

**Order of the
Inter-American Court of Human Rights
of November 17, 2004
Provisional Measures regarding Guatemala
Case of Blake**

HAVING SEEN:

1. The August 16, 1995 Order of the President of the Inter-American Court of Human Rights (hereinafter "the President") in which he decided:

1. To request that the Government of the Republic of Guatemala adopt without delay any measures necessary to effectively ensure the protection and personal safety of: JUSTO VICTORIANO MARTÍNEZ-MORALES, FLORIDALMA ROSALINA LÓPEZ-MOLINA, VÍCTOR HANSEL MORALES-LÓPEZ, EDGAR IBAL MARTÍNEZ-LÓPEZ, and SYLVIA PATRICIA MARTÍNEZ-LÓPEZ.

2. To request that the Government of the Republic of Guatemala adopt any measures necessary so that the aforementioned persons may continue residing in their place of domicile and be guaranteed that no agents of the Guatemalan State nor other persons acting under the authority of the State shall persecute or threaten them.

[...]

2. The September 22, 1995 Order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), in which it decided:

1. To ratify the August 16, 1995 Order of the President and request that the Government of the Republic of Guatemala maintain provisional measures on behalf of: Justo Victoriano Martínez-Morales, Floridalma Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López, and Sylvia Patricia Martínez-López.

2. To require that the Government of the Republic of Guatemala inform the Court every three months of the provisional measures that have been taken.

3. To require that the Inter-American Commission on Human Rights transmit to the Court its observations on the reports of the Government of the Republic of Guatemala within the month following notification of said reports.

3. The April 18, 1997 Order of the Court, in which it decided:

1. To take note of the measures adopted by the State of Guatemala in compliance with the Order of the Court of September 22, 1995.

2. To call on the State of Guatemala to expand the measures adopted to provide them to Justo Victoriano Martínez-Morales, Floridalma Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López and Sylvia Patricia Martínez-López not only in their homes but outside of them.

4. The August 18, 2000 Order of the Court, in which it decided:

1. To request that the State of Guatemala maintain all the measures necessary to protect the lives and personal integrity of Justo Victoriano Martínez-Morales, Floridalma

Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López, and Sylvia Patricia Martínez-López.

2. To request that the State of Guatemala inform the Court on the measures adopted to investigate the threats against said persons, in conformity with the Secretariat's note in this respect, with the purpose of obtaining effective results that may lead to the identification of those responsible and their punishment.

3. To request that the State of Guatemala continue submitting its reports on the provisional measures adopted every six months, and that the Inter-American Commission on Human Rights submit its observations on said reports within six weeks of receiving them.

5. The June 2, 2001 Order of the Court, in which it decided:

1. To call on the State of Guatemala to maintain the necessary measures to protect the life and personal integrity of Justo Victoriano Martínez-Morales, Floridalma Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López and Sylvia Patricia Martínez-López.

2. To call on the State of Guatemala to inform the Court, by July 2, 2001, at the latest, about the measures adopted in the instant case; in particular, those that it has taken to investigate the threats experienced by these persons in order to obtain effective results that lead to the identification of those responsible and their punishment.

3. To instruct the Secretariat of the Court to transmit the State's report to the Inter-American Commission on Human Rights as soon as it has been received.

4. To request the Inter-American Commission on Human Rights to transmit its comments on the report mentioned in the previous operative paragraph to the Court, within one month of having been notified thereof.

5. To call on the State of Guatemala to continue submitting reports on the provisional measures adopted, every six months, and on the Inter-American Commission on Human Rights to submit its comments on these reports within six weeks of receiving them.

6. The June 6, 2003 Order of the Inter-American Court, in which it decided:

1. To lift and terminate the provisional measures adopted by the Inter-American Court of Human Rights in its Orders of September 22, 1995, April 18, 1997, August 18, 2000, and June 2, 2001, in favor of Justo Victoriano Martínez-Morales.

2. To call upon the State to maintain the necessary measures to protect the life and safety of Floridalma Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López and Sylvia Patricia Martínez-López.

3. To call upon the State to report to the Inter-American Court of Human Rights, within fifteen days of receiving notification of this Order, on the provisional measures it has adopted to comply with it.

4. To call upon the State to report to the Inter-American Court of Human Rights every three months regarding the adoption of the measures ordered by this Court, in order to protect the life and safety of the persons indicated in the second operative paragraph. Furthermore, to call upon the beneficiaries of the measures and on their representatives to submit their comments on these reports of the State within four weeks of receiving them, and upon the Inter-American Commission on Human Rights to present its comments within six weeks of receiving notification of the respective reports of the State.

[...]

7. The Judgments on the merits and on reparations issued by the Court on January 24, 1998 and January 22, 1999, respectively, in the instant case.

8. The January 6, 2004 report by the State of Guatemala (hereinafter "the State" or "Guatemala"), in which it pointed out that due to the complaint filed on September 4, 2004 by Víctor Hansel Morales-López, stating that he was "under surveillance from and threatened [by] groups called 'maras,'" it decided to "extend the security measures in his favor for a substantial time," but that on September 18, 2003 Mr. Morales-López had traveled to Houston, United States, to live and work in that city. For this reason, the State asserted that to date it had received no other reports of incidents suffered by the family of Justo Victoriano Martínez-Morales and it requested the total lifting of the provisional measures, "as there [we]re no longer reasons" to continue providing them.

9. The February 9, 2004 brief with comments by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), in which it pointed out that, according to information supplied by Floridalma López-Molina, her son Víctor Hansel Morales-López had returned to Guatemala on December 5, 2003. On the other hand, with respect to the State's request to lift the provisional measures, the Commission endorsed the concern expressed by the beneficiaries of those measures, who stated that they felt a "well-founded fear for their security due to completion of the prison sentence of Vicente Cifuentes-López, who was convicted by the Guatemalan judicial authorities as one of the persons responsible for the murder of Nicholas Chapman Blake in the trial during which Justo Victoriano Martínez-Morales rendered testimony and due to which he and his family received serious death threats. In this regard, the Commission asked the Court to extend the provisional measures for six months, during which the State must supply information on the legal situation of Vicente Cifuentes-López, so as to assess whether the conditions that gave rise to those measures still exist.

10. The April 26, 2004 report by the State, in which it asserted that the protection measures ordered by the Court in this case had not been interrupted. Also, regarding the legal situation of Vicente Cifuentes-López, the State reported that he was an inmate at the Granja Modelo de Rehabilitación Cantel penitentiary in Quetzaltenango, serving the incommutable 28 year prison term to which he was sentenced for the murder of Nicholas Chapman Blake, and that he must continue serving this prison sentence until March 11, 2025.

11. The July 1, 2004 brief with observations by the Inter-American Commission, in which it reported that Floridalma López and her children were in good conditions regarding security and were in agreement with the protection measures adopted by the State through the National Civil Police. In this regard, the Commission pointed out that given the effectiveness of said measures, it would be prudent for the State to continue them six months more.

12. The July 20, 2004 report by the State, in which it reported that on June 11, 2004 it summoned Víctor Hansel Morales-López, beneficiary of the provisional measures, to the seat of the Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos (COPREDEH) in the Department of Huehuetenango, to verify compliance with said measures, and he stated that the members of his family had suffered no personal security problems, threats or intimidation, and that the National Police continued to provide them with security measures, through the presence of "a member of this institution" twenty-four hours a day and by regular patrols in the vicinity of their house. In this regard, the State pointed out that the next of kin of Justo Victoriano Martínez, beneficiaries of the

measures, had not suffered threats or intimidation for several years, and that the problems that Víctor Hansel Martínez-López had complained about were totally separate from the facts that gave rise to these provisional measures. The State also asserted that during the period in which the measures had been in force there had been no real and eminent threat to the beneficiaries' lives and safety, and this had led to a change in their legal nature. Therefore, it requested that the provisional measures be lifted and that the file be shelved.

13. The October 15, 2004 note by the Secretariat of the Court (hereinafter "the Secretariat") in which it asked the State to submit its quarterly report on the provisional measures ordered by the Court. The November 4, 2004 note by the Secretariat, in which it repeated its request for the State to submit said report.

14. The November 4, 2004 notes by the Secretariat, in which, under instructions by the President, it asked the Commission and the representatives of the beneficiaries of the provisional measures to state their position regarding the State's request to lift the provisional measures.

15. The November 12, 2004 note by the Inter-American Commission, in which it stated that it received a letter from Florildama López de Martínez, in which she requested that the protection measures be extended six months more, since in September of this year "one of [her] sons received several threatening phone calls," for which reason the State must investigate the origin of those threats. The Commission also pointed out that it believes it prudent for the Court to extend the provisional measures six months more, during which time the State should report on the legal situation of Vicente Cifuentes-López, to assess whether the conditions that gave rise to these measures still exist. Finally, the Commission stated that the Court could order the gradual lifting of the measures in the course of six months, if the circumstances allow this, until the security measures are definitively lifted. For this, the Commission pointed out that the number of security agents in charge of the stationary security post could be reduced from two to one, in 24 hour shifts, for three months; second, the stationary security post could be changed to perimeter security with a mechanism to ensure the ability of the National Civil Police to react immediately if necessary, for three months more; and third, definitive lifting of the security measures.

WHEREAS:

1. Guatemala has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention") since May 25, 1978, and it accepted the adjudicatory jurisdiction of the Court on March 9, 1987.

2. Article 63(2) of the American Convention provides that in cases of "extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court may adopt such provisional measures as it deems pertinent in matters it has under consideration.

3. In its Orders of September 22, 1995, April 18, 1997, August 18, 2000, and June 2, 2001, the Court ordered the State to take such steps as might be necessary to ensure the lives and the right to humane treatment of Justo Victoriano Martínez-Morales and his next of kin, Floridalma Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López, and Sylvia Patricia Martínez-López (*supra* Having Seen 2, 3, 4 and 5).

4. In its June 6, 2003 Order, the Court ordered the lifting of the provisional measures issued in favor of Justo Victoriano Martínez-Morales and their continuation in favor of his next of kin Floridalma Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López, and Sylvia Patricia Martínez-López (*supra* Having Seen 6).

5. On January 6 and July 20, 2004 the State requested the lifting of the provisional measures ordered by the Court in favor of Floridalma Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López, and Sylvia Patricia Martínez-López, in view of the fact that they have not suffered threats or intimidation for several years, and that the problems stated by Víctor Hansel Martínez-López in his complaint are completely separate from the facts that gave rise to the provisional measures (*supra* Having Seen 8 and 12). The State also expressed that during the period in which the measures have been applied, "there has been no real and eminent danger to the beneficiaries' lives and safety, and this has led to a change in their legal nature" (*supra* Having Seen 12).

6. In its comments, the Commission deemed it prudent to maintain the provisional measures six months more, or for them to be gradually lifted, if possible (*supra* Having Seen 15).

7. The representatives of the beneficiaries of the provisional measures did not send their comments on the request to lift the provisional measures, even though they were asked to do so by this Court (*supra* Having Seen 14). The State, in turn, did not send the report that was requested (*supra* Having Seen 13). In this regard, information requested must be supplied within the terms set for this purpose for the Court to be able to assess it -together with the information provided by the State- and reach the appropriate decision on the provisional measures, bearing in mind the circumstances of the case.

8. Only the Court has competence to decide on continuation or lifting of the provisional measures. Therefore, the provisional measures ordered by the Court remain in full force and effect until the Court itself orders that they be lifted.

9. Article 1(1) of the Convention sets forth the general obligation of the States Parties to respect the rights and freedoms recognized in that treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

10. The State is providing protection measures to Floridalma Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López, and Sylvia Patricia Martínez-López, and these measures consist of providing a member of the National Police twenty-four hours a day and to regularly patrol the area near their house (*supra* Having Seen 12).

11. It is necessary to maintain, for a certain time, the provisional measures ordered in favor of Floridalma Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López and Sylvia Patricia Martínez-López, in compliance with the obligation of the State to effectively ensure protection of their lives and of their right to humane treatment, bearing in mind that there continues to be a situation in which these persons are at risk. At the appropriate time, the Court will assess said provisional measures taking into account the specifics of the instant case.

NOW THEREFORE:**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

exercising the authority granted by Articles 63(2) of the American Convention on Human Rights and 25 and 29 of its Rules of Procedure,

DECIDES:

1. To continue the provisional measures ordered by the Inter-American Court of Human Rights in its June 6, 2003 Order (*supra* Having Seen 6.2) for four months in favor of Floridalma Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López, and Sylvia Patricia Martínez-López. After this term expires, the Court will assess the need for said measures to remain in force, based on the situation of the protected persons.

2. To order the State to report to the Inter-American Court of Human Rights, within two months of when it receives notice of the instant Order, on the steps taken to protect the lives and the right to humane treatment of the beneficiaries of the provisional measures (*supra* Having Seen 6.2), and to call upon the representatives of said beneficiaries and on the Inter-American Commission on Human Rights to submit their comments on said report by the State within four and six weeks, respectively, of when they receive said report by the State.

3. To notify this Order to the State, to the Inter-American Commission on Human Rights, and to the representatives of the beneficiaries.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado-Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary