

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF AUGUST 19, 2013**

PROVISIONAL MEASURES WITH REGARD TO VENEZUELA

MATTER OF GUERRERO LAREZ

HAVING SEEN:

1. The Order issued by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) on November 17, 2009, in which the Court adopted provisional measures in this matter based on the *prima facie* assessment of a situation of extreme gravity and urgency in relation to the rights to life and personal integrity of Francisco Dionel Guerrero Larez owing to his alleged disappearance while in State custody and, in particular, decided, *inter alia*:

1. To require the State to adopt, immediately, all necessary measures to determine the situation and whereabouts of Francisco Dionel Guerrero Larez and to protection his life and personal integrity.

[...]

2. The Order issued by the Court on May 15, 2011, in which the Court referred to the implementation of the provisional measures in this matter and, in particular, decided, *inter alia*:

1. To reiterate that the State must adopt, immediately, all necessary measures to determine the situation and whereabouts of Francisco Dionel Guerrero Larez and to protection his life and personal integrity.

2. To reiterate that the State has the obligation to inform the Inter-American Court, specifically and in detail, about the implementation of the measures ordered.

3. To establish that the State must provide information to the Inter-American Court of Human Rights, by July 30, 2011, at the latest, in relation to the provisions of the first operative paragraph of this Order. Following the presentation of this report, the State must continue reporting to the Inter-American Court every two months on the measures adopted in favor of the beneficiary of the provisional measures ordered in this matter, and the representatives of the beneficiary and the Inter-American Commission on Human Rights must present their observations within four and six weeks, respectively of notification of these State reports.

[...]

3. The communication of August 3, 2011, in which the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") asked for a "prudential extension" in order to forward the report requested in the third operative paragraph of the Order issued by the Court on May 15, 2011 (*supra* having seen paragraph 2), and the note of the Secretariat of August 5, 2011, in which the extension requested by the State was granted until August 12, 2011.

4. The notes of the Secretariat of October 6 and December 19, 2011, and July 17, 2012, in which the State was reminded that, pursuant to the third operative paragraph of the Order issued by the Court on May 15, 2011 (*supra* having seen paragraph 2), and following the extension granted by the note of the Secretariat of August 5, 2011 (*supra* having seen paragraph 3), the State should have presented its report on the measures adopted in this matter by August 12, 2011, at the latest. Consequently, on the instructions of the President of the Court, the State was asked to forward the report as soon as possible.

5. The note of the Secretariat of December 19, 2011, in which the Court asked the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") to present a report on the procedural status of this matter being processed before the Commission, by January 20, 2012.

6. The communication of January 20, 2012, in which the Commission advised that, at that date, it "ha[d] not received an individual petition related to the matter in question."

7. The brief of August 22, 2012, in which the State presented a report on the implementation of the provisional measures ordered by the Court in this matter.

8. The briefs of September 24 and October 17, 2012, in which the representatives of the beneficiary (hereinafter "the representatives") and the Inter-American Commission, respectively, presented their observations on the State's report of August 22, 2012 (*supra* having seen paragraph 7).

9. The note of the Secretariat of May 7, 2013, in which it reminded the State that, in keeping with the third operative paragraph of the Order issued by the Court on May 15, 2011 (*supra* having seen paragraph 2), the State should report to the Inter-American Court every two months on the measures adopted in favor of the beneficiary of the provisional measures issued in this matter. Since the last State report was received by the Secretariat on August 22, 2012, on the instructions of the President of the Court, the State was requested to present a report on the measures adopted in this matter by May 31, 2013. At the time this Order is issued, this report had not been received.

10. The note of the Secretariat of July 30, 2013, in which the Court asked the Commission to advise whether it had received an individual petition related to the matter in question by August 6, 2013, and the communication of August 7, 2013, in which the Inter-American Commission advised that "to date, it ha[d] not received an individual petition."

CONSIDERING THAT:

1. Venezuela has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since August 9, 1977, and, pursuant to Article 62 of the Convention, accepted the contentious jurisdiction of the Court on June 24, 1981.

2. Article 63(2) of the American Convention stipulates 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. The provisions of Article 63(2) of the Convention signify that the provisional measures ordered by this Court are obligatory, because a basic principle of international law, supported by international case law, has indicated that State must comply with their treaty-based obligations in good faith (*pacta sunt servanda*).¹ These orders entail a special obligation of protection for the beneficiaries of the measures, while they are in force, and failure to comply with them may give rise to the international responsibility of the State.²

4. Article 63(2) of the Convention stipulates that three conditions must co-exist for the Court to be able to order the adoption of provisional measures: (i) “extreme gravity”; (ii) “urgency,” and (iii) that they are intended “to avoid irreparable damage to persons.” These three conditions must coexist and be present in any situation in which the Court’s intervention is requested. Thus, this Court recalls that the American Convention requires that, in order to adopt provisional measures, the gravity must be “extreme”; in other words, at its highest and most intense level. The urgent nature means that the risk or threat involved must be imminent, which also supposes that the response to remedy it is immediate. Lastly, with regard to the damage, there must be a reasonable probability that it will materialize, and it should not relate to legal rights or property that may be repaired. The Court recalls that, when ordering the measures of protection, the standard of assessment of the requirements by the Court or its President is *prima facie* and, at times, it is necessary to apply presumptions in view of the need for protection.³ Furthermore, these three conditions must persist for the Court to maintain the protection ordered. If one of them has ceased to be valid, the Court must assess the pertinence of continuing the protection ordered.⁴ Moreover, maintenance of the measures of protection requires the Court to make a more rigorous evaluation of the persistence of the situation that gave rise to them.⁵

5. These measures were ordered based on the *prima facie* assessment of a situation of extreme gravity and urgency in relation to the rights to life and to personal integrity of the beneficiary owing to his alleged disappearance while in the State’s custody. Thus, the events

¹ Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, sixth considering paragraph, and *Case of the Barrios Family*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of May 30, 2013, third considering paragraph.

² Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 20, 2002. Series C No. 94, paras. 196 to 200, and *Matter of certain Venezuelan Prisons, Penitentiary Center of the Central Occidental Region*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of February 13, 2013, second considering paragraph.

³ Cf. *Case of Raxcacó Reyes et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of August 30, 2004, tenth considering paragraph, and *Ávila Moreno et al. (Case of Operation Genesis)*. Request for provisional measures with regard to Colombia, Order of the Inter-American Court of Human Rights of May 30, 2013, eighth considering paragraph.

⁴ Cf. *Case of Carpio Nicolle*. Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, fourteenth considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Inter-American Court of Human Rights of May 22, 2013, third considering paragraph.

⁵ Cf. *Matter of the Kankuamo Indigenous People*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of April 3, 2009, seventh considering paragraph, and *Matter of Álvarez et al.* Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of May 22, 2013, forty-fourth considering paragraph.

that gave rise to these measures consist in the fact that Mr. Guerrero Larez, who was deprived of liberty in the Venezuelan General Penitentiary, has been disappeared since September 7, 2009, the date on which a family member spoke to him by telephone for the last time. That same day, another family member received a telephone call advising that Mr. Guerrero Larez had been deprived of his life in the Penitentiary. When ordering the State to adopt measures, it was also noted that the next of kin and their representatives had denounced the fact to different State authorities, including: (a) the National Prison Services Directorate; (b) the Minister of People's Power for Interior Relations and Justice; (c) the Sixth Criminal Trial Judge of the Metropolitan Area of Caracas; (d) the Prosecutor General; (e) the Director for Fundamental Rights of the Public Prosecution Service; (f) Regional Command No. 2 – Unit No. 28 – Second Company of the National Guard in San Juan de los Morros, and (g) the Office of the Ombudsman. Some of these authorities even came to the Penitentiary, met with the prison authorities, and reported on the uncertainty of what had happened to Mr. Guerrero Larez. Also, in view of the State's failure to respond to the urgent request for information sent by the Inter-American Commission, this Court considered that the said request had not produced the intended effect and that the situation of risk that had justified it persisted. Consequently, the Court considered that its intervention in this matter in order to avert the danger could not be delayed.

6. Subsequently, the Court recalled that whenever there are convincing reasons to suspect that a person has been subjected to disappearance, the prompt and immediate action of the judicial and prosecution authorities is essential, ordering opportune and necessary measures aimed at determining the whereabouts of the victim or the place where he may be deprived of liberty.⁶ Also, it emphasized that, in situations of deprivation of liberty such as those of this case, among the essential judicial guarantees, *habeas corpus* represented the appropriate means to determine the situation and whereabouts of Mr. Guerrero Larez, as well as to ensure respect for his life and to protect his personal integrity.⁷

7. In view of the fact that three year and nine months have elapsed since the adoption of the provisional measures in favor of the beneficiary, and based on the nature of the events that gave rise to their adoption, the Court finds it opportune to examine the status of the implementation of these measures in order to decide whether it is necessary to maintain them in force. In this regard, it is appropriate to recall that, owing to its competence, in the context of provisional measures the Court must only consider arguments that are strictly and directly related to the extreme gravity, urgency and need to avoid irreparable damage to persons.

8. Considering, also, that in this matter there is no related individual petition being processed before the Commission, as the Commission has advised (*supra* having seen paragraphs 6 and 10), the Court must ensure that the provisional measures are not distorted in the sense that they are being used to obtain what should be achieved by means of a contentious case.⁸ Therefore, the only admissible analysis is limited to the protective nature of these provisional measures, insofar as they seek to avoid irreparable damage to persons.⁹

⁶ Cf. *Matter of Guerrero Larez*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of May 15, 2010¹, eighth considering paragraph.

⁷ Cf. *Matter of Guerrero Larez*, *supra* note 6, eighth considering paragraph.

⁸ Cf. *Matter of Liliانا Ortega et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of July 9, 2009, fourth considering paragraph, and *Matter of Guerrero Gallucci*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 21, 2011, twenty-ninth considering paragraph.

⁹ Cf. *Case of the "La Nación" newspaper*. Provisional measures with regard to Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, fourth considering paragraph, and *Case of the Barrios Family*, *supra* note 1, second considering paragraph.

9. Following the Order of the Court (*supra* having seen paragraph 1), the State should have adopted, immediately, any necessary measures to determine the situation and whereabouts of Mr. Guerrero Larez and to protect his life and personal integrity. In this regard, the State advised that: (a) on February 25, 2010, an inspection was made of the Venezuelan General Penitentiary with the support of 15 members of the National Guard, four experts attached to the Scientific, Criminal and Criminalistics Investigations Unit, and two workers, who proceeded to excavate a hole of approximately 60 centimeters in the place indicated by the wife of inmate Guerrero Larez as the burial place, "without finding any evidence of criminalistics interest"; (b) on March 3, 2010, at the Prosecutor's request, the First Trial Court with Supervisory Powers of the Criminal Judicial Circuit of Guárico State issued an arrest warrant for the prisoner Guerrero Larez, "because the possibility has not been excluded that the said citizen is a fugitive from justice"; (c) the Administrative Service for Identification, Immigration and Alien's Affairs was asked to provide the possible migratory movements of Mr. Guerrero Larez; (d) it was agreed to continue the inspection on March 4, 2012; however, "it was not continued owing to the absence of support from the Bolivarian National Guard to provide security to the team appointed to enter the [Venezuelan General Penitentiary], even though this had been requested on several occasions by the Third Prosecutor, in response to which the Head of Unit No. 28 of the Bolivarian National Guard advised that, on the instructions of his superiors, the members of the said unit were prohibited from entering the prison, even for the roll-call and to count the prisoners"; (e) the Third Prosecutor of the Public Prosecution Service of the Judicial Circumscription of Guárico State is responsible for the investigation of two cases that have been joindered, one against Mr. Guerrero Larez for violating his sentence (evasion), and another in which he appears as a victim, initiated as a result of the complaint filed for his presumed death while serving his sentence in the Venezuelan General Penitentiary, and (f) the Office of the Delegate Ombudsman of Guárico State advised in April 2012, that, since February 25, 2012, the Third Prosecutor "had not taken any steps to look for the citizen who has disappeared." The State has not provided any further information.

10. The representatives reiterated the statements of the beneficiary's father and wife, who have contradicted some of the State's affirmations concerning the measures taken. They also emphasized that the State had not provided a "prompt and satisfactory answer" with regard to the location and whereabouts of Mr. Guerrero Larez, because it had failed to provide information on the results of the request made to the Administrative Service for Identification, Immigration and Alien's Affairs, while it ordered the arrest of Mr. Guerrero Larez, "knowing that he had not escaped from the prison." Consequently, they asked the Court that, when reiterating to the State that these measures remain in force, it "stress that the case does not refer to an "aggravated escape," as indicated in the State's report, but to a disappearance."

11. The Commission indicated that the information provided by the State reveals that none of the domestic proceedings have taken steps to try and find the whereabouts of the beneficiary immediately and by all available means. It also considered that "[t]he time that has passed without any measure being taken by the State, together with the failure to follow up on the measures initiated previously, clearly constitute non-compliance with the provisional measures ordered by the Inter-American Court." Lastly, it expressed its "profound concern for the situation of the beneficiary, whose fate or whereabouts have still not been determined by the State of Venezuela, even though he disappeared while in its custody and, consequently, the State occupied a special position as guarantor of his life and personal integrity."

12. In this regard, the Court finds it opportune to recall that a supposed absence of investigation by a State does not necessarily constitute, in itself, a circumstance of extreme

gravity and urgency that warrants maintaining the provisional measures,¹⁰ unless the lack of investigation is clearly connected to the extremely grave risk or threat to life and personal integrity. In sum, failure to comply with the obligation to investigate is not *per se* sufficient reason to maintain the provisional measures.¹¹ In this regard, the Court observes that, when adopting these provisional measures, several complaints had been filed before different State authorities and that some of these authorities had gone to the Penitentiary and had met with the prison authorities, confirming the situation of uncertainty about what happened to Mr. Guerrero Larez.¹² Also, when maintaining the measures in force in 2011, the absence of progress in the investigation, and the absence of information on the whereabouts of Mr. Guerrero Larez led to the presumption that he was in grave danger of having his rights to life and personal integrity violated.¹³

13. As Mr. Guerrero Larez is still disappeared, the grave risk to his life and integrity continues. However, the passage of time in this matter and the lack of progress in the investigations directly affect the practical effects of these provisional measures, whose basic purpose was to avoid irreparable damage to the life and integrity of Mr. Guerrero Larez by the prompt action of the national authorities to discover his whereabouts. Even though these measures have been in force for three years and nine months, the Court still has no information on specific progress or results that would allow it to determine clearly what happened to Mr. Guerrero Larez or his whereabouts, so that the protection that it was hoped they would provide has been ineffective. Consequently, owing to the particular circumstances of this matter, and taking into account that provisional measures are exceptional in nature and relate to a specific temporary situation so that, given their characteristics they cannot be perpetuated indefinitely,¹⁴ the Court must order that they be lifted and that the possible violations of the American Convention derived from what happened to Mr. Guerrero Larez be examined by means of a contentious case, if the necessary presumptions exist, and not in the context of the provisional measures.¹⁵

14. In addition, it is opportune to recall that the Court has indicated that, regardless of the existence of specific provisional measures, the State has a special obligation to ensure the rights of those deprived of their liberty,¹⁶ because the State is in a special position of guarantor

¹⁰ Cf. *Case of Carpio Nicolle et al.*, *supra* note 4, twenty-fourth considering paragraph, and *Matter of Álvarez et al.*, *supra* note 5, one hundred and third considering paragraph.

¹¹ Cf. *Case of Carpio Nicolle et al.*, *supra* note 4, twenty-fourth considering paragraph, and *Matter of Álvarez et al.*, *supra* note 5, one hundred and third considering paragraph.

¹² Cf. *Matter of Guerrero Larez*, Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, eleventh considering paragraph.

¹³ Cf. *Matter of Guerrero Larez*, *supra* note 6, ninth considering paragraph.

¹⁴ Cf. *Matter of the Communities of the Jiguamiandó and of the Curbaradó*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of August 30, 2010, seventieth considering paragraph, and *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic*. Provisional measures with regard to Dominican Republic. Order of the Inter-American Court of Human Rights of February 29, 2012, forty-eighth considering paragraph.

¹⁵ Cf. *Matter of Children and Adolescents deprived of liberty in the "Tatuapé Complex" of the CASA Foundation*. Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of July 3, 2007, seventeenth considering paragraph and *Matter of the Peace Community of San José de Apartadó*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of August 30, 2010, twenty-ninth considering paragraph.

¹⁶ Cf. *Matter of the Mendoza Prisons*. Provisional measures with regard to Argentina. Order of the President of the Inter-American Court of Human Rights of August 22, 2007, sixteenth considering paragraph, and *Matter of the Socio-educational Internment Facility*. Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of November 20, 2012, twenty-first considering paragraph.

with regard to them or to those who are in a situation of risk, and to expedite the investigations required to clarify the facts and to punish those responsible, as appropriate.¹⁷ Indeed, Article 1(1) of the Convention establishes the general obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure to all those subject to their jurisdiction, the free and full exercise of those rights and freedoms, and this is required not only with regard to the powers of the State, but also in relation to the actions of private third parties.¹⁸

15. Also, the State had the obligation to present its bi-monthly reports on the implementation of the provisional measures within the time frame and with the frequency indicated by the Court.¹⁹ However, since these provisional measures were ordered, the State has only submitted three of the 23 reports it should have presented, so that the State has not complied with its obligation to provide information duly and promptly. The Court has established that failure to comply with the State obligation to provide information on all the provisional measures adopted in compliance with the Court's decisions is especially serious, in view of the juridical nature of these measures, which seek to prevent irreparable damage to persons in situations of extreme gravity and urgency.²⁰

16. Lastly, the Court recalls that the adoption, lifting, or declaration of non-compliance with the provisional measures does not imply an eventual decision on the merits of the dispute if the case should, ultimately, be submitted to the consideration of the Court, nor does it prejudice the State's responsibility for the facts denounced.²¹

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its attributes under Articles 63(2) of the American Convention on Human Rights and 27 and 31(2) of the Rules of Procedure of the Court,²²

DECIDES:

¹⁷ Cf. *Case of Carpio Nicolle et al.*, *supra* note 4, twenty-fourth considering paragraph, and *Matter of Álvarez et al.*, *supra* note 5, one hundred and fourth considering paragraph.

¹⁸ Cf. *Matter of the Peace Community of San José de Apartadó*. Provisional measures with regard to Colombia. Order of the Court of June 18, 2002, eleventh considering paragraph, and *Matter of the Socio-educational Internment Facility*, *supra* note 17, twenty-first considering paragraph.

¹⁹ Cf. *Matter of Lilliana Ortega et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of December 2, 2003, twelfth considering paragraph, and *Matter of Natera Balboa*, *supra* note 10, eleventh considering paragraph.

²⁰ Cf. *Case of the Urso Branco Prison*. Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of July 7, 2004, sixteenth considering paragraph, and *Matter of Alvarado Reyes*. Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of November 23, 2012, twenty-fourth considering paragraph.

²¹ Cf., *mutatis mutandi*, *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the President of the Inter-American Court of Human Rights of July 13, 1998, sixth considering paragraph; *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic*. Provisional measures with regard to Dominican Republic. Order of the Inter-American Court of Human Rights of September 7, 2012, forty-third considering paragraph, and *Case of the Barrios Family*, *supra* note 1, sixteenth considering paragraph.

²² The Court's Rules of Procedure approved at its eighty-fifth regular session held from November 16 to 28 2009.

1. To deplore the fact that the State has not complied with these provisional measures that were adopted to determine the situation and whereabouts of Francisco Dionel Guerrero Larez and to protect his life and personal integrity.
2. To lift the provisional measures required by the Inter-American Court of Human Rights in its Orders of February November 17, 2009 and May 15, 2011, without prejudice to the subsistence of the general obligations that correspond to the State under Article 1(1) of the American Convention on Human Rights.
3. To require the Secretariat of the Court to notify this Order to the Bolivarian Republic of Venezuela, the Inter-American Commission on Human Rights, and the representatives of the beneficiary.
4. To archive the file of this matter.

Diego García-Sayán
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto de F. Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary