foundation's premises or the beneficiaries' homes. In addition, the representatives indicated that they had not received the three reports prepared as a result of these assessments and were unaware of the respective conclusions.

Carmen Abac Baquiáx, Cristhyan Roberto Tórtola Meda, Daniel Alonzo Jiménez Gaytán, Daniela María Alarcón Flores, Eddy Armando Joaquín Gómez, Edgar Alberto Telón del Cid, Freddy Augusto Muñoz Guzmán, Felipe Israel Valle Rodríguez, Gabriela Alejandra Meléndez Méndez, Gabriela Sofía Padilla, Gerson Oved Martínez, Jennifer Lila Towbridge, Jenny Milsa Sontay Morales, Jorge Alberto Molina, Jorge Isaac Rodríguez, Jorge Mario Rodríguez, José Antonio Aguilar Toj, Juan de Jesús Orozco Pérez, Juana Elizabeth Cedillo, Luis Alejandro Larios Diéguez, Luis Eduardo Martínez Villegas, Luis Odonel Zetino, Luisa Mayen Camey, Marco David García King, Marco Vinicio Yoc Aguilar, María de los Ángeles Garnica Oliva, María del Rosario Espinoza Martínez, María Elena López Chivalan, María Soledad Rodríguez, Melvin Noé Silvestre Silvestre, Miguel Ángel Ruiz Corado, Mishel Marie Stephenson Ojea, Mónica Casado, Nancy Lorena Vela, Nelson Gerardo Tavico Leguarca, Ofelia Nohemí Chirix García, Patricia Maribel Álvarez Gómez, Petrona Marcelina Chel López, Rodolfo Alberto Leiva Solís, Rosalina Amparo Ramírez Mejía, Samuel Cax Boror, Sebastián Yurrita de la Fuente, Selket Susana Callejas Martínez, Silke María Gatermann, Susana María Sánchez Agreda, Wendy Carolina Argueta, Wendy Zussest Castillo Zavala, Willi Guerra Sosa and Yarol Iván León Saravia.

14. Prior to the public hearing, the Commission stated that it “did not have any indication that [the beneficiaries had] agree[d] to the measure to [decrease the protection].” In addition, taking into consideration the substantial reduction in protection and the reactivation of the threats, it indicated that “the measures of protection [had] not been entirely sufficient or efficient, which kept the beneficiaries in a situation of extreme gravity [and] urgency.” The Commission asked the Court to urge the State to “proceed immediately to provide the security agents necessary to guarantee the life and physical integrity of the beneficiaries, and to design a comprehensive protection plan, establishing who will be in charge of coordinating and executing it.” In its observations of August 27, 2010, the Commission indicated that it considered that the information provided by the State as to why it had reduced the protection of the beneficiaries was insufficient, and did not respond to the concerns expressed by the beneficiaries. It also reiterated “the need to have adequate information regarding the measures the State is taking to ensure that the protection measures required in the orders of the Court are planned and implemented with the participation of the beneficiaries of the measures or their representatives.”

15. During the public hearing the Commission indicated that the reduction in the security personnel responsible for the protection of the beneficiaries in this matter “has somewhat denatured the purpose of the provisional measures,” insofar as “it has been necessary to decide who will be protected.” It stated that the protection “should not exclude anyone,” but rather there should be effective protection for both the members of the Foundation and its director and his family. The Commission indicated that, although the State had undertaken to advise the FAFG of any change or transfer of the agents, “this did not occur, and [its] protection was decreased substantially.” Furthermore, in its observations of February 2011, the Commission insisted that Guatemala must guarantee the safety of all the beneficiaries. Regarding the scarcity of resources as a reason for the reduction of personnel, it considered that this was also revealed by the fact that the beneficiaries had to supply accommodation, food and travel expenses for the agents who were providing them with security, and asked the State to provide more information in this regard. In relation to the risk assessments, it added that the risk factor or the elements that the State had taken into consideration to establish whether the risk was increasing or decreasing at certain times was unknown. In this regard, it indicated that, at certain times, the Foundation’s work “is more visible,” depending on the type of case it is investigating and this should be taken into account when assessing the measures to be adopted.

16. The Court takes note of the information presented by the State regarding the reasons for the reduction in the number of agents who provide security to the beneficiaries. It also observes that, according to information provided by the State itself, this change in the security plan was notified to the beneficiaries the day before it went into effect (*supra* considering paragraph 12) and that the beneficiaries were not asked their opinion or whether they agreed with the change prior to its implementation (*supra* considering paragraph 10). In this regard, the Court recalls that these measures must be planned and implemented with the participation of the beneficiaries or the representatives, so that they are prompt and effective. Additionally, in keeping with the second operative paragraph of the order of the Court of January 26, 2009, the State must keep the beneficiaries informed of any progress in their execution.

17. The Court also notes that the information provided by the representatives and the State reveals that, currently, none of the members of the Foundation has personal protection, because, due to the said reduction in personnel, only some members of the family of the Director of the

Foundation are being protected by the bodyguard service. In addition, regarding these security measures, it notes with concern the observations of the representatives that the beneficiaries have to choose which beneficiary receives protection at different times because, on each shift, a single agent protects more than one person. Consequently, when they separate, one or several of the individuals protected by this service are left unprotected and, in some cases, it is the children. In this regard, the Court recalls that it is not sufficient that the State adopt certain measures of protection; rather, these measures and their implementation must be effective so that that risk ceases for those whose protection is sought.⁹ Therefore, the Court asks the State to refer specifically in its next report to: (i) the observations of the representatives and the Inter-American Commission that the beneficiaries have to choose who will be protected; (ii) the specific protection measures it has adopted or will adopt to protect effectively all the beneficiaries who are members of the family of the FAFG Director, Fredy Armando Peccerelli, especially the children, owing to their special situation of risk, and (iii) the need to adopt personalized measures of protection for any other beneficiary, especially the FAFG Executive Director or other members of the Foundation. It also requested the representatives of the beneficiaries to refer particularly to the latter point (*supra* (iii)) in their observations on the corresponding State report, and include specific observations on the other points on which the State was requested to provide information.

18. Furthermore, the Court observes that the State indicated that it had made risk assessments of the beneficiary Fredy Peccerelli, Director of the Foundation, and his family, as well as of the organization's headquarters, and that the results were reflected in the measures adopted (*supra* considering paragraph 12). It also takes note of the representatives' observation that they have not received the results of the assessments, and that the parameters described by the State for making the assessment do not include special consideration for the type of work carried out by the Foundation and its members (*supra* considering paragraph 13). In this regard, the Court appreciates the assessment made by the State authorities of the specific risk to which the beneficiaries are exposed. However, it observes that these assessments and results have not been presented or communicated to the Court. It also reminds the State that it must advise the representatives of any advances in the implementation of these measures, so that it is not sufficient that the results of the studies are reflected in the measures implemented; rather Guatemala must inform the beneficiaries or their representatives, as well as this Court, of the said results in particular, and also indicate the measures it will adopt based on these results, before adopting them. Moreover, the Court recalls that these measures were granted because of the threats received by members of the FAFG in relation to the Foundation's work identifying and recovering mortal remains.¹⁰ It therefore urges the State to bear in mind the observations of the representatives and the Commission as regards taking into consideration in the said assessments the type of work performed by the beneficiaries. Therefore, the Court requests the State, in its next report on the implementation of these measures, to present pertinent information on the said risk assessments, as well as the specific, adequate and sufficient measures and means of protection that have been implemented in keeping with these assessments.

⁹ Cf. *Matter of Juan Almonte Herrera et al.* Provisional measures with regard to Dominican Republic. Order of the President of the Court of March 24, 2010, sixteenth considering paragraph; *Matter of Mery Naranjo et al.*, *supra* note 3, twenty-seventh considering paragraph, and *Matter of Alvarado Reyes et al.* Provisional measures with regard to Mexico. Order of the Court of November 26, 2010, twenty-sixth considering paragraph.

¹⁰ Cf. *Matter of the Forensic Anthropology Foundation of Guatemala*. Provisional measures with regard to Guatemala. Order of the President of the Court of April 21, 2006, eighth considering paragraph, and *Matter of the Forensic Anthropology Foundation of Guatemala*. Provisional measures with regard to Guatemala. Order of the Court of July 4, 2006, ninth considering paragraph.

19. In relation to the representatives' request to lift these measures with regard to specific individuals who no longer work for the Foundation, as well as to "extend them" to others who currently form part of its work team (*supra* considering paragraph 11), the Court observes that neither the State nor the Commission referred to this request by the representatives.

20. Regarding the individuals for whom the representatives request the lifting of these measures, in view of the lack of objection by the parties, and as it has previously in relation to this matter,¹¹ the Court admits and finds it appropriate to lift the provisional measures granted in favor of the 23 beneficiaries who no longer work for the FAFG (*supra* considering paragraph 11).

21. However, with regard to the expansion of the provisional measures requested by the representatives to the current employees of the FAFG who did not work at the said organization in 2006 when the measures were granted, the Court finds it pertinent to recall that reading Article 63(2) of the American Convention together with Article 27(2) of the Court's Rules of Procedure reveals that the Court may order the adoption of provisional measures in matters not yet submitted to its consideration at the request of the Commission. In this regard, it reiterates that, when processing these matters, it is for the Inter-American Commission to explain to the Court the universe of beneficiaries of the provisional measures adopted at its request,¹² so that, in the absence of an express request from the Commission, the Court cannot expand the protection of the provisional measures ordered in this matter.¹³ Thus, in keeping with the provisions of the Convention and the Rules of Procedure that regulate the adoption of provisional measures (*supra* considering paragraph 1), the request for expansion made by the representatives cannot be considered, because it was not submitted by the Inter-American Commission.

B. Regarding the coordination and implementation of the security measures during the transfers to the exhumations and their execution

22. In its report of March 26, 2010, the State advised that, according to the Ministry of the Interior, the transfers should be coordinated with the Assistant Director General of Operations to provide "security in the mountains," and that security during exhumations should be coordinated with the local police station. It also indicated that it was "convening the beneficiaries in order to coordinate with them the protective measures that would be provided to them and to obtain a schedule of transfers and exhumations to be conducted in the near future."

23. Subsequently, during the public hearing, the State confirmed that "to protect the team of forensic anthropologists," the National Civil Police used the "mountain security" plan, which was

¹¹ Cf. *Matter of the Forensic Anthropology Foundation of Guatemala*. Provisional measures with regard to Guatemala. Order of the President of the Court of August 21, 2007, sixth considering paragraph, and *Matter of the Forensic Anthropology Foundation of Guatemala*. Provisional measures with regard to Guatemala. Order of the Court of November 21, 2007, sixth considering paragraph..

¹² Cf. *Matter of Matter of the Jiguamiandó and the Curbaradó Communities*. Order of the Court of August 30, 2010, seventeenth considering paragraph.

¹³ Cf. *Matter of Matter of the Jiguamiandó and the Curbaradó Communities*. Order of the Inter-American Court of Human Rights of November 17, 2009, twenty-third considering paragraph, and *Matter of Jiguamiandó and the Curbaradó Communities*. Order of the Court of August 30, 2010, *supra* note 12, seventeenth considering paragraph.

coordinated by the Operations Division with the different police stations concerned, according to the territorial boundaries. This involved operating relays of radio patrol cars from the police station of each area to provide security and protection during transfers. The State indicated that, together with the beneficiaries of the measures, “an initial program or schedule of exhumation activities had been established; although, unfortunately, due to an interruption in the flow of information, this was only partially complied with because it only covered the exhumation in the La Verbena Cemetery in Zone 7 of Guatemala City on July 21, 2010”; furthermore, regarding the second schedule, “with the exception of the exhumation programmed in the Department of Jutiapa and the following ones, the protection services were provided coordinated by the Sub-Directorate General of Operations.” The State added that this security mechanism is not limited to custody during transfers, but rather “the police agents are required to protect the life, security and safety of the [FAFG] workers and experts, irrespective of the protection mechanisms ordered by the competent jurisdictional organ or the urgent actions required by the prosecutor of the case.” It also advised that, on April 5, 2010, a meeting had been held with the beneficiaries at which it was agreed to forward the exhumation schedules to the Presidential Coordinating Committee for the Executive’s Human Rights Policy (hereinafter “COPREDEH”) in order to coordinate the beneficiaries’ protection; but “it was not always possible to achieve the effective protection of the beneficiaries,” owing to the limited notice with which FAFG sent the schedule of activities. During the said public hearing, the State indicated that “it would be willing to coordinate [the] mechanism” proposed by the representatives for security during the exhumations (*infra* considering paragraph 25) “to ensure effective compliance with the provision.” Nevertheless, in its reports of September 22 and November 9, 2010, the State insisted that “the collaboration of the beneficiaries was necessary [to] forward the agreed schedule with sufficient notice: a minimum of one week before the first transfer,” so as to ensure the satisfactory operation of the security service for these procedures. Lastly, in its report of January 14, 2011, Guatemala advised that, in November 2010, the Ministry of the Interior had provided information “on the constraints to providing a full-time patrol car” to the FAFG employees for the exhumations, including “the scarcity of resources such as patrol cars, because these cars provide human and logistic support to different institutions every day.” In addition, it indicated that “while mechanisms that could be more effective are arranged,” it continued to provide the “mountain security” service.

24. The representatives indicated that the “mountain security” service represented an “obstacle to the work, because the mechanism consisted in changing the security unit (patrol car) according to territorial boundaries and the area of responsibility of the police station to which each police unit was assigned,” with the problem that agents were not always available, because they were not specifically appointed to provide security to the FAFG. The representatives considered that “this mechanism is not effective because there are no units that provide continuous protection throughout the journey.”

25. During the public hearing and in their subsequent observations, the representatives insisted that the mountain security system was “not functional, [because] the teams are frequently placed at further risk, since they have to wait [...] on the highway, [...] with] the evidence of the exhumation,” where the jurisdiction of one security unit ends, while they wait for “the agents [from the following jurisdiction who] are not at the appropriate place.” Regarding the notice given to the State of the exhumations, they explained that the FAFG is informed of the date of the exhumations “very late [and that] it notifies COPREDEH immediately.” The representatives indicated that, based on the meeting of April 5, 2010, the Foundation undertook to send a fortnightly program with at least two days notice, indicating the day the activity would start, the type of activity, the place and approximate duration, and the number of Foundation personnel who would be present. Subsequently,

the name and telephone number of the contact person was added. They indicated that, subsequently, in June 2010, the FAFG was asked to send the program with four days notice, which was “difficult because most of the activities were not confirmed that many days ahead of time.” Owing to these difficulties, the representatives suggested that “the State of Guatemala appoint one patrol car from the [National Civil Police] permanently to accompany the FAFG teams that travel into the countryside to carry out investigation procedures as experts for the Public Prosecution Service, as well as continuing to try and coordinate the security of the FAFG teams with the police stations in the municipalities where the FAFG is working.” In their observations of October 25 and December 13, 2010, the representatives insisted on the impossibility of providing a schedule for the exhumations one week in advance, due to the number of variables that cause “uncertainty regarding when the exhumations will be carried out, [because] there are factors that oblige them to be modified and even suspended.” In addition, they indicated that, even though the mountain security system is not functional and places the beneficiaries in a situation of vulnerability, the latter have chosen to continue with this mechanism as far as possible, owing to the impossibility of coordinating another mechanism with the State. In their observations of February 2011, they insisted that the mountain security system “is not the most effective,” because its coordination is extremely complex and “it seldom offers the anticipated results,” and that even when the exhumation schedule is submitted on time, “the service is not always available owing to problems within the National Civil Police.

26. In its observations of February 17, 2011, the Inter-American Commission took note that the State “ha[d] not proposed alternatives that would resolve the problems raised by the representatives.” In this regard, it reiterated that Guatemala had not presented information on the measures it was adopting “to resolve the problems in the implementation of these provisional measures,” and insisted that the State must “provide measures of security and protection to those who conduct the exhumations.”

27. The Court recalls that, in its Order of January 26, 2009, it found that the State must adopt the necessary measures to guarantee that the beneficiaries are accompanied throughout the exhumations and during their transfers to the site.¹⁴ In this regard, it assessed positively the State’s efforts to provide a security service to the members of the FAFG during the transfers to conduct exhumations and while the exhumations were being carried out. The Court observes that the State has not indicated that it is opposed to the representatives’ request and proposal that the protection during the journeys to the exhumations and while they are being carried out be provided by a patrol car, on a permanent basis, and not by the “mountain security” system. Nevertheless, in January 2011, the State indicated that it did not have the necessary resources, although it was arranging “mechanisms that m[ight] be more effective” (*supra* considering paragraphs 23 and 25). The Court considers that, to ensure that this measure of protection is implemented effectively, Guatemala must take into account the concerns and observations of the representatives as regards their disagreement with the “mountain security” plan designed by the State. Moreover, it observes that Guatemala indicated that the beneficiaries must advise their exhumation timetable with one week’s notice but, on several occasions, the beneficiaries have said that this is not possible owing to the way in which these procedures are conducted. In this regard, the Court also notes that, as explained by the representatives and not contradicted by the State, it is the Public Prosecution Service that determines and orders the exhumations carried out by the FAFG and, as the State indicated during the public

¹⁴ Cf. *Matter of the Forensic Anthropology Foundation of Guatemala*. Provisional measures with regard to Guatemala. Order of the Court of January 26, 2009, eleventh considering paragraph.

hearing, it is the Public Prosecution Service that benefits from the Foundation's work in its own investigations.

28. The Court reiterates that the protective measures adopted by the State must be effective in order to ensure that the risk ceases for the persons whose protection is sought.¹⁵ In addition, it emphasizes that the beneficiaries and their representatives are required to provide all necessary collaboration to support the effective implementation of the measures,¹⁶ and also the importance that the federal authorities establish clear and direct means of communication with the beneficiaries that create the trust required for adequate protection. In this regard, the Court appreciates the information provided by the State that meetings have been held with the beneficiaries or their representatives in order to coordinate the implementation of these provisional measures. However, it awaits further information in this regard, because the Court has only been informed of the meeting held April 5, 2010 (*supra* considering paragraphs 23 and 25).

29. Based on the foregoing, and taking into account the willingness in this regard expressed by Guatemala during the public hearing (*supra* considering paragraph 23), the Court urges the parties, by mutual agreement, to design a mechanism or modify the existing one in order to ensure the effective implementation of security and protection measures in favor of the beneficiaries during the transfers to and throughout the exhumations conducted by FAFG members and employees. To this end, the Court urges the State to take into consideration the relevant observations and concerns of the beneficiaries, and the beneficiaries to collaborate as necessary with the State authorities. Consequently, the Court asks the State and the representatives to forward detailed and complete information on the actions and measures they have adopted or implemented to establish or modify this aspect of the measures of protection, so that they are appropriate for the specific circumstances of the work of the beneficiaries.

C. Regarding new threats and acts of intimidation against the beneficiaries and the investigation of the events relating to these provisional measures

c.1 Regarding the new threats and acts of intimidation

30. In its brief of April 22, 2010, the Inter-American Commission forwarded to the Court an FAFG press communiqué reporting alleged events that occurred on April 13, 2010. According to this communiqué, that morning a truck parked next to the vehicle of Omar Bertoni Girón, Head of the Foundation's Forensic Anthropology Laboratory, who was inside a gas station and, at that moment, someone broke the car window and stole the case that contained his laptop computer, an incident recorded by the gas station's security cameras. The communication also indicated that, the same evening, Fredy Peccerelli received a threatening note referring to what happened to Mr. Girón and threatening the members of the Foundation, its Director and the latter's family.¹⁷ In this regard, on

¹⁵ Cf. *Matter of Juan Almonte Herrera et al.*, *supra* note 9, sixteenth considering paragraph; *Matter of Mery Naranjo et al.*, *supra* note 3, twenty-seventh considering paragraph, and *Matter of Alvarado Reyes et al.*, *supra* note 9, twenty-sixth considering paragraph.

¹⁶ Cf. *Case of the Mapiripán Massacre*, *supra* note 3, twentieth considering paragraph, and *Matter of Mery Naranjo et al.*, *supra* note 3, twenty-seventh considering paragraph.

¹⁷ According to the press communiqué published by the FAFG, this message was addressed to the FAFG Director,

May 20, 2010, the representatives indicated that they had not been informed of any progress in the investigation of the theft, and therefore asked that the State be required to conduct the corresponding investigation.

31. In its report of July 8, 2010, the State indicated that, on April 13 that year, Omar Bertoni Girón had reported the incident described in the said communiqué. According to this complaint, the laptop computer taken from Mr. Girón contained important information for the FAFG and his personal files. Guatemala indicated that “the assistant prosecutor and personnel from the evidence gathering team [of the] Public Prosecution Service inspected the vehicle; in addition, they obtained the video that [had] recorded the incident. However, the analysis of the video is still underway because they do not have the appropriate software to zoom in on the images; [also] two fingerprint samples were taken from the broken glass, and they were awaiting the analysis in order to compare them with the victim’s prints and establish whether there are any prints that would be useful for the investigation.” During the public hearing and in the report presented at the hearing, the State added that, this type of offense “is very common” in the place where the incident occurred, and a statement had been obtained from gas station security agent identifying the license plates of several vehicles that came to the gas station to carry out this type of theft. Also, with regard to a vehicle that appeared in the security video, “the traffic security cameras had been asked for [the video showing its] exit from the gas station to see if they could find it on the streets.” Lastly, the State mentioned that, “two days later [...], a vehicle with the same characteristics stole the computers of a member of the Legislature at a [nearby] gas station.” Subsequently, in its report of September 22, 2010, the State added that information had been obtained on the persons and vehicles that entered Colonia Villa Sol, the place of residence of “the victims,” on the day of the events and this was being analyzed. It also indicated that fingerprints had been found on the anonymous letter sent that day and that it was still waiting for the analysis of the ones found on the broken window of the vehicle. Furthermore, in its report of November 9, 2010, it added that statements had been obtained from several individuals working in the place where the incident occurred, which established that “the incident reported matched the pattern of other similar offenses.”

32. Regarding the information presented by the State about the events that took place in April 2010, the representatives made a series of observations, specifically in relation to the alleged lack of results in the investigation.¹⁸ Also, in their observations of October 25, 2010, they repeated their concern over the lack of results from the investigation despite the material that the State indicated it possessed, and that “there was no indication whether a strategy existed to connect all these elements, or the progress achieved based on [them].” In the brief of December 13, 2010, the representatives observed that the conclusion reached by the Public Prosecution Service that “the incident in question

Fredy Peccerelli, and contained messages such as: “we will take revenge on the members of the FAFG”; “damn revolutionaries. Their bodies will end up in the graves. We will spread their body parts throughout the city. Your family, niece, sister [and] parents will pay for everything.”

¹⁸ Specifically, the representatives observed that, since it was assumed that the State had a video of the incident, “how [was] it possible that [...] four and a half months later, [they were requesting] help from private universities to see whether it was possible to determine the license plate of the vehicle.” They also indicated that, even though Guatemala had allegedly identified vehicles that follow the same pattern of thefts in the gas stations in the area, it had not taken any measure in this regard and, similarly, continued to talk about comparing a fingerprint, whereas this is “an essential element in an investigation.” Lastly, they noted that there had been no response to the request made to the “traffic cameras,” which revealed “a total lack of rigor in the work of the Guatemalan system of justice.”

‘matched the pattern of other similar common offenses,’ [...] attempted to fit [what happened] into a pattern, when no expert appraisal had been made and, above all, [...] it was considered separately from the threats received as a result of the theft in question. Based on the foregoing, they asked that the “State of Guatemala be ordered to conduct comprehensive investigations without isolating facts that should be investigated in parallel and in a complementary manner.”

33. Regarding these events, in its observations of February 2011, the Commission added that, on September 24, 2010, when an exhumation, previously coordinated with the community leaders, was being conducted in the village of Xenaxicul in the municipality of Aguacatán, department of Huehuetenango, “the local Mayor incited the population to prevent [the] work [of the beneficiaries] from continuing.” In the report filed before the authorities based on this incident, the beneficiaries stated that this official “told them that if they did not pay the [village] or if they did not leave, the [local population] would attack them with axes, [and] he also threatened the next of kin of the victims [whose exhumation FAFG was there to conduct].” Consequently, the members of the FAFG who had gone to carry out the exhumation “decided to abandon their appraisal until the Public Prosecution Service opened an investigation against the Mayor.”¹⁹ In this regard, they indicated that they were awaiting the possibility of “returning with the appropriate measures of security” but, to date, they had received no information in this regard, or any “request to continue with the work that remained pending.” In addition, they reported that, on December 9, 2010, Juana Elizabeth Cedillo Ceto and Petrona Marcelina Chel de López, two employees of the FAFG branch office in the municipality of Nebaj, department of El Quiché, received “an abusive voice message that included death threats” on the mobile telephone provided by the FAFG “for the use of this office.” They clarified that the said branch office of the Foundation “ha[d] no security measure provided by the State,” and indicated that the incident had been reported to the Public Prosecution Service.

34. Regarding the events of April 2010, the Commission expressed its “alarm” over the theft of Omar Bertoni Girón’s computer and the threat against the FAFG Executive Director, emphasizing that this threat “relates not only to the incident against Mr. Bertoni Girón, and the information obtained from his computer, but also extends the threat to the Executive Director, all his family, and the members of the FAFG.” The Commission considered that “the threat indicates that the actions that have been required of the Guatemalan State have not been implemented effectively.” Also, at the public hearing, the Commission asked that the State present recent information on the investigation into these incidents.

35. The Court appreciates the information provided by the State regarding the actions taken to investigate the alleged new acts of harassment suffered by the beneficiaries. Nevertheless, it observes that, even though the State argued that the theft of the computer with sensitive FAFG material was the result of a common crime in the sector where it occurred, this does not explain the message that

¹⁹ With their observations of February 2011, the representatives provided, *inter alia*, a copy of the complaint filed before the Ombudsman’s Office based on this incident, in which three members of the FAFG, two of them beneficiaries of these measures reported that, on September 24, 2010, they had met in the home of one of the next of kin of the deceased victims, who “told them that the next of kin who had accompanied them [the] previous day had been threatened with imprisonment and beaten because they had told the [FAFG employees] where the deceased could be found.” In addition, they stated that, when the social anthropologist was on the way to the cemetery, “he was intercepted by four individuals who, in a threatening manner, told him to be careful with the deceased, [and that] it was then that the deputy Mayor appeared [...] inebriated [and] made the [death] threats” described above. In addition, they indicated that the “interpreter and family member of victims [who accompanied them], was also threatened by several people from the Xenaxicul community, [...] including the deputy Mayor.”

the FAFG Director allegedly received later, in which reference was made to the theft and the beneficiaries were threatened. In this regard, it takes note of the State's observation that this message apparently followed the pattern of messages that the State argued could be attributed to the beneficiary Gianni Peccerelli. However, the Court notes that, as both the State and the representatives have reported, this attribution of responsibility had already been rejected by a domestic court which found that there were no grounds for it (*infra* considering paragraphs 37 and 38). Moreover, the Court notes the recent events reported by the representatives in February 2011 (*supra* considering paragraph 33) regarding the alleged threats that had hindered the Foundation's work and obstructed progress in the judicial investigations. Bearing in mind that Guatemala has not had the opportunity to comment on these alleged incidents, the Court asks the State to make specific reference to these new incidents of alleged threats and intimidation reported by the representatives in its next report on the implementation of these provisional measures, as well as to any measures it has adopted in this regard. In relation to the alleged threats received by telephone by the employees of the FAFG branch office in the municipality of Nebaj, the Court notes that these members of the Foundation are not beneficiaries of these provisional measures and, in this regard, recalls that it cannot rule on acts or situations that are not exclusively related to the beneficiaries of the measures.²⁰ Nevertheless, it takes note of the representatives' observation that "[t]his incident is one more in the series of threats suffered by the FAFG."

36. The Court finds that these events reveal the continuation of situations that could constitute threats to the safety of the beneficiaries and this, added to the lack of information from the State regarding the risk assessments that had been made on the beneficiaries, does not allow it to determine clearly whether, in the current circumstances, the security mechanisms that the State has implemented have been useful, effective and timely. Therefore, the Court finds that maintaining these provisional measures in favor of the beneficiaries of the measures is justified.

c.2 Regarding the investigations into the events related to these provisional measures

37. In its report of June 1, 2009, the State indicated that "it was difficult to determine the authors" of the threats received by the members of the FAFG, because of "the technical methods used to transmit them"; but all the "appropriate [means] to clarify the events" had been exhausted. Subsequently, during the public hearing held in September 2010, the State described the most relevant measures taken as part of the investigations into the events related to these provisional measures that occurred in 2006, 2007 and 2009. In this regard, it indicated that five investigations were carried out during the first two years and it was concluded that the threats were not significant, which led to in the dismissal of the court case. Regarding 2009, the State referred to incidents that took place in January that year, when a threat was allegedly received by e-mail and text message; the Public Prosecution Service attributed responsibility to the beneficiary Gianni Peccerelli, brother of the Director of the Foundation, Fredy Peccerelli. Nevertheless, it indicated that the judge of the case had decided that there were no grounds for attributing responsibility to the beneficiary; a decision that is under appeal.

²⁰ Cf. *Matter of the Jiguamiandó and the Curbaradó Communities*. Order of the Court of August 30, 2010, *supra* note 12, sixty-second considering paragraph, and *Matter of Mery Naranjo et al.*, *supra* note 3, seventy-third considering paragraph.

38. Regarding the procedures and activities referred to by the State, in their observations of February 2009, the representatives indicated that “it appeared that [the State] is trying to attribute responsibility to Gianni Peccerelli for all the threats received over seven years, without any evidence to date other than the content of [a] video.” They also indicated that, after more than seven years during which the representatives have reported different acts of intimidation, “an analysis should be made that determines the pattern and the origin of the threats to date; also related to the political context at each moment the threats were received, as well as the fact that most of them attack the work performed by the organization.” They added that the State “ha[d] not revealed, through its institutions in charge of the criminal prosecution, that a serious, efficient and effective investigation had been conducted that could achieve concrete results.” The representatives forwarded the decision of the criminal judge of first instance of May 17, 2010, establishing the lack of grounds to attribute responsibility to Gianni Peccerelli, because “there [were] insufficient rational grounds to believe in [his] participation [...] in the facts.” This decision also found that “the investigation [was] biased,” because it did not include all the data gathered; it therefore “urge[d] the Public Prosecution Service to redirect its investigation against the individuals who could really be threatening the Foundation’s personnel and the Peccerelli family.” The representatives also forwarded an explanatory table of all the threats reported by the FAFG from 2002 to April 2010, based on which they concluded that, during this time, there had been 64 different acts of intimidation carried out by different means and against different persons related in one way or another to the Foundation. In 11 of these, the Public Prosecution Service had presented “an administrative result of the investigation,” while, in 29 cases it had not presented any result. The representatives recognized that some progress had been made in the investigations, but expressed their concern since “most of the complaints filed had not been truly investigated, because the investigations were based on interviews and, without further investigation, the assumption that the information provided was true, correct and did not implicate anyone.” In this regard, they asked “that the judicial investigation be conducted more thoroughly to include all the events, thus avoiding the bias with which it has been carried out to date”; “that the FAFG be notified promptly and periodically of the findings of any subsequent investigations,” and “that, in light of the significant differences of opinion between the beneficiaries and the current prosecutor in charge of the case, [the latter] be relieved of this case [...] and a special prosecutor be appointed, or [...] another prosecutor from [...] the Office of the Human Rights Prosecutor of the Public Prosecution Service.”

39. On April 22, 2010, the Commission indicated that “it [was] necessary to establish a clear and coherent line of investigation into the facts and the corresponding responsibility and for the interested parties to have access to it.” Subsequently, in August 2010, it expressed concern “that the investigations conducted by the State up until this time have not identified those responsible for the threats and that the beneficiaries do not have adequate access to the corresponding information.” It considered that this, added to the new threats to the beneficiaries of the measures, revealed that the State was not complying fully with all aspects stipulated in the Court’s Orders. During the above-mentioned public hearing, it emphasized that the State had not presented detailed information regarding the investigation of the events that occurred after January 2009. In addition, in February 2011, it insisted that the absence of a clear line of investigation that was coherent with the facts would not permit “identification of the source of the risk to the beneficiaries,” and that the information provided by Guatemala “was very general and did not permit a clear, overall assessment of the results required [in this matter].”

40. The Court observes that, in its Order of January 26, 2009, it asked the State for specific information on “the investigation of the facts that led to the adoption of these provisional measures.”²¹ However, the Court finds it pertinent to clarify that although, previously, during the processing of these provisional measures, its criteria had been to request the State to investigate the facts that had led to the respective provisional measures and to report to the Court in this regard, taking into account the characteristics of these provisional measures and the fact that they have been in place for more than four years, the Court now finds that the issue of the investigation would require it to make an analysis of the merits, which is beyond the scope of the provisional measures.

41. Nevertheless, the Court reiterates that Article 1(1) of the Convention establishes the general obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction, the free and full exercise of those rights and freedoms. Consequently, irrespective of the existence of specific provisional measures, the State is obliged to guarantee the rights of individuals in a situation of risk, and must promote the necessary investigations to elucidate the facts, followed by the consequences that the pertinent laws establish.²²

42. Based on the above, within the framework of the instant provisional measures, and as it has in other matters,²³ the Court will not refer to the investigation of the facts or to the way in which the State is conducting the investigation. In this regard, the Court reiterates that it will no longer request the parties for information on this point. However, it insists that this does not exempt the State from its obligation to investigate the reported facts that support these measures, in the terms of Article 1(1) of the American Convention.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred upon it by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31 of its Rules of Procedure,

DECIDES:

1. To require the State to maintain and to adopt all necessary measures to protect effectively the rights to life and to personal integrity of the following persons who work for the Forensic Anthropology Foundation of Guatemala: Fredy Armando Peccerelli Monterroso, Alma Nydia

²¹ Cf. *Matter of the Forensic Anthropology Foundation of Guatemala*, *supra* note 14, third operative paragraph.

²² Cf. *Case of Velásquez Rodríguez*. Provisional measures with regard to Honduras. Order of the Court of January 15, 1988, third considering paragraph; *Matter of Eloisa Barrios et al.* Provisional measures with regard to Venezuela. Order of the Court of November 25, 2010, twenty-fourth considering paragraph, and *Matter of Mery Naranjo et al.*, *supra* note 3, seventy-eighth considering paragraph.

²³ Cf. *Matter of the Children and Adolescents deprived of liberty in the FEBEM “Tatuapé Complex.”* Provisional measures with regard to Brazil. Order of the Court of July 3, 2007, seventh operative paragraph; *Matter of the Peace Community of San José de Apartadó*. Provisional measures with regard to Colombia. Order of the Court of August 30, 2010, thirtieth considering paragraph, and *Matter of Mery Naranjo et al.*, *supra* note 3, seventy-ninth considering paragraph.

Vásquez Almazán, Ana Dolores Arriola Carrillo, Beatriz Díaz Arreaga, Blanca Noemí Barcenás Albizurez, Byron Estuardo García Méndez, Claudia Eugenia Rivera Fernández, Danny A. Guzmán Castellanos, Dominga Alejandra Varel Sequeira, Edgar Herlindo Hernández Sánchez, Edwin Giovanni Peruch Conós, Fredy Arnoldo Cumes Erazo, Gladis Amparo Martínez Ruiz, Guillermo E. Vásquez Escobar, Heidy Hirua Quezada Arriaga, Jaime Enrique Ruiz Castellanos, Jessika Marisela Osorio Galindo, Jorge Luis Romero de Paz, José Samuel Suasnavar Bolaños, Juan Carlos Gatica Pérez, Juan Ramón Donado Vivar, Katia Victoria Orantes Poza, Leonel Estuardo Paiz Diez, Marco Tulio Pérez Tánchez, Mario Bernabé Ramírez Alarcón, Mario Nájera, Mynor Adán Silvestre Aroche, Nancy Yadira Valdez Vielman, Omar Bertoni Girón de León, Oscar Ariel Ixpatá, Oswaldo Alexander García Pérez, Ramiro Edmundo Martínez Lemus, Raúl H. Archila García, Renaldo Leonel Acevedo Álvarez, Sergio Oswaldo García López, Shirley Carola Chacón, Silvia Beatriz Pellecer Montiel and Tomasa Cifuentes Cifuentes.

2. To require the State to maintain and to adopt all necessary measures to protect effectively the rights to life and to personal integrity of the next of kin of Fredy Armando Peccerelli, Director of the Forensic Anthropology Foundation of Guatemala, namely: Jeannette Peccerelli, Ashley Corienne Peccerelli del Valle, Tristán Collin Peccerelli del Valle, Fredy Armando Peccerelli Tenas, María del Carmen Monterroso de Peccerelli, Bianka Irina Peccerelli de Girón, Gianni Paolo Peccerelli Monterroso and Luisa Fernanda Martínez de Peccerelli.

3. To require the State to take all pertinent measures to ensure that the measures of protection required in this Order are planned and implemented with the participation of the beneficiaries of the measures or their representatives, so that they can be implemented promptly and effectively and, in general, keep them informed of any progress in their execution.

4. To reject the request to expand these provisional measures presented by the representatives of the beneficiaries, as indicated in the twenty-first considering paragraph of this Order.

5. To lift the provisional measures granted in favor of Adriana Gabriela Santos Bremme, Alan Gabriel Robinsón Cañedo, Álvaro Luis Jacobo González, Carlos René Jacinto, Dania Marianela Rodríguez Martínez, Elder Rodolfo Urbina Urizar, Erick Oswaldo Duque Hernández, Estuardo Guevara, Fernando Arturo López Antillon, Flavio Abel Montufar Dardon, Gillian Margaret Fowler, Gustavo Cosme Godínez, Irma Yolanda Morales Bucu, José Fernando Alonzo Martínez, Juan Carlos Patzán Morales, Liesl Marie Cohn de León, Lourdes Lorena Herrera Sipaque, Lourdes Sofía Chew Pazos, Manuel Antonio Meneses Ruiz, María Raquel Doradea, Mynor Alexander Urizar Chavarría, Myrna Graciela Díaz Gularte and Reina Patricia Ixcot Chávez, as indicated in considering paragraph 21 of this Order.

6. To request the State of Guatemala to submit to the Inter-American Court of Human Rights, by June 1, 2011, at the latest, a thorough, detailed report indicating the measures adopted in compliance with the provisions of the first and second operative paragraphs of this Order, as well as the information required in considering paragraphs 17, 18, 28, 29 and 35 of this Order.

7. To request the representatives of the beneficiaries to present their observations on the report of the State indicated in the preceding operative paragraph within four weeks of receiving it, as well as the information requested in considering paragraphs 17 and 29 of this Order.

8. To request the Inter-American Court of Human Rights to present its observations on the report of the State indicated in the sixth operative paragraph of this Order within six weeks of receiving it.

9. To reiterate to the State that it must continue reporting on the provisional measures adopted every two months, and to require the representatives of the beneficiaries and the Inter-American Commission on Human Rights to present their observations within four and six weeks, respectively, of notification of the said State reports.

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

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary