The protection of ESCR in the Inter-American System through the use of precautionary and provisional measures

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Introduction

The Pehuenche communities, members of the Mapuche people, live along the Bío-bío River in the central part of Chile. These communities depend on the river for their survival. In 1996 the Chilean National Electricity Company (ENDESA) planned the construction of six hydroelectric dams throughout the river. One thousand out of the five thousand members of the Pehuenche tribe were to be resettled. The first one, Pangue, was built that year. In early 1999 the construction of the second and largest one, Ralco, was to begin. This dam would "flood 3,500 hectares of land, almost all of which belong[ed] to approximately a hundred Mapuche-Pehuenche families, who [would] be forcefully relocated."[1] After the Downing Report[2] and several campaigns, the construction was suspended. The communities never requested the Inter-American System to ask the Chilean State to stop the construction of the dam. Would they have been able to do this through precautionary or provisional measures, as means to protect their economic, social and cultural rights (ESCR)?

The Pehuenche case is one example of an urgent situation that, if not stopped, could lead to violations of ESCR. Similar development projects have led people to use the Inter-American System as means to

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1 Aldisson Anguita Mariqueo, "Chilean Economic Expansion and Mega-Development Projects in Mapuche Territories". *In the Way of Development,* Zed Books, London 2004, p. 208.

2 Theodore Downing, *An Overview of the International Finance Corporation Sponsored Participatory Evolution of a Pehueche Indigenous Foundation,* 1996. http://www.ted-downing.com/Publications/E1/E1.htm; Ibid, pgs. 214-216.

seek protection.[3] This protection has not been easy, in the particular case of ESCR, due to an apparent legal misconception that leads to belief that these rights cannot be justiciable. This essay contests this position, focusing in particular on the protection of ESCR through precautionary and provisional measures before the Inter-American System.

After giving a general view of the standing of ESCR within the Inter-American System, this paper will give a brief assessment of the nature of precautionary and provisional measures in the system in order to show how they can and have been used to protect ESCR. The essay will finally offer a brief analysis of the measures and suggest ways in which they could be used to enhance the protection of ESCR.

The Inter-American System and economic, social, and cultural rights

ESCR first appear in the Organization of American States Charter (OAS Charter) in 1948.[4] Its principles mention the importance of the fundamental rights of the individual, without limiting them to only civil and political rights (CPR).[5] Moreover, Articles 46 to 52 mention ESCR such as labour, education, and culture. The states decided that they needed to find a way to secure the rights abstractedly mentioned in the OAS Charter, and thus drafted the American Declaration on the Rights of the Duties of Man (the Declaration).[6] This document is "considered the founding instrument of the inter-American human rights system,"[7] and has as its purpose, among other things, the "international protection

3 See Chapter 1.2 *infra*, the cases of the Maya, Mayagna and Saramaka communities.

4 The OAS Charter is binding for the 35 states that signed it.

5 OAS Charter, Article 3.

6 Adopted by the Ninth International Conference of American States, Bogotá, 1948.

7 Tara Melish, *Protecting Economic, Social, and Cultural Rights in the Inter-American Human Rights System: A Manual on Presenting Claims,* Orville H. Schell Jr. Center for International Human Rights, Yale Law School, New Haven: 2002, p. 9.

of the rights of men."[8] It does not draw a distinction between CPR and ESCR thus granting a broader protection than other instruments.[9]

Although it has been argued that protection of ESCR disappeared from the regional instruments with the adoption of the American Convention on Human Rights (hereafter, the Convention), to give way to the protection of only CPR,[10] this instrument in fact contains several provisions related to ESCR.[11] The preamble reminds us "essential rights of man are (…) based upon attributes of the human personality (…)." Moreover, the Convention confirms their indivisibility by reiterating that the ideal of freedom can only be achieved through the enjoyment of ESCR and CPR.[12] Specifically, Article 26,[13] similar in text to Article 2 (1) of the ICESCR,[14] requires the progressive realization of these rights, in particular those set forth in the Charter.

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8 Foreword of the Declaration, in http://www.cidh.oas.org/Basicos/basic2.htm. Though the Declaration was not, in principle, an obligatory document, its status has changed overtime, and it has "acquired the status of an authoritative interpretation of the reference to 'fundamental rights of the individual' (…) [and] it nonetheless evinces a decisive shift in their attitude [the States] towards the supervision and enforceability of the rights listed in the Declaration" Scott Davidson, *The Inter-American Human Rights System,* Dartmouth Publishing Company Limited, England: 1997, p. 13. The Court confirmed this legal effect and the possibility of interpreting in its Advisory Opinion, OC-10/89, *Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights,* 14 July 1989, paras. 36 and 47. The Commission established its mandatory nature for States that have not ratified the Convention in the *Case of Baby Boy v United States*, Resolution No. 23/81, Case 2141, 6 March 1981, paras. 15-16.

9 Davidson, Note 9 supra, p. 13; Note 8 supra, p. 9.

10 Signed in November 22, 1969 and entered into force 18 July 1978 in http://www.cidh.oas.org/Basicos/basic3.htm. I will not refer to Rights in the Convention as CPR since some of them (i.e. freedom of association, the rights of the family or the rights of the child), may be of a social nature.

11 Carlos Rafael Urquilla, "Los Derechos Económicos, Sociales y Culturales en el Contexto de la Reforma al Sistema Interamericano de Protección de los Derechos Humanos", in: *Revista IIDH,* vol. 30-31, 1995, p. 266.

12 Note 11 supra, preamble.

13 "The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires", in http://www.cidh.oas.org/Basicos/basic3.htm.

14 "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant

In spite of this, the system only recognised a specific protection of these rights twenty years later, in the Protocol of San Salvador (the Protocol).[15] The Protocol includes a number of ESCR,[16] but Article 19 (6)[17] reduces the judicial protection before the Commission and the Court to two of them, the right to education[18] and the right to form trade unions.[19]

The judicial protection of only two rights within the Protocol, the fact that many States have not signed it,[20] and the lack of clear clauses of justiciability for ESCR throughout the other instruments, has obliged petitioners, and even the Inter-American Commission and Court of Human Rights to find different strategies that will guarantee the judicial protection of ESCR within the system.[21]

These strategies have been used both in general litigation and in arguments to support the granting of precautionary and provisional measures. The use of these measures in the Inter-American System would not have been possible, however, without the historic shift that interim measures[22] had from protecting the rights of States to stop human rights violations.

by all appropriate means, including particularly the adoption of legislative measures." In http://www.unhchr.ch/html/menu3/b/a_cescr.htm.

15 Adopted in November 17, 1988 and entered into force in November 16, 1999.

16 Among others, health, social security, trade unions, and food.

17 "Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights."

18 Article 13.

19 Article 8.

20 This Protocol has been signed by 19 countries and ratified by 13 of the 35 states members to the OAS.

21 Some of these strategies include "1) indirect approach, 2) integration approach, 3) article 26 approach and a 4) complex violation approach", note 8 supra, p. 119.

22 Precautionary and provisional measures have also been called interim measures within the international law context. I will refer to them as they are used in each context.

Precautionary and provisional measures: Where do they come from?

Precautionary measures first appeared at the international level in the Permanent Court of International Justice (PCIJ). The Court determined the existence of an international principle accepted by all tribunals that states: "Parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given, and or extend the dispute."[23] The purpose was thus the preservation of the parties' rights until a decision was reached.

The first cases presented before the PCIJ were interstate claims dealing with the rights of States. Yet, issues began to arise that would decades later lead to the recognition of these measures for the protection of human rights. In the case of the Denunciation of the Treaty of Friendship, Commerce and Navigation between China and Belgium,[24] the Court granted interim measures for the protection of any Belgian who lost his/her passport to be taken to the nearest Belgian consulate. It ordered that special protection be given to Belgian missionaries, and stated that any Belgian caught committing a crime could only be arrested through a Belgian consul and could not be subject to any personal violence.[25] This was only possible "because of the need for co-terminosity between the relief sought and the principal claim advanced, interim measures could protect human rights when they were the subject matter of the dispute, but not more generally."[26]

The International Court of Justice (ICJ)[27] has also developed the concept of interim measures to include the protection of human rights. In the case of the *United States Diplomatic and Consular Staff in Teheran*,[28] the United States asked, among other things, for the protection of "the rights of its nationals to life, liberty, protection and

23 Shabtai Rosenne, *Provisional Measures in International Law: The International Court of Justice and the International Tribunal for the Law of the Sea*, Oxford University Press, New York: 2005, p. 3.

24 P.C.I.J., ser. A/B, No. 8, 8 January 1927 in http://www.worldcourts.com/pcij/eng/decisions.htm

25 Rosalyn Higgins. "Interim Measures for the Protection of Human Rights, in: *Columbia Journal of Transnational Law,* Vol. 36, 1997, p. 93, in Lexis Nexis.

26 Ibid, p. 95.

27 The PCIJ was replaced with the ICJ.

28 I.C.J., *United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran)*, 15 December 1979 in: http://www.icj-cij.org/icjwww/icases/iusir/iusirframe.htm.

security."[29] The Court primarily analysed the case from a State-State point of view, but also considered that the continuation of this situation would lead to "privation, hardship, anguish and even danger to life and health and thus to a serious possibility of irreparable harm."[30]

The consideration of people's rights by the ICJ was also a concern in the frontier dispute *Burkina Faso v Mali*.[31] In this case the Court granted interim measures because of a "risk of irreparable harm to persons and property."[32] The most evident case of protection of human rights through interim measures within the ICJ is *Bosnia Herzegovina v Yugoslavia* regarding the application of the Genocide Convention.[33] In this case, Bosnia accused Yugoslavia of breaching its obligations "toward the people and State of Bosnia"[34] under the Genocide Convention. The Court ordered Yugoslavia to ensure that "no acts of genocide, of conspiracy to commit genocide, of direct and public incitement to commit genocide, or of complicity in genocide, whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, ethnical, racial or religious group"[35] were committed within its territory. This case served to protect the human rights of Bosnian people because the Court said there where at the heart of the discussion.

Precautionary and provisional measures in the Inter-American System

Human rights are also at the heart of the discussion in the cases where the Commission or the Court adopt precautionary or provisional measures within the Inter-American System. The importance of these measures is the possibility to "protect persons from grave and

29 Ibid, para. 19.

30 Note 26 supra, p. 100.

31 I.C.J. *Frontier Dispute (Burkina Faso v. Mali),* 10 January 1986 in: http://www.icj-cij.org/icjwww/icases/iHVM/ihvm_isummaries/ihvm_isummaries_toc.htm.

32 Note 26 supra, p. 101.

33 I.C.J , *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia)*, 8 April 1993 in: http://www.icj-cij.org/icjwww/idocket/ibhy/ibhy_summaries/ibhysummary19930416.html.

34 Ibid, para. 2.

35 Note 34 supra, para. 52.

irreparable injury, [making] interim measures not only preventive but also protective of human rights."[36]

Within the system these measures are set forth in the Convention, the Statute of the Court and the Rules of Procedure of the Commission. Article 63 of the Convention states: "2. In 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."

This article is referred to in Article 25 of the Rules of Procedure of the Court, "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. 2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission."[37]

Furthermore, Article 25 of the Rules of Procedure the Commission allows it "1. [i]n serious and urgent cases, and whenever necessary according to the information available, (…), on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons."[38]

Traditionally, these measures have been used for the protection of civil and political rights, and particularly the rights to life and personal integrity.[39] However, if one reads the abovementioned articles of the Convention and the Rules of Procedure, in principle, their application only requires the existence of a case of extreme urgency and gravity that may cause irreparable harm if action is not taken; they do not

36 Jo M. Pasqualucci, "Interim Measures in International Human Rights: Evolution and Harmonization" in: *Vanderbilt Journal of Transnational Law,* January, 2005, pgs. 803-863, Lexis-Nexis.

37 Also read these articles with Article 74 of Rules of Procedure and Article 19 (c) of the Statute of the Commission.

38 All of the above-mentioned articles must be read with Article 1 (1) of the Convention, which contains States obligations to "ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms (…)."

39 See as examples ICtHR, *Case Velásquez Rodríguez, Fareín Garbi, and Solis Corrales, and Godinez Cruz v Honduras,* Order 15 January 1988 and *Vogt v Guatemala,* Order 27 June 1996. http://www.corteidh.or.cr/seriee_ing/index.html; IACHR, *Neville Lewis v Jamaica,* 20 November 1997 and *Luzia Canuto v Brazil*, 16 December 1998 in http://www.cidh.oas.org/annual.eng.htm.

restrict their use to protect a particular type of right. Thus, in principle, these measures could be used for the protection of ESCR as long as the requirements of "urgency and gravity" and "irreparable harm" are met.

This seems to be confirmed by judge Cançado Trindade in his concurring opinion within the *Haitian and Haitian Origin Dominican Persons in Dominican Republic Case*.[40] He argues that provisional measures can be used for the protection of rights different from life or personal integrity. He specifically says the following: "[T]here is, juridically and epistemologically, no impediment at all for such measures, which so far have been applied by the Inter-American Court in relation to the fundamental rights to life and to personal integrity (Articles 4 and 5 of the American Convention on Human Rights), to *be also applied in relation to other rights protected by the American Convention*."[41]

He then mentions that in this particular case the provisional measures should also apply "to the rights to personal liberty, to the special protection of the children in the family, and to circulation and residence (Articles 7, 19 and 22 of the Convention)."[42] Cançado's vote broadens the application of the measures to at least these rights within the Convention, but does not go as far as applying them directly for the protection of ESCR.

His further mention of the rights that could be protected in the particular case is not entirely clear. When he says "protected by the American Convention", does he mean only those specifically mentioned therein or does he also include other rights that, although not specifically mentioned, could be protected through other formulas?[43].

We are again faced with the problem envisaged when seeking the justiciability of ESCR within the system. One possible answer seems to

40 Starting November 1999, the petitioners alleged that the State of Dominican Republic was "massively expelling" Haitian and Haitian origin Dominicans out of the Dominican Republic without a legal procedure and based on the colour of their skin.

41 ICtHR, *Hatian and Hatian Origin Dominican Persons in Dominican Republic*, Precautionary Measures, 18 August 2000, Concurrent Vote, Trindade Cançado, para. 14, http://www.corteidh.or.cr/paises_ing/rdominicana.html, emphasis added.

42 Ibid, para. 15.

43 Ibid, para. 23. Cançado reiterates in this vote the tutelary character of precautionary and provisional measures' surpassing their purely procedural aspect.

be the adoption of a similar approach for the request of precautionary or provisional measures as the one used for violations of ESCR. The strategies that have been used in this area by the petitioners, the Commission and the Court include the following.[44]

Linking ESCR to rights in the Convention

One of the ways in which petitioners and the system have achieved the protection of ESCR through precautionary and provisional measures is by linking these rights to those found within the Convention,[45] such as the Right to Life (Article 4), Right to Humane Treatment (Article 5), Freedom of Association (Article 16), Right to Property (Article 21), and the Freedom of Movement and Residence (Article 22). In many cases, the system has broadened the meaning of these rights in order to be able to grant precautionary and provisional measures that will avoid violations of ESCR.

1. Right to Life and Personal Integrity

In relation to the Right to Life, a first step was taken when the Court decided in *Villagrán Morales et. al v. Guatemala (Street Children)* to include within the meaning of the right to life, the right to a "dignified life".[46] It also considered this right as a fundamental one for the existence of other rights.[47] Furthermore, in one of it's latest judgements, *Mapiripán v Colombia,* it signalled that internal-displacement affects the displaced person's life and physical integrity.[48] The Commission

44 We will only analyse the measures presented before the Commission between 2000-2005 and the provisional measures studied by the Court due to the lack of space. This timeframe does, however, provide a comprehensive understanding of the situation.

45 Davidson, Note 9 supra, p. 349; Melish, Note 8 supra, pgs. 233-234; Christian Courtis, "Luces y Sombras. La Exigibilidad de los Derechos Económicos, Sociales y Culturales en la Sentencia de los 'Cinco Pensionistas' de la Corte Interamericana de Derechos Humanos", in: *Revista Mexicana de Derecho Público,* Distribuciones Fontamara S.A., Mexico, p. 39.

46 ICtHR, judgement of 19 November 1999, para. 144 in: http://www.corteidh.or.cr/seriec_ing/index.html "The right to life includes not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence."

47 Ibid, para.144.

48 ICtHR, *Mapiripán v. Colombia,* judgement 15 September 2005, para. 188 http://www.corteidh.or.cr/seriec_ing/index.html.

has used this definition in order to protect the right to health when granting precautionary measures for petitioners with HIV/AIDS, for those imprisoned seeking medical assistance, and, in some cases, for communities as a whole.

During our time frame of analysis (2000-2005), the Commission granted ten precautionary measures[49] protecting more than 100 petitioners who had HIV/AIDS and who had asked for the protection of their right to health through the rights to life and personal integrity found in the Convention. One of the first measures granted was that of *Jorge Odir Miranda et. al v El Salvador.*[50] Petitioners asked, among other rights,[51] for the protection of their right to health through the right to life; they required medical care, as well as access to anti-retroviral medication. The measures were granted for an initial period of six months.[52] Four months later, the Board of Directors of the Salvadoran Social Security Institute awarded the anti-retroviral therapy to the petitioners.[53] The other petitioners construed similar arguments to those of the Odir Miranda case mentioning the right to life as means to protect their health. States responded in all but one case.[54]

Not only people with HIV/AIDS have been fortunate to receive immediate protection through the Commission for urgent health issues that endanger their life or personal integrity. Jorge Luis García, inmate of the Central Nieves Morejón Prison in Cuba, was diagnosed a tumour in his right lung in August 2000. In February 2001 he began a hunger strike because he was not given appropriate medical attention. His life was obviously in danger, and this was the consideration made by the Commission when granting precautionary measures in April 2001. The Commission requested his transfer to a hospital specializing in his illness, and asked the State to provide medical attention through

49 Eight of them during 2002.

50 IACHR, *Annual Report 2000,* 29 February 2000, http://www.cidh.org/annualrep/2000eng/chap.3a.htm.

51 They also invoked article 26 of the Convention, analysed *infra.*

52 After the measures expired (29 August 2000) the petitioners asked for their renewal, but the Commission denied them.

53 This case was admitted by the Commission in its Report 29/01, Case 12.249, 7 March 2001, in: http://www.cidh.org/annualrep/2000eng/chapteriii/admissible/elsalvador12.249.htm.

54 See annex 1.

a physician selected by the family.[55] That same year, in August 2001, the Commission granted similar measures to Isabel Velarde Sánchez in Perú.[56] Since then, four other inmates have been protected from serious health problems.[57]

In other cases, the Commission has protected the life and integrity of groups of people or members of a particular community.[58] It has granted measures for communities whose health was in danger due to forced internal displacement, such as in the case of the communities of San Mateo de Huanchor in Perú[59] and of Bello (Colombia).[60] The sanitary conditions were also improved for the patients of the Neuro-psychiatric Hospital in Paraguay, thanks to the Commissions' recommendations. Precautionary measures for the Bello community were suspended five months later because the State reached a series of agreements with the community. Additionally, in its 2005 annual report, the Commission highlighted the fact that they had reached an agreement with Paraguay in order to improve the Neuro-psychiatric hospital conditions.[61]

The case of *Eduardo Nicolas Cuadra v Perú* stands out because he was granted measure even though he did not fall under the scope of a community or a person with HIV/AIDS. He asked for the protection of his right to social security because he was not being provided with the medical treatment he required. The Commission ordered the State to

55 IACHR, 24 April 2001, *Annual Report 2001,* para. 28, http://www.cidh.org/annualrep/2001eng/chap.3a.htm.

56 Ibid, 28 August 2001, para. 50.

57 See annex 2.

58 It is important to note that the Commission has protected groups longer than the Court has. The first case in which the Court granted the protection to a group was San José de Apartadó v. Colombia (November 2004) whereas the Commission, as seen here, has granted them long way before. Note 68 infra, concurring vote of Judge Sergio García, paras. 5-6.

59 IACHR, *Annual Report 2004,* para. 44, http://www.cidh.org/annualrep/2004eng/chap.3b.htm In this case the living conditions, health, food, farming and livestock of five communities of 5,000 families were affected by the deposits from a mine near their land, by the Rimac River. "The studies conducted (…) conclude that cumulative power and chronic effect of arsenic, lead, and cadmium in the deposits generated a high risk of exposure for the communities."

60 Ibid, para. 16. The Commission requested the Government to provide "adequate accommodations and the necessary conditions for the subsistence" of 63 children and 50 adults.

61 IACHR, *Press Release 8/05*, 122nd Regular Sessions, 11 March 2005, http://www.cidh.org/comunicados/english/2005/8.05.htm.

provide it in order to "prevent irreparable harm" to his health and "to preserve his personal integrity."[62]

2. Right to Property

The existence of a CPR and ESCR dimension[63] within the right to property is confirmed in *Mayagna (Sumo) Awas Tingni v Nicaragua*. That indigenous community, made up of at least 620 individuals and 142 families live near the Wawa River in Nicaragua. They rely on agriculture, collection of medicinal plants, hunting and fishing for their survival. Since 1995 this tribe has been fighting for the protection of their ancestral land against logging activities planned to take place near the Wawa River. After first unsuccessfully requesting precautionary measures in December 1995, they were later granted by the Commission in 1997. The Nicaraguan State did not stop the project.[64] After the approved report 27/98 in March 1998, the Commission sent the case to the Court, which granted provisional measures on the basis of the right to property.[65] The Court found there was an intrinsic relationship between indigenous communities and their territory, thus the logging affected "a fundamental basis of their culture, spiritual life, integrity and economic survival."[66] This idea was reiterated in *Sarayaku v Ecuador*.[67]

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62 IACHR, 19 June 2003, *Annual Report 2003,* para. 61, http://www.cidh.oas.org/annualrep/2003eng/chap.3e.htm.

63 Note 8 supra, p. 233. Some rights within the Convention may have CPR and ESCR aspects, both which can be judicially protected.

64 ICtHR, *The Mayagna (Sumo) Awas Tingni Community v Nicaragua,* Preliminary Objections, 1 February 2000, paras. 13-17, http://www.corteidh.or.cr/paises_ing/nicaragua.html.

65 ICtHR, *The Mayagna (Sumo) Awas Tingni Community v Nicaragua,* Provisional Measures, 6 September 2002, paras. 6-9, http://www.corteidh.or.cr/seriee_ing/index.html.

66 Ibid, paras. 140, 147 and 149.

67 ICtHR, *Sarayaku Indigenous Community Case*, Order 6 July 2004, http://www.corteidh.or.cr/seriee_ing/index.html; IACHR, Report 64/04, Petition 167/03, *Admissibility Report*, 13 October 2004, http://www.cidh.org/annualrep/2004eng/ecuador.167.03eng.htm. This community was seeking protection, since July 1996, from oil exploration and exploitation in their land. In 2003 the Commission granted precautionary measures, which were disregarded by the State. After further aggressions by members of the State and of the oil exploration company the Commission asked the Court for provisional measures in June 2004, even though the case was not being looked at by the court. The Court granted these measures on July 2004 with similar arguments of those set forth in the Mayagna case.

Other indigenous communities in Belice,[68] Brazil,[69] Paraguay,[70] and Suriname[71] have received protection of their ESCR through precautionary measures on the basis of the broadened concept of the right to property. In these measures the Commission recommended that the State act to protect the affected communities, by variously stopping the granting of new concessions, abstaining from carrying out evictions and providing the necessary assistance to those who had already been forcibly displaced.

Four of the five communities –Belice,[72] Yakye Axa,[73] Keylenmagategma,[74] and Saramakas[75]– were taken on as cases by the Commission, and one of them led to a judgment by the Court.[76] These communities have in common their long-time struggle for protection. The Saramaka clans, for example, had filed a petition and

68 IACHR, *Annual Report 2000*, Precautionary Measures, 20 October 2000, para. 11, http://www.cidh.org/annualrep/2000sp/cap.3a.htm. The Commission granted these measures in favour of the Maya community to stop wood and oil concessions on their land. They were granted for the right to property under the American Declaration because Belice has not ratified the Convention. The State did not reply to the request.

69 IACHR, *Report on the Situation of Human Rights in Brazil,* 19 September 1997, OEA/Ser.L/V/II.97, Doc. 29 rev. 1, paras. 48-59. The Ingaricó, Macuxi, Wapichana, Patamona, and Taurepang in the state of Roraima asked for their land to be delimited, since they had been victims of several invasions. The Commission asked the State of Brazil to adopt the necessary measures to protect them, but did not specify which ones. This situation had already been recorded in the Commission's visit to Brazil in 1997.

70 ICtHR, orders 26 September 2001 and 12 October 2004. The first order was granted to the Yakye Axa and the second one to the Kelyenmagategma. Both communities seeked protection because they were being forcibly displaced from their land. Furthermore, the Yakye Axa had inadequate food and health conditions, whilst the Keylenmagategmas' had been victims of raids against their homes.

71 IACHR, *Annual Report 2002,* Precautionary Measures, 8 August 2002, para. 75, http://www.cidh.org/annualrep/2002eng/chap.3g.htm In August 2002, twelve Saramaka clans claimed that the logging, construction of roads, and mining concessions were taking place within their land, without having been consulted. Furthermore, they presented evidence to show that the mines being operated had released mercury into the environment, contaminating their water resources.

72 IACHR, Case 12.053, IACHR, *Admissibility Report 78/00*, Case. 12.053, 5 October 2000, http://www.cidh.org/indigenas/belice12.053.htm.

73 IACHR, Case 12.313, http://www.cidh.org/annualrep/2002eng/paraguay.12313.htm.

74 IACHR, Case 11.173, found in the admissibility decision of case 12.313.

75 IACHR, Case 12.338, still pending, http://www.cidh.org/annualrep/2002eng/chap.3g.htm.

76 ICtHR, *Yakye Axa Indigenous Community v Paraguay.* Judgement 17 June 2005.

been given protection in 1988 for the threats and murders of members of the community over a territorial dispute.[77] In 2004 they had two hearings before the Commission to update their situation and in 2005 a community leader appeared before the Commission with two witnesses.[78]

3. Freedom of Association

No precautionary or provisional measures have yet been used to stop situations, such as massive dismissals of workers. However, the case of *Baena Ricardo v Panamá*,[79] has to be swiftly mentioned as a precedent for the possible use of these measures to protect freedom of association.[80] In this case the Commission and Court both found a breach of Article 16 of the Convention. The Court said, "The entirety of the evidence in the instant case shows that, in dismissing the State workers, labour union leaders who were working on a number of claims were dismissed. In addition, the members or workers organizations were dismissed for acts that were not causes for dismissal according to the legislation in force at the time of the events. This proves that the intention (…) was to provide a basis for the massive dismissal of public sector trade union leaders and workers, such actions doubtlessly limiting the possibilities for action of the trade union organisations in the cited sector."[81]

This precedent could possibly be used to ask for a precautionary or provisional measure in a case where there is a danger of an unjustified massive dismissal of public sector trade union leaders in order to prevent the dismissal.[82]

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77 IACHR, Resolution 22/89, "*Annual Report of the Inter-American Commission on Human Rights 1988-1989,* Case 10.124, 27 September 1989, http://www.cidh.org/annualrep/88.89eng/suriname10.124.htm.

78 IACHR, Press Release 08/04, "ACHR Expresses Concern about Rule of Law in the Americas," 12 March 2004 and 23/04, "ACHR Reaffirms its Independence at the Conclusion of its Sessions," 28 October 2004.

79 ICtHR, *Baena Ricardo et. al v Panamá Case,* judgement of 2 February 2001.

80 Article 16 of the Convention.

81 Note 80 supra, para 160. See also, paras. 172-173.

82 The Case 12.357, *Isabel Acevedo León et. Al. v Perú*, before the Commission has similar facts to those in *Ricardo Baena v. Panamá*. The petitioners have not requested precautionary measures, but it is important to note that they argue a violation of the right to property but did not allege a violation of the right to freedom of association. http://www.cidh.org/annualrep/2002eng/peru.12357.htm.

The progressive approach

As mentioned above, the petitioners in the case of Ricardo Baena alleged a violation of Article 26,[83] as did the petitioners in the case Jorge Odir Miranda when asking for precautionary measures.[84] In the latter case, the Commission's analysis during the admissibility stage stated that Article 26 (like Article 29) could use other instruments to *interpret provisions found in the Convention,* such as the Protocol of San Salvador.[85] However, in its further analysis it states that during the merits stage the Commission should examine *"whether the facts reported violated Articles 2, 24, 25, and 26 of the American Convention"*[86] and decided to *declare the "case admissible with respect to alleged violation* of the rights protected under *Articles 2, 24, 25, 26 of the American Convention*.[87]

It seems strange that the Commission would mention both Articles 26 and 29 allowing their use for interpretative purposes, but then decide to additionally leave open a possible violation of Article 26, in and of itself. This would suggest that the Commission finds it feasible to not only use Article 26 for interpretation purposes, but to effectively find a violation of this provision. If this is so, a new route for petitioners to ask for precautionary measures under the said Article would be opened.

In practice, petitioners would have to determine the specific rights protected by this Article. Reading it carefully one is led to examine the rights that derive from the economic, social, education, scientific, and culture norms found in the OAS Charter.[88]

This progressive view set forth by the Commission in the Jorge Odir Miranda Case could suffer a regression if the analysis done by the Court

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83 Note 80, supra.

84 IACHR, Report 29/01, Case 12.249, *Jorge Odir Miranda Cortéz et. Al v. El Salvador*, 7 March 2001, para. 26. In the other precautionary or provisional measures analysed no explicit mention of this Article was found. However, it must be taken into account that we did not have access to the petitions themselves, but to the reports published by Commission. In many cases, the latter do not mention the specific rights or Articles for which the petitioners are seeking protection.

85 Ibid, para. 36.

86 Note 85 supra, para. 45.

87 Note 85, supra, para. 1 of the Decision, emphasis added.

88 Note 8 supra, 339-343. In the Charter one can find at least the following rights: right to education, to food, to adequate housing, social security, to form trade unions, and for collective bargaining, to a fair salary and to strike; right to participation, to have legal aid, and to health, at least in relation to workers.

in the case of *Five Pensioners v Perú* prevails.[89] The petitioners asked for finding a violation of Article 26 arguing that Perú had not complied with its obligation of progressiveness when reducing the pensions without justification. The Courts decision did not clarify whether this provision could effectively be used to protect ESCR or if it can only be used to measure a States level of progressiveness through different ways other than individual petitions.[90]

Although there is clearly an issue regarding the interpretation of Article 26, trying to explain all the issues that arise from the Five Pensioners decision in the present essay would not do justice to the discussion.[91] It would deviate us from the focus of this paper, the protection of ESCR through the use of precautionary and provisional measures. It must however be said that the debate around this issue could ultimately have an effect on the use of precautionary and provisional measures for the protection of ESCR through Article 26.

If one takes the view that article 26 contains a specific obligation to protect the rights therein and a general obligation of progressiveness,[92] one can use this Article, as did the Odir Miranda case, to protect the ESCR therein. If, however, one considers that Article 26 only contains an obligation of progressiveness that should be achieved in its social dimension, like the Court did, this provision could not be used to protect individual ESCR.[93]

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89 ICtHR, judgment 28 February 2003. Five pensioners who worked for a public institution, were recognised a pension, which some years later was reduced by the State without justification. The government then passed an Act to justify the said reduction. The pensioners asked for judicial review, which was decided in their favour. The State only complied with some of the decisions.

90 Ibid. The Court said: "147. Economic, social and cultural rights have both an individual and a collective dimension. This Court considers that their *progressive development*, about which the United Nations Committee on Economic, Social and Cultural Rights has already ruled, *should be measured in function of the* growing coverage of economic, social and cultural rights in general, and of the right to social security and to a pension in particular, of the *entire population*, bearing in mind the imperatives of social equity, *and not in function of the circumstances of a very limited group of pensioners,* who do not necessarily represent the prevailing situation." Emphasis added.

148. It is evident that this is what is occurring in the instant case; therefore, the Court considers that it is in order to reject the request to rule on the progressive development of economic, social and cultural rights in Peru, in the context of this case."

91 For a thorough explanation of this issue see Courtis, Note 46 supra, pgs. 57-67.

92 Note 8 supra, pgs. 336-337.

93 Courtis, Note 46 supra, pgs. 59-62.

It seems that the Commission still does not take the same view as the Court. The Community of *San Mateo de Huanchor v Perú,*[94] who was granted precautionary measures in 2004, asked the Commission to find a violation, among other rights, of Article 26. The Commission admitted the petition in October 2004 to find whether there is a violation of this provision.[95] Additionally, after the *Five Pensioners* decision, the Court was asked to look into a possible violation of Article 26 in *Acevedo Jaramillo and others v Peru*. However, in that case the Court did not look into the violation of Article 26 arguing it had already based its decision on other articles.[96]

In any event, the most favourable interpretation for enhancing the protection of ESCR through precautionary and provisional measures would be admitting that Article 26 contains a number of ESCR that are justiciable.

Protection of ESCR found in other instruments

Though the *Five Pensioners* judgment could be considered a step backward in the interpretation of Article 26, it maintains the important application of Article 29 of the Convention as a means of interpretation. This Article includes different criteria that may expand the scope of the protected rights in the Convention. It specifically "prohibits the Commission and Court from interpreting the Convention's provisions in such a way as to restrict, exclude, or limit the effect of rights recognised in the Convention, domestic laws, other ratified treaties, the American Declaration, and 'other international acts of the same nature' as the Declaration."[97]

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94 See chapter 1.1 supra.

95 IACHR, *Admissibility Report,* Report 69/04, Petition 504/03, 15 October 2004, paras. 2, 4 and 66. They specifically said: "The Commission considers that *the events that were denounced* with regard to the effects of the environmental pollution of the Mayoc sludge, which has created a public health crisis in the population of San Mateo de Huanchor, *if proven, could be characterized as a violation of the right to* personal security, right to property, rights of the child, right to fair trial and judicial protection and *the progressive development of economic, social, and cultural rights* enshrined in Articles 4, 5, 8, 17, 19, 21, 25, and 26 of the American Convention, related to Articles 1 (1) and 2 of the same instrument." Emphasis added.

96 ICtHR, *Acevedo Jaramillo and others v Perú,* judgment 7 February 2006, para. 285.

97 Note 8 supra, p. 132.

In cases of precautionary and provisional measures many petitioners turn to rights found in the Protocol of San Salvador or the American Declaration when seeking protection.[98] In *Jorge Odir Miranda v El Salvador*, for example, the petitioners alleged the violation of Article XI of the American Declaration and Article 10 of the Protocol of San Salvador. The Commission said it could not find a direct violation of Article 10, but could use Article 29 in order to "take into account the provisions related to the right to health in its analysis of the merits of the case."[99] Article 29 is therefore an important tool to be used in order to extend the content of rights within the Convention to include provisions recognised in the Protocol that cannot be directly justiciable because they do not fall under Article 19 (6).[100]

Finally, one must not forget, as stated by Judge García that, in any event, interpretations should allow for the "fullest protection of persons, all for the ultimate purpose of preserving human dignity, ensuring fundamental rights and encouraging their advancement."[101]

The Bío-bío community asked for precautionary measures during 1999 in favour of Patricia Ballestero Vidal, Lee Pope and Arnold Fuentes (Spanish, United States and French nationals respectively). A decree was issued to deport them, apparently due to the public manifestations organised in favour of the Pehuenche indigenous community. The Commission granted the measures. The petitioners did not, however, ask for measures to stop the construction of the dam.[102]

If they had done so, it would have been strategic to bring forth arguments regarding the effects that the dam would have on the Pehuenche's land, culture and way of life, and providing the evidence for the urgency of the measure to avoid irreparable harm. Nevertheless,

98 See for example: *Jorge Odir Miranda et. al v Perú, Juan Pablo Améstica et. al v Chile, Isabel Velarde v Perú, Mayagna v. Nicaragua, Maya v. Belice.*

99 Note 54 supra, para. 47.

100 This interpretation is only valid provided the State has ratified the Protocol. For States non-parties to the Protocol one could refer to Article 23 of the Rules of Procedure and Article 20 of the Statute of the Commission, as has been done with States that have not ratified the Convention, in order to ascertain jurisdiction. IACHR, *Frans Britton, AKA Collie Willis v Guyana,* Report No. 80/01, Petition 12.264, 10 October 2001, para. 20-21.

101 ICtHR, *The Mayagna (Sumo) Awas Tingni Community v Nicaragua,* Judgement, 1 February 2000, Concurring Opinion Judge Sergio García, para. 3.

102 IACHR, *Annual Report 1999,* Precautionary Measures, 3 March 1999, para. 16, http://www.cidh.org/medidas/1999.sp.htm.

as will be seen below, these arguments might not have been enough to achieve a precautionary measure in 1999, but the protection today would have possibly been achieved.

The agendas

The analysis of the petitions show a tendency, at both the Commission and the Court level towards the protection of indigenous communities leaving behind issues that had been at the heart of the discussion in the early 2000s.

As seen above, from 2000-2002, the Commission registered a high number of petitions related to the protection of people with HIV/AIDS. The first petitions were brought before the Commission when, at an international level, the issue was very much being discussed. In June 2001, the United Nations held a special session, which led to the unanimous adoption of the "Declaration of Commitment on HIV/AIDS,"[103] and that was the basis for the creation in 2002 of the Global Fund to Fight AIDS, Tuberculosis, and Malaria.[104] At the same time the World Trade Organisation was discussing issues related to generic drugs and public health, where anti-retrovirals were very much on the table and considered in the adoption of the Doha Declaration in November 2001.[105]

However, petitions regarding HIV/AIDS came suddenly to a full stop, and since 2003, no measures have been granted on the subject. The lawyer and litigator before the system Carlos Rafael Urquilla says "I have had to suffer being excluded from the Commission's agenda".[106] The shift in the Commission's internal agenda is a possible explanation for the complete stop, considering that more than 1.7 million people in the Americas have HIV, that in 2004, approximately 95,000 people died from AIDS,[107] and that HIV/AIDS continues to be very much in the global agenda, as one of the Millenium Development Goals.[108]

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[103] http://www.un.org/ga/aids/conference.html.

[104] http://www.paho.org/English/AD/DPC/gfatm.htm#overview.

[105] http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#trips.

[106] Interview with Carlos Rafael Urquilla, lawyer, 15 March 2006.

[107] UNDP, *Regional Report on HIV/AIDS 2005: Shifting Perspectives and Taking Action,* p.7, http://www.undp.org/hiv/pubs.htm.

[108] Goal No .6 to "halt and begin to reverse the spread of HIV/AIDS" by 2015, http://www.un.org/millenniumgoals/#.

This shift within the Inter-American System is benefiting indigenous communities, who are receiving more protection through precautionary and provisional measures. Only one measure related to ESCR of indigenous communities was rejected by the Commission.[109] In the Court, two indigenous communities have received protection through provisional measures for these rights, both of them after the year 2000. One explanation of this is that the years of declarations, reports and special rapporteurships have been fruitful.[110] An alternative interpretation may be that the international cooperation agencies' interests[111] influence the Commission and Court's agenda. This, however, we cannot prove. The positive side in this shift is that cases, like the Pehuenche will receive more attention than in the past.

Today, the Pehuenches could have possibly been granted precautionary measures because of the importance of the issue. However, they would still have to face problems fitting the Commission's criteria regarding the urgency of the measures.

The urgency and irreparable damage criteria

Proving the urgency and irreparable harm, which are specifically mentioned in the provisions related to this topic,[112] are of utmost importance when referring to precautionary or provisional measures as instruments used to avoid a human rights violation. The first problem one comes across when analyzing the Commission's measures is the fact that when granting them, the Commissioners do not specify the "urgency" or the "irreparable harm" trying to be prevented.

In some cases, such as those related to displacement of communities, when it might be difficult to prove the imminent violation of an ESCR, the Commission has nevertheless granted protection.[113] Yet, in other cases, where this urgency might be more obvious, such as when people with HIV/AIDS need treatment or a particular medicine, the

[109] Note 70, supra.

[110] Since 1996, the Commission named a Special Rapporteur for indigenous people, a Declaration was issued in February 1997 and a special report on the situation was published in the year 2000.

[111] By this we mean money given by development agencies, which might have a particular interest in a particular issue.

[112] Article 63 (2) Convention; Article 25 (1) and 74 Rules of Procedure of the Commission; Article 19 (c) Statute of the Commission.

[113] Note 60 supra, para. 16.

Commission has denied the measures. In the Jorge Odir Miranda case, for example, the Commission decided not to extend the protection after an initial six-month protection was granted, in spite of the fact that 16 petitioners had died during that period of time.[114]

The difficulty in determining clear criteria of what is considered urgent and irreparable is increased by the fact that the Commission only publishes the measures that were granted and not those denied. These obstacles could be surpassed if this organ included in its reports of precautionary measures how the requirement of urgency and irreparable harm was met in each case, or if, at least, they made public the denied petitions to allow petitioners to set out their own criteria before filing their request.[115]

At the Court level the analysis improves because the Judges produce a decision explaining their reasoning for granting the measures. Furthermore, "there is a presumption that Court-ordered provisional measures are necessary when the Commission has previously ordered precautionary measures on its own authority that were not effective."[116] This presumption, though especially important for the petitioners at the Court level, also imposes a higher responsibility on the Commission to have clearer criteria when granting precautionary measures.

In the Pehuenche case, even if the "urgency" and "irreparable harm" criteria were met and measures were granted, their effective implementation could not be guaranteed. This problem weakens the use of precautionary and provisional measures as effective means to protect human rights.

Effective implementation

Between 2000-2005 the Commission granted 25 precautionary measures protecting ESCR. The Commission received an answer from the State explaining the actions taken to comply its recommendations,

114 Note 54 supra; Note 107 supra.

115 One must understand and take into account the quasi-judicial nature of this organ, which means they do not need to come up with judicial decisions and the fact that its members need not be lawyers. However, this does not have to preclude the existence of public and clear criteria to establish situations of emergency.

116 Jo M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights,* Cambridge University Press, Cambridge: 2003, p. 297; ICtHR, *Case Caballero Delgado and Santana v Colombia*, Provisional Measures, 7 December 1994, considerings, para. 3.

in 18 cases. States did not respond at all in 2 cases, and in 5 it is not clear from the information whether the State responded or not. This 72% response is an indication that a dialogue related to ESCR exists between the Commission and the States and is important evidence of States recognising the Commission's recommendations. The latter was acknowledged and applauded by the Commission at the end of its 122nd sessions.[117]

This level of compliance is a positive step towards reaffirming the protection of ESCR through precautionary measures and, confirms, to a certain extent,[118] that States generally comply with them. Though the latter is not the topic of discussion, one must remember that "in the Commission's view, OAS member states, by creating the Commission and mandating it through the OAS Charter and the Commission's Statute to promote the observance and protection of *human rights* of the American peoples, have implicitly undertaken to implement measures of this nature where they are essential to preserving the Commission's mandate."[119]

Furthermore, a judicial or quasi-judicial body that has been empowered to know of individual petitions, "must have the authority to order a State to take interim measures. This authority is essential to fulfil the purpose of human rights treaties: the protections of persons."[120] Precautionary measures are precisely used to avoid a person from being harmed and to guarantee their effective protection.[121]

Effectiveness, this is to say, the lack of immediate action taken by States, seems to be an on-going problem common to precautionary and provisional measures. The important dialogue between the System and the State sometimes trumps the urgent need for protection. The

117 IACHR, Press Release No. 07/06 "Evaluation of Human Rights in the Americas during IACHR Regular Sessions, 17 March 2006, http://www.cidh.oas.org/Comunicados/English/2006/7.06eng.htm. It applauded "[the] fruitful interaction [that] took place during the hearings with Member States, essential actors in the inter-American system on human rights."

118 One must consider, as mentioned above, that some States did not answer to the Commission's request. One could interpret that these states do not consider the measures binding.

119 IACHR Report No. 52/01, Case 12.243, *Juan Raul Garza v United States*, 4 April 2001.

120 Note 37 supra.

121 We do not particularly mention provisional measures in this point because its obligatory nature has not been an issue, as has happened with the Commissions' measures.

Sarayaku community was victim of this delay. The petitioners asked for precautionary measures for the first time in on May 5, 2003.[122] The State of Ecuador responded quite promptly on June 17th. Ecuador said they had sent the documents to the pertinent authorities, which does not necessarily mean that they effectively stopped the invasion of Sarayaku land and the threats to which they were subject. In fact, in August 2003, Ecuador sent a communication to the Commission stating that members of the Sarayaku community had threatened some people, due to the initiation of oil exploration in their land.[123] In October 2003, during the Commission's sessions Ecuador explained their military presence in the area as due to Colombian guerrilla problems. The dialogue with Ecuador continued, but petitioners had to finally ask for provisional measure in June 2004. As of that time, several members of the community had already been detained, threatened, and the explorations had begun.

In other cases, the compliance of the State has been null even after a judgment by the Court has been produced. This happened in the case of the Mayagna community who asked for provisional measures "with [the] aim of comprehensively maintaining the right of the Community to use and enjoy its lands and resources, as recognized by the judgment of the Court on the merits and reparations in the instant case."[124]

Conclusion

In the same way as interim measures once evolved towards protecting human rights, precautionary and provisional measures should evolve towards preventing violations of ESCR. The Inter-American Commission and the Court have started to adopt this approach slowly, but a time should come where petitioners do not have to invent new legal approaches to achieve their protection or where they have to determine what the system's agenda might be. The urgent protection of a human right should be enough to trigger the system and enough reason for States to provide an immediate protection.

[122] Note 68 supra, para. 2, numerals h, i, j.

[123] Ibid, para. 2, numeral k.

[124] Note 66, para.2.

Annex 1

Precautionary Measures HIV/AIDS

Inter-American Commission on Human Rights 2000-2005

Petitioner	Country	Year Granted	State Response	Admissibility
Jorge Odir Miranda Cortez and 26 other	El Salvador	2000	Yes	Yes
Juan Pablo Améstica Cáceres and 3 other	Chile	2001	Yes	N/A
52 persons*, including 2 minors	Bolivia	2002	Yes	N/A
1 person*	Colombia	2002	Yes	N/A
6 persons*	Ecuador	2002	Yes	N/A
11 persons*	Guatemala	2002	Yes	N/A
4 persons*	Honduras	2002	No	N/A
8 persons*	Nicaragua	2002	Yes	N/A
15 persons*	Peru	2002	Yes	N/A
10 persons*	Dominican Republic	2002	Yes	N/A

Source: Information was taken from the *Annual Reports of the Inter-American Commission on Human Rights*. www.cidh.oas.org.

N/A – In these cases no admissibility or inadmissibility report was found on the website.

* The Commission does not identify the petitioners.

Annex 2

Precautionary Measures
Protection of Health for Prison Interns

Inter-American Commission on Human Rights
2000-2005

Petitioner	Country	Year Granted	State Response	Admissibility
Jorge Luis García Pérez-Antúnez	Cuba	2001	Yes	Yes
Isabel Velarde Sánchez	Perú	2001	N/A	No
Anthony Mc Leod	Jamaica	2002	No	No
Wilson García Asto	Perú	2002	Yes	Yes
Mariano Bernal Fragoso	México	2003	Yes	No
Luis Miguel Sánchez Aldana	Suriname	2004	Yes	No

Source: Information was taken from the *Annual Reports of the Inter-American Commission on Human Rights*. www.cidh.oas.org.

N/A corresponds to the cases where information was not available on the website.

Bibliography

Books

Blaser, M. Feit H., McRae G., *In the Way of Development: Indigenous Peoples, Life Projects and Globalization,* Zed Books, 2004.

Davidson, S., *The Inter-American Human Rights System*, Aldershot, Darmouth Publishing, 1997.

Harris, D.J., Livingstone, S., *The Inter-American System of Human Rights*, Oxford, Clarendon Press, 1998.

Melish, Tamara, *Protecting Economic, Social, and Cultural Rights in the Inter-American Human Rights System: A Manual on Presenting Claims,* Orville H. Schell Jr. Center for International Human Rights, Yale Law School, 2002.

Pasqualucci, J.M., *The Practice and Procedure of the Inter-American Court of Human Rights*, Cambridge University Press, 2003.

Rosenne, Shabtai, *Provisional Measures in International Law: The International Court of Justice and the International Tribunal for the Law of the Sea*, Oxford University Press, 2005.

Articles

Cançado Trindade, A.A., "El nuevo reglamento de la Corte Interamericana de Derechos Humanos (2000): la emancipación del ser humano como sujeto del derecho internacional de los derechos humanos", *Revista del Instituto Interamericano de Derechos Humanos,* 2001, pgs. 45-71.

Courtis, Christian, "Luces y Sombras. La Exigibilidad de los Derechos Económicos, Sociales y Culturales en la Sentencia de los 'Cinco Pensionistas' de la Corte Interamericana de Derechos Humanos", *Revista Mexicana de Derecho Público,* Distribuciones Fontamara S.A., Mexico, pgs. 37-67.

Downing, Theodore, "An Overview of the International Finance Corporation Sponsored Participatory Evolution of a Pehueche Indigenous Foundation", 1996, http://www.ted-downing.com/Publications/E1/E1.htm

Higgins, R, "Interim Measures for the Protection of Human Rights", 36 *Columbia Journal of Transnational Law*, 1997, pgs. 91-108.

Pasqualucci, J.M., "Provisional Measures in the Inter-American Human Rights System: An Innovative Development in International Law", 26 *Vanderbilt Journal of Transnational Law*, 1993, pgs. 803-863.

UNDP, Regional Report on HIV/AIDS 2005: *Shifting Perspectives and Taking Action*.

Urquilla, Carlos Rafael, "Los Derechos Económicos, Sociales y Culturales en el Contexto de la Reforma al Sistema Interamericano de Protección de los Derechos Humanos", *Revista IIDH,* vol. 30-31, 1995.

International Human Rights Instruments

American Declaration of the Rights and Duties of Man, approved by the Ninth International Conference of American States, Bogotá, 1948.

American Convention on Human Rights adopted and opened for signature in San José, Costa Rica, November 22, 1969 and entered into force July 18, 1978, OEA/Ser.K/XVI/I.1, doc. 65 rev. 1 corr. 1 (1970).

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador", adopted at El Salvador in El Salvador, November 17, 1988.

Rules of Procedure of the Inter-American Commission on Human Rights, approved at its 109th special session held from December 4 to 8, 2000 and amended at its 116th regular period of sessions, held from October 7 to 25, 2002 and at its 118th regular period of sessions, held from October 6 to 25, 2003.

Rules of Procedure of the Inter-American Court of Human Rights, approved by the Court at its 49th regular session held from November 16 to 25, 2000.

Statute of the Inter-American Commission on Human Rights, approved by Resolution No. 447 by G.A. of the OAS, La Paz, Bolivia, October 1979.

Statute of the Inter-American Court of Human Rights, adopted by Resolution No. 448 by G.A. of the OAS at its Ninth Regular Session, La Paz, Bolivia, October 1979.

Internet

Center for Justice and International Law: www.cejil.org.

Inter-American Commission on Human Rights: www.cidh.oas.org.

Inter-American Court of Human Rights: www.corteidh.or.cr.

Office of the High Commissioner for Human Rights: www.unhchr.ch.

Organisation of American States: www.oas.org.

Pan American Health Organization: http://www.paho.org.

University of Minnesota Human Rights Library: www1.umn.edu/humanrts/index.html.

United Nations: http://www.un.org.

World Trade Organisation http://www.wto.org.