ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS [*]
OF FEBRUARY 13, 2013

REQUEST FOR PROVISIONAL MEASURES
REGARDING HONDURAS

CASE OF PACHECHO TERUEL *ET AL.*

HAVING SEEN:

1. The brief of the organizations *Equipo de Reflexión, Investigación y Comunicación* de la *Compañía de Jesús (ERIC-SJ), Pastoral Penitenciaria* and CARITAS in the Diocese of San Pedro Sula (hereinafter "the representatives"), submitted on January 23, 2013, on behalf of Mrs. Sandra Lorena Ramos, pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Article 27 of the Court's Rules of Procedure[1] (hereinafter "the Rules"), requesting that the Republic of Honduras (hereinafter "the State" or "Honduras") grant protection to Sandra Lorena Ramos Cárcamo and her three minor daughters.[2]

2. Mrs. Ramos Cárcamo was summoned by the President of the Court and rendered her testimony before the Court during the public hearing in the Case of Pacheco Teruel et al., on February 28, 2012. In the Judgment on merits, reparations and costs she was declared a victim, as a relative of the deceased inmate Wilfredo Reyes[3].

3. The request for provisional measures submitted by the representatives is based on the following facts:

a) on October 26, 2012 the local television channel reported that the State had complied with the compensation payments to the victims, ordered by this Court in the *Case of Pacheco Teruel et al. v. Honduras* in connection with the incidents that occurred in the Prison of San Pedro Sula in 1994, also disclosing the amounts of those payments;

b) on October 27 of the same year, the three minor daughters of Mrs. Lorena Ramos were on their way to a small shop when they were startled by three men, two of them masked, who threatened them. According to the account provided by the representatives: "a man attacked them; without saying a word, he grabbed

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[*] Judge Alberto Pérez Pérez informed the Court that, for reasons beyond his control, he could not attend the discussion and signing of this Order.

[1] Rules of Procedure of the Court approved at its Eighty-fifth Regular Period of Sessions, held on November 16-28, 2009.

[2] The full names of the three minor daughters of Mrs. Sandra Lorena Ramos, K. K., A. M. and M. N., shall be kept confidential by the Court.

[3] *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs.* Judgment of April 27, 2012, Series C No. 241, paras. 72 and 84.

[one of the girls] by the hair, and held a gun to her waist. Two other individuals seized [the second girl] by the hand. [And], as they led them away, the [men] said they were going to kill them; when [the second girl] started to cry, the men placed a gun in her mouth to keep her quiet." Fortunately, one of the girls managed to escape, calling her paternal grandmother, who arrived and began screaming at the attackers to let them go. As a result, the captors let the girls go and the grandmother took them away from the place;

d) on November 9, 2012, in the early hours of the morning, Sandra Lorena Ramos found a man inside her house. "This [man] stared at her and left without saying or doing anything", and

e) in response to these events, Sandra Lorena Ramos decided to move to another city with her daughters.

4. The representatives requested that the Court order provisional measures, "given the imminent risk of irreparable damage, both to Sandra Lorena Ramos Cárcamo, and to her minor daughters, due to the actions directly perpetrated against the victims and because, in accordance [with] the aforementioned Judgment, the compensation payments are due to be made in February 2013." They also requested that the Court: a) order provisional measures in favor of Sandra Lorena Ramos Cárcamo and her three minor daughters, and b) require the State of Honduras to conduct a thorough, impartial and effective investigation into the facts reported.

5. The note of January 23, 2013, in which the Secretariat of the Court, following the instructions of the President and pursuant to Article 27(5) of the Rules, asked the State to submit its observations to the request for provisional measures, together with any other documents considered pertinent, no later than February 1, 2013.

6. In a brief submitted on February 4, 2013 the State presented its observations to the request for provisional measures. In said brief, the State explained that the Attorney General's Office would be contacting Sandra Lorena Ramos in order to urge her to file the respective complaint with the Public Prosecutor's Office, given that the alleged crimes require a specific procedure. Likewise, it would demand an effective investigation into the facts denounced by the representatives. In addition, the State undertook to send a communication to the Secretariat of Security of Honduras, for the purpose of "considering the adoption of some level of protection in favor of Mrs. Sandra Lorena Ramos and her daughters, until the situation of risk affecting them disappears."

CONSIDERING THAT:

1. Honduras has been a State Party to the American Convention on Human Rights since September 8, 1977 and, pursuant to Article 62 thereof, recognized the Court's contentious jurisdiction on September 9, 1981.

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. Article 27 of the Rules of Procedure of the Court establishes that:

> 1. At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.
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> [...]
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> 3. In contentious cases before the Court, victims or alleged victims, or their representatives, may submit to it a request for provisional measures, which must be related to the subject matter of the case.
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> [...]
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> 5. If the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt such urgent measures as may be necessary to ensure the effectiveness of any provisional measures that may be ordered by the Court at its next session.
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> [...]

4. According to Article 63(2) of the Convention, the provisional measures ordered by the Court are binding on the State, because a basic principle of international law, supported by international case law, indicates that States must comply with their international treaty obligations in good faith (*pacta sunt servanda*).[4]

5. Under international human rights law, provisional measures are not only preventive, in the sense that they preserve a juridical situation, they are also essentially protective because they protect human rights, inasmuch as they seek to avoid irreparable damage to persons.[5] Provisional measures are applicable provided the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met. Thus, provisional measures become a real jurisdictional guarantee of a preventive nature.[6]

6. This request for provisional measures is related to a case before the Court, regarding which a Judgment was issued on April 27, 2012[7]. Article 63(2) of the Convention requires the concurrence of three conditions for the Court to order provisional measures: a) "extreme gravity"; b) "urgency", and c) the need to "avoid irreparable damage" to persons. These three conditions must coexist and must be present in any situation in which the Court's intervention is requested.[8]

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[4] *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 para. 6, and *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of November 13, 2012, Considering para. 2.

[5] *Cf. Case of the Newspaper "La Nación".* Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering para. 4, and *Matter of Alvarado Reyes et al., supra,* Considering para. 3.

[6] *Cf. Case of the Newspaper "La Nación"".* Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering para. 4, and *Case of Carpio Nicolle et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of October 25, 2012, Considering para. 4.

[7] *Cf. Case Pacheco Teruel et al. v. Honduras, supra.*

[8] *Cf. Case Carpio Nicolle.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering para. 14, and *Matter of Wong Ho Wing.* Provisional Measures regarding Peru, Order of the acting President of the Inter-American Court of Human Rights of December 6, 2012, Considering para. 3.

7. As to the issue of gravity, for the purposes of adopting provisional measures, the Convention requires that this be "extreme," in other words, at its most intense or highest level. The urgency of a situation implies that the risk or threat involved is imminent, which requires an immediate remedy in response. Finally, regarding the issue of damage, there must be a reasonable probability that it will materialize and it must not affect goods or legal interests which can be repaired.[9]

8. In response to a request for provisional measures, the Court cannot consider the merits of any argument that is not strictly associated with extreme gravity, urgency and the need to avoid irreparable damage to persons. Any other matter may only be brought before the Court in a contentious case.[10]

9. From the information provided by the representatives, it is clear that the alleged violent attacks and threats have endangered the life and integrity of Sandra Lorena Ramos and of her three minor daughters, which, *prima facie*, are of a grave character.

10. In this regard, the State has undertaken to investigate the facts, once these are reported, and to promote "the implementation of some level of protection in favor in Mrs. Sandra Lorena Ramos and her daughters, until the situation of risk affecting them has disappeared."

11. This Court considers the State's undertaking to be valid, and deems it essential that the events which occurred are reported at the domestic level, so that the competent authorities can act and fulfill their duty of protection and prevention regarding the persons subject to their jurisdiction.[11] Likewise, it is timely to recall that Article 1(1) of the Convention establishes the general obligations of States Parties to respect the rights and freedoms recognized therein and to guarantee their free and full exercise to all persons subject to their jurisdiction, imposing these not only in relation to the power of the State but also in relation to the actions of private third parties.[12]

12. Accordingly, given the gravity and urgency of the situation facing Sandra Lorena Ramos and her three minor daughters (*supra* Having Seen 1), this Court considers it necessary to guarantee their protection through the immediate adoption of provisional measures by the State, in light of the provisions of the American Convention, so that all measures are adopted to effectively prevent actions that affect or endanger their life and personal integrity.

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[9] *Cf. Matters of the Monagas Judicial Confinement Center ("La Pica"), the Capital Region Penitentiary Center Yare I and Yare II (Yare Prison), the Central Occidental Region Penitentiary Center (Uribana Prison), and El Rodeo I and El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering para. 3, and *Case of La Cruz Flores.* Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of October 25, 2012, Considering para. 3.

[10] *Cf. Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 29, 1998, Considering para. 6, and *Matter of Alvarado Reyes et al., supra*, Considering para. 4.

[11] *Cf. Matter of Alejandro Ponce Villacís and Alejandro Ponce Martínez.* Provisional Measures regarding Ecuador. Order of the Inter-American Court of Human Rights of May 15, 2011, Considering para. 10.

[12] Cf. Matter of *the Peace Community of San José de Apartadó*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of June 18, 2002, Considering para. 11, and *Matter of the Socio-educational Internment Facility (UNIS).* Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of November 20, 2012, Considering para. 21.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred by Articles 63(2) of the American Convention on Human Rights and 27 and 31(2) of the Court's Rules of Procedure,

DECIDES:

1. To require the State of Honduras to adopt all measures that are necessary and effective to protect the life and personal integrity of Sandra Lorena Ramos and of her three minor daughters. These provisional measures shall remain in force until September 30, 2013.

2. To require the State to make the pertinent arrangements to enable the representatives of the beneficiaries to participate in the planning and implementation of these protection measures and to keep them informed about the progress made in their execution.

3. To require the State to continue reporting to the Inter-American Court of Human Rights every three months, as from the notification of this Order, on the provisional measures adopted in accordance with this ruling.

4. To require the representatives of the beneficiaries to submit their observations to the reports of the State specified in the preceding paragraph, within four weeks of receiving these. Also, the Inter-American Commission of Human Rights shall present its observations to the aforementioned briefs of the State and of the representatives within two weeks of receiving the respective observations of the representatives.

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

Diego García-Sayán
President

Manuel E. Ventura Robles

Eduardo Vio Grossi

Roberto of Figueiredo Caldas

Humberto Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

SEPARATE OPINION OF JUDGE EDUARDO VIO GROSSI
ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 13, 2013
PROVISIONAL MEASURES REGARDING HONDURAS
MATTER OF PACHECO TERUEL *ET AL.*

I issue this separate opinion in order to place on record that, in my view, these provisional measures were ordered in consideration of the fact that the State is required to provide protection to Mrs. Ramos and her daughters, by virtue of the Judgment delivered by the Inter-American Court on April 27, 2012 in the case of *Pacheco Teruel v. Honduras.* This opinion is consistent with the views I expressed, *inter alia*, in my *Dissenting Opinion concerning the Order of the Inter-American Court of Human Rights of November 25, 2011, on Provisional Measures in the Matter of Millacura Llaipén et al. regarding Argentina*.

Eduardo Vio Grossi