

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF FEBRUARY 2, 2006**

**PROVISIONAL MEASURES ADOPTED BY THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
REGARDING THE DOMINICAN REPUBLIC**

**MATTER OF HAITIANS AND DOMINICANS OF HAITIAN-ORIGIN IN THE
DOMINICAN REPUBLIC**

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal") of August 18, 2000, wherein it was decided:

1. To require that the State of the Dominican Republic adopt, forthwith, whatever measures are necessary to protect the lives and personal integrity of Benito Tide-Méndez, Antonio Sension, Andrea Alezy, Janty Fils-Aime, and William Medina-Ferreras.
2. To require that the Inter-American Commission on Human Rights urgently report in detail to the Inter-American Court of Human Rights, no later than August 31, 2000, about the current situation of Rafaelito Pérez-Charles and Berson Gelim, in relationship to diverging affirmations of the parties on these two persons.
3. To require that the State of the Dominican Republic abstain from deporting or expelling Benito Tide-Méndez and Antonio Sension from its territory.
4. To require that the State of the Dominican Republic permit the immediate return to its territory of Janty Fils-Aime and William Medina-Ferreras.
5. To require that the State of the Dominican Republic permit, within the shortest possible time, the family reunification of Antonio Sension and Andrea Alezy with their minor children in the Dominican Republic.
6. To require that the State of the Dominican Republic collaborate with Antonio Sension to obtain information on the whereabouts of his next of kin either in Haiti or in the Dominican Republic.
7. To require that the State of the Dominican Republic, within the framework of the pertinent cooperation agreements between the Dominican Republic and Haiti, investigate the situation of Janty Fils-Aime and William Medina-Ferreras, under

* Judge Diego García-Sayán informed the Court that, by reason of *force majeure*, he was unable to attend the deliberation and signing of this Order.

the supervision of the Inter-American Commission on Human Rights, to expedite the results of such investigations.

8. To require that the State of the Dominican Republic continue to follow up the investigations that its competent authorities have already initiated concerning Benito Tide-Méndez, Rafaelito Pérez-Charles, Antonio Sension, Andrea Alezy, and Berson Gelim.
9. To require that the State of the Dominican Republic adopt, forthwith, whatever measures are necessary to protect the lives and personal integrity of Father Pedro Ruquoy and Ms. Solange Pierre^[1], witnesses at the August 8, 2000, public hearing.
10. To require that the State of the Dominican Republic and the Inter-American Commission on Human Rights provide to the Inter-American Court of Human Rights detailed information on the situation of members of the border communities or "bateyes" who could be subject to forced repatriations, deportations or expulsions.

[...]

2. The Order of the Inter-American Court of November 12, 2000, wherein it was decided:

1. To ratify the Decision of the President of the Inter-American Court of Human Rights of September 14, 2000 and, therefore, to require the State of the Dominican Republic to adopt, forthwith, the necessary measures to protect the life and personal integrity of Rafaelito Pérez Charles and Berson Gelim.
2. To require the State of the Dominican Republic to refrain from deporting or expelling Rafaelito Pérez Charles from its territory.
3. To require the State of the Dominican Republic to allow the immediate return of Berson Gelim to its territory, even making it possible for him to meet with his son.
4. To require the State of the Dominican Republic to continue the follow up of the investigations that were already initiated by the competent authorities with respect to Rafaelito Pérez Charles and Berson Gelim.
5. To require the State of the Dominican Republic, in its reports on the provisional measures ordered by the Inter-American Court of Human Rights on August 18, 2000, to also report on the urgent measures it has adopted in compliance with this Decision,
6. To require the Inter-American Commission on Human Rights to submit remarks to the report of the State of the Dominican Republic within a period of six weeks after being received.

[...]

3. The Order of the Court of May 26, 2001, wherein it was decided:

1. To request the State of the Dominican Republic to maintain the measures ordered by the Inter-American Court of Human Rights in its orders of August 18 and November 12, 2000, in favor of Benito Tide Méndez, Antonio Sension, Andrea Alezy, Janty Fils-Aime,

¹ For the purposes of this Order, the names "Solain Pie or Solain Pierre or Solange Pierre" will be used to identify said person, who initially appeared as a witness in the hearing on these provisional measures and is currently a beneficiary thereof. We wish to note that in the text of other Orders of the President and the Court cited herein, the body of evidence and the briefs of the parties, she appears either as Solain Pie or Solain Pierre or Solange Pierre or Solain Pie de Dandre or Sonia Pierre, and it is understood that these names refer to the same person.

William Medina Ferreras, Rafaelito Pérez Charles, Berson Gelim, Father Pedro Ruquoy and Solange Pierre[;]

2. To request the State of the Dominican Republic to submit detailed information on the status of the provisional measures and the situation of all the protected persons, by June 11, 2001, at the latest; and the Inter-American Commission on Human Rights to submit its comments on said report within 15 days of its receipt[;]

3. To request the State of the Dominican Republic, in compliance with the orders of the Inter-American Court of Human Rights of August 18 and November 12, 2000:
 - a. to refrain from deporting or expelling Benito Tide Méndez, Antonio Sension and Rafaelito Pérez Charles from its territory;
 - b. to allow the immediate return to its territory of Janty Fils-Aime, William Medina Ferreras and Berson Gelim;
 - c. to allow the family reunification of Antonio Sension, Andrea Alezy and Berson Gelim with their under-age children in the Dominican Republic, as soon as possible;
 - d. to collaborate with Antonio Sension in obtaining information about the whereabouts of his next of kin in Haiti or in the Dominican Republic; and
 - e. to adopt special measures to protect the life and physical integrity of Father Pedro Ruquoy and Solange Pierre, witnesses at the public hearing on August 8, 2000.

4. To request the State of the Dominican Republic:
 - a. to notify the competent authorities in writing that Benito Tide Méndez, Antonio Sension, Rafaelito Pérez Charles, Janty Fils-Aime, William Medina Ferreras and Berson Gelim are beneficiaries of provisional measures of protection ordered by the Inter-American Court of Human Rights to prevent them from being deported or expelled from the Dominican Republic;
 - b. to grant Benito Tide Méndez, Antonio Sension, Rafaelito Pérez Charles, Janty Fils-Aime, William Medina Ferreras and Berson Gelim identification documents indicating that they are beneficiaries of provisional measures of protection ordered by the Inter-American Court of Human Rights to prevent them from being deported or expelled from the Dominican Republic; and
 - c. to continue following up on the investigations that have already been initiated by the competent authorities with regard to the persons protected by these provisional measures[;]

5. To request the State of the Dominican Republic and the Inter-American Commission on Human Rights to take the necessary steps to create appropriate mechanisms to coordinate and monitor the above-mentioned measures by June 28, 2001, at the latest.

[...]

4. The briefs submitted by the Dominican Republic (hereinafter "Dominican Republic" or "the State") on June 26, August 29, October 26 and November 7, 2001; January 16, April 30, July 2, September 6 and November 26, 2002; January 25, March 27, May 27, August 1, October 13 and December 17, 2003; March 1, May 28, August 13, October 4 and 27, 2004, and January 10, April 22, July 6, August 8 and September 5, 2005, wherein, *inter alia*, it stated that:

- a) Ms. Solain Pie or Solain Pierre or Solange Pierre "has not accepted the protection provided by the Dominican [State] [but] has always declined it"; on the other hand, Father Pedro Ruquoy "is under police protection", and both of the aforementioned beneficiaries "perform their activities in a normal fashion";

b) beneficiaries "have not responded to the [State's] call to contact relevant authorities", which precludes "proper fulfillment" of the Court's orders by the Dominican Republic. It requested the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") to extend its good offices and call upon the representatives of the beneficiaries of the provisional measures² (hereinafter "the representatives") to collaborate with the State by furnishing information to locate the beneficiaries of the provisional measures, "making them appear before the [Dominican] authorities";

c) the State and "the [*Red de Encuentro Dominico-Haitiano* (Dominican-Haitian Meeting Network)] Jacques Viou, representative of the [beneficiaries], signed a collaboration agreement [on January 23, 2001] to enable the [State] to ascertain the true situation of the [beneficiaries] and comply with the mandate of the [...] Court";

d) on March 19, 2002, at the seat of the State Secretariat of Foreign Relations, in the presence of members of the Inter-American Commission and representatives of the beneficiaries, a Memorandum of Understanding was drawn up with a view to creating a coordination and supervision mechanism of provisional measures. On July 2, 2002, the State informed that the *Comité de Impulso* (Committee for the Implementation of Provisional Measures), created under the aforementioned Memorandum of Understanding, was the subject of a constitutional motion filed by a group of lawyers and representatives of the civil society before the Supreme Court of Justice of the Dominican Republic;

e) "it notifi[ed] competent authorities that Messrs. Benito Tide-Méndez, Rafael[ito] Pérez-Charles, Antonio Sension, Andrea Alezy, Janty Fils-Aime, William Medina-Ferreras and Berson Gelim, are under special protection", in compliance with the orders of the Court;

f) on March 18, 2002, it supplied safe-conducts to Messrs. Antonio Sesion and Benito Tide-Méndez, and on March 19, 2002, to Mr. William Medina-Ferrera and his family, Mr. Janty Fils-Aime and his family, and Mr. Berson Gelim and his family;

g) on August 12, 2002, it supplied safe-conducts to Mss. Ana Virgil, Reyita Antonia and Ana Lidia Sension, Mr. Antonio Sesion's next of kin, and to other six people, who are not beneficiaries of these measures;

h) the safe-conducts were granted so that beneficiaries could clarify and regularize their migratory situation, and the time elapsed between the date when the documents were granted "and [December 16, 2003] is enough for them to have regularized their migratory *status*". In this respect, it is

² It is worth mentioning that in the initial processing of these provisional measures, pursuant to the Rules of Procedure of the Court in force as of November 24, 2000, only the State and the Commission intervened. Those Rules were reformed by Order of the Court of November 25, 2003, and Article 25(6) thereof provided that beneficiaries of provisional measures "may address their comments on the report made by the State directly to the Court". Hence, the representatives submitted their first comments on the report made by the State on April 20, 2004. From that date onwards, the representatives have continued to submit the corresponding comments.

necessary to obtain "detailed information on the activities of each beneficiary [...] in relation to their actions [to] solve their migratory situation and their claims before Courts". Safe-conducts "are not identity cards or passports [but] provisional documents granted, in this case, in favor of the beneficiaries [...], whose sole aim is to allow free national transit, without any risk whatsoever;

i) these measures are related to the "situation of clandestinity, illegality and lack of documents caused by the beneficiaries of the Provisional Measures themselves and not by the State", such a situation "must be solved [...] by Dominican authorities and, subsidiarily, by the Court";

j) time "has proved that [the] situation of extreme gravity and urgency denounced by the Commission did not correspond to the actual situation". When the Commission requested the measures it did not "investigate the truthfulness of [the] complaint filed by the [beneficiaries]". "Case [No.] 12,271, [pending before the Commission,] refers to certain persons, it individualizes them, it is not a 'class action'";

k) "if [beneficiaries] and their representatives wish to file a claim or complaint, they should do so, once and for all, before the Courts of Justice of the Dominican Republic";

l) it submitted a report, prepared by the *Consejo Estatal del Azúcar* (State Sugar Council), on the living conditions at the bateyes, and afterwards, "call[ed] upon relevant authorities to conduct a study on the bateyes and the different initiatives undertaken by the Dominican Republic to improve the living conditions of [their] inhabitants", and

m) "it has properly complied with each and every one of the provisional measures ordered by [the] Court", and the safe-conducts granted to the beneficiaries and their next of kin are fully in force.

5. The briefs submitted by the Inter-American Commission on June 29, July 16, October 17 and December 14, 2001; April 12, June 25, August 22 and October 28, 2002; January 7, March 5, May 20, July 10, September 15 and November 21, 2003; January 28, April 26, July 19, October 8 and December 13, 2004, and March 10, June 28, August 19 and September 29, 2005, wherein it stated, *inter alia*, that:

a) the State continues to refer to admissibility criteria and to the merits of the case, which are the subject of a possible contentious case, when, in fact, the petition that prompted these measures is not pending before the Court;

b) Ms. Solain Pie or Solain Pierre or Solange Pierre and Father Pedro Ruquoy are still at risk, "by reason of their participation in the [public] hearing [held on August 8, 2000] before the Inter-American Court", which has fostered a situation in which they continue to "be the target of threats and attacks". Ms. Solain Pie or Solain Pierre or Solange Pierre has been "receiving daily telephone threats, and [...] April 9 [, 2000] she received a telephone call warning her 'that people who do not speak so much last longer'". It pointed out that representatives have expressed that the situation of both of the aforementioned beneficiaries has worsened, and also mentioned that the threat against Ms. Solain Pie or Solain Pierre or Solange Pierre has been extended to

her children, through a telephone call and the presence of people who allegedly follow and control them;

c) “[Beneficiaries] Benito Tide-Méndez and Rafaelito Pérez-Charles [have lived] in constant fear of being expelled from the Dominican Republic again [and of suffering] the same misfortunes to which the [State] had already subjected them”. In like manner, “petitioner [Antonio] [S]ension, whose wife and children were illegally expelled to Haiti by the [State], fear[ed] being subjected to [...] similar circumstance[s]”. Mr. Berson Gelim was reunited with his son William Gelim;

d) by October 2001, Ms. Andrea Alezy was suffering from “psychological problems”, due to which she has had to “spend whole seasons at her sister’s house, in Belle-Anse, Haiti”;

e) by April 12, 2002, the following persons had received special safe-conducts: Antonio Sension; Benito Tide-Méndez; William Medina-Ferreras, his partner, Lilia Jean Pierre, and his three children Wilda, Luis Ney and Carolina Isabel; Janty Fils-Aime, his partner, Janise Midi, and his children, Diane, Antonio, Endry and Juan, and Berson Gelim and his son William;

f) on July 23, 2002, Mr. Antonio Sesion reunited with his wife, Ana Virgil, and his two daughters, Ana Lidia and Reyita Antonia, after eight years without seeing them, as a result of his alleged expulsion to Haiti in 1994. On August 12, 2002, the four members of the family appeared before the General Directorate of Migration in Santo Domingo, and received their safe-conducts;

g) the State must oversee that adopted measures remain in force, and take, forthwith, such steps as may be necessary to ensure their efficacy, particularly regarding the safe-conducts granted in favor of the beneficiaries and their next of kin, as well as the safety and integrity of the beneficiaries, their next of kin and the protected witnesses. In this respect, it pointed out that although the safe-conducts are of a temporary nature, they will remain in force until the Court renders a decision on the merits and only this instance is empowered to declare them no longer valid, as is evident from the text of said documents, to wit, that the holder is “[a]uthorized to freely transit and work in the territory of the Dominican Republic until the Inter-American Court [...] decides case 12,271”;

h) the *Red de Encuentro Dominico-Haitiano* (Dominican-Haitian Meeting Network) Jacques Viou “does not appear as a petitioner in the case and, therefore, [...] the meetings between the [Dominican-Haitian Meeting Network] Jacques Viou and the State cannot be [considered] mechanisms to comply” with the measures;

i) progress was made in the implementation of the measures, for instance, by supplying the safe-conducts to the seven families of the beneficiaries between March and August 2002, and by signing the Memorandum of Understanding on March 19, 2002, under which the Committee for the Implementation of Provisional Measures was created to supervise compliance with provisional measures. However, it subsequently asserted that the aforementioned “Memorandum of Understanding [...] was declared

unconstitutional" and that it lacked "further information on the issue or [on] other initiatives aimed at effectively taking over the supervision of the fulfillment of the adopted measures". In this respect, it stated that active and direct participation of the beneficiaries is indispensable when planning and implementing the measures intended to protect them;

j) the argument of the State that lack of communication with the beneficiaries precludes full compliance with the adopted measures is unfounded, since most of the measures can be implemented without direct communication between the State and the beneficiaries. It pointed out, according to the information provided by the representatives, that Messrs. William Medina-Ferreras, Jeanty Fils-Aimé, Berson Gelin and, in particular, Rafaelito Pérez-Charles and Benito Tide Méndez, are unwilling to maintain a direct relationship with state officials by reason of the ill-treatment they received at the hands of state agents, and that the beneficiaries had stated that "they [would] not appear before Dominican authorities unless there first existed such conditions and guarantees as necessary to fully safeguard their rights to life, personal integrity and safety, liberty and dignity, as well as their right not to be expelled until the main case is decided";

k) it is important for the State to continue overseeing the full effectiveness and efficacy of the safe-conducts, which are the only means to assure the beneficiaries that they will not be expelled from the Dominican Republic;

l) the State "keeps failing to submit information about the reports on the implementation of the provisional measures", and

m) it is awaiting the information that the State "pledged" to provide regarding the situation of members of bordering communities or bateyes who may be the target of forced repatriations, deportations or expulsions. It noted "that the State has launched some projects in the health sector [at the bateyes] which seem to be positive initiatives". Nonetheless, "it reiterat[ed] the need for the State to provide the [...] Court with detailed and specific information related to 'the situation of members of bordering communities or *bateyes* who may be the target of forced repatriations, deportations or expulsions', pursuant to the Court's order".

6. The briefs of the representatives forwarded on April 20, June 30, September 23 and November 30, 2004; February 24, June 10, August 3, September 15 and 26, 2005, wherein they expressed, *inter alia*, that:

a) "the situation of risk and urgency as regards the beneficiaries of the measures prevails";

b) the State "[has] not furnish[ed] detailed information on the degree of compliance with each of the provisional measures ordered by [the Court,] nor on the situation of all the protected persons";

c) the migratory status of the beneficiaries bears no relationship to the implementation of the provisional measures ordered by the Court; therefore, the State's comments that beneficiaries have not taken the necessary steps to clarify and regularize their migratory condition do not apply in respect of said

measures. The State's confusion "over the nature of provisional measures, and the difference between these proceedings and those related to the filing of petitions before the Inter-American Commission" impacts on the effective fulfillment of these provisional measures;

d) "the safe-conducts will remain in force until the Court renders a decision on the merits and only this instance is empowered to declare them no longer valid";

e) the physical and personal integrity of Father Pedro Ruquoy is still in peril, as shown by the statements of an "army colonel [,who] purportedly threatened to kill Father Ruquoy";

f) Ms. Solain Pie or Solain Pierre or Solange Pierre has recently faced threats and harassment, including threat phone calls making reference to her children, in respect of whom it is suspected that they are being controlled by strangers. Hence, they requested the Court to extend the provisional measures to those persons and to call upon the State to refrain from deporting or expelling them from the Dominican Republic;

g) the lack of information on the investigations into the facts that prompted the adoption of the provisional measures regarding Messrs. Benito Tide-Méndez, Rafaelito Pérez-Charles, Antonio Sension and Berson Gelim and Ms. Andrea Alezy, prevents the Court from assessing the degree of compliance with the measures;

h) on other occasions, the Court has ordered provisional measures based on the principle that "the members of a community at risk are at a similar risk [by reason of] their condition of individuals [that belong to] said community". The beneficiaries of these measures are at a serious and imminent risk of being expelled, inasmuch as they are members of Haitian and Dominican-Haitian communities, which are allegedly subjected to mass and regular expulsions;

i) "the few reports submitted by the [State]" regarding the situation at the bateyes provide no "details pertaining to their characteristics nor to the expulsion operations carried out in these communities", and

j) on August 10, 2005, the Supreme Court of Justice of the Dominican Republic rendered a judgment declaring the Memorandum of Understanding unconstitutional, thus eliminating the mechanism that had been created to coordinate and supervise the provisional measures ordered by the Court; and the State has not fostered conditions for said mechanism to be re-established. In this respect, they remarked that "active participation of the [beneficiaries] is an indispensable element for the operation of any supervision and implementation mechanism, in accordance with the Court's precedents on provisional measures".

7. The Order of the President of the Inter-American Court (hereinafter "the President") of October 5, 2005, whereby he decided:

1. To call upon the State of the Dominican Republic to maintain the provisional measures ordered by the Inter-American Court of Human Rights on August 18, 2000, November 12, 2000 and May 26, 2001.

2. To call upon the State of the Dominican Republic to adopt, forthwith, such steps as may be necessary to protect the rights to life and personal integrity of Ms. Solain Pierre's four children.

3. To call upon the State of the Dominican Republic to refrain from arbitrarily deporting or expelling Ms. Solain Pierre's four children from its territory.

4. To call upon the State of the Dominican Republic to treat the names of Ms. Solain Pierre's children in a confidential fashion.

5. To call upon the State of the Dominican Republic to investigate the facts that prompted the adoption of these urgent measures, and, if appropriate, to identify those responsible and impose the corresponding punishment on them.

6. To call upon the State of the Dominican Republic to perform all relevant actions so that the measures of protection ordered herein are planned and implemented with the participation of the beneficiaries thereof or their representatives, in such a manner that the aforementioned measures are diligently and effectively executed and that, in general, they are permanently informed about any progress made in said execution.

[...]

8. The briefs of the State forwarded on October 18 and November 29, 2005, wherein, besides reiterating some of the aforementioned statements, it pointed out, *inter alia*, that:

a) it does not object to the participation of beneficiaries in the planning or implementation of the measures; however, as to the participation of representatives, "it considers it an attack against its sovereignty";

b) with respect to the destruction of Berson Gelim's and Janty Fils-Aime's safe-conducts, it affirmed that they will be re-issued and that it will inform the Court about the outcome of the investigation into the relevant facts. It pointed out that communication between parties and authorities is necessary and that authorities are open to discuss and solve any setback that may endanger the efficacy of the safe-conducts;

c) it has been more than three years since the beneficiaries of the safe-conducts last contacted state authorities, and the Commission and the representatives did not denounce any violation against their human rights until October 31, 2005. It reiterated that it has complied with the provisional measures for more than four years, as well as its willingness to keep complying with them;

d) Ms. Solain Pie or Solain Pierre or Solange Pierre should file "a formal and serious complaint, with the names of claimants, defendants and the witnesses they claim to know" regarding the alleged facts against her, and

e) "it is issuing relevant instructions for [the measures adopted by the President of the Court in his Order of October 5, 2005] to be effective".

9. The briefs of the Commission submitted on November 2, 2005 and January 13, 2006, wherein it stated, *inter alia*, that:

a) the State should submit specific information about the representatives' allegation that "Mr. [Berson] Gelim's safe-conduct was destroyed and Mr. Gelim was sent to Haiti where he had to stay until he was allowed to return to the Dominican Republic thanks to the intercession of a Human Rights NGO, and that Mr. [Janty] Fils-Aime presumably faced a similar situation";

b) it is disturbing "that the State expressed [...] the need for Ms. [Solain Pie or Solain Pierre or Solange Pierre] to file a 'formal and serious' complaint for it to begin its investigations". Although beneficiaries are called to collaborate with the elucidation of the facts, "in no case should [they] be charged with the responsibility of the commencement or efficacy of the investigation that [the State] should foster" and "the proceedings before the Court constitute sufficient grounds to begin the corresponding investigations";

c) the State must oversee the effective implementation of the measures of protection in favor of Ms. Solain Pie or Solain Pierre or Solange Pierre's children, who, out of fear of the threats they received, are out of their country, and must "remove any obstacles that may hinder the implementation of their protection";

d) it is disturbing that fear for Father Pedro Ruquoy's life resulted in his leaving the country, after 30 years of residing there, mainly in light of the threats he received recently;

e) it is necessary for the State to oversee the effective implementation of the measures ordered in this case and to submit "specific, accurate, up-to-date and detailed [information] pertaining to its duty to protect Ms. [Solain Pie or Solain Pierre or Solange Pierre's] children, as well as to the matter giving rise to and effectiveness to the protection requested for all beneficiaries";

f) the State must be called upon to adopt, forthwith, such steps as may be necessary to ensure the efficacy of the measures. In particular, it requested that the State should restore the safe-conducts to those who had them destroyed, considering the vulnerability they face for not having said documents;

g) it is necessary for the State to "submit information about whatever investigations it conducts and the implementation of the provisional measures, in light of persistent public information on mass deportations or 'repatriation' processes of people of Haitian origin or descent", and

h) "it insists on the fact that the requirement to create an adequate mechanism to coordinate and supervise the measures [so that they are planned and implemented with the participation of beneficiaries or their representatives] remains unfulfilled".

10. The briefs of the representatives forwarded on October 25, November 4 and December 16, 2005, wherein they stated, *inter alia*, that:

a) they acknowledge that safe-conducts were given to the persons mentioned by the State in its report;

b) it is disturbing that the State has not reported on the measures adopted to comply with the Order of the President of October 5, 2005, inasmuch as the insecure situation faced by Ms. Solain Pie or Solain Pierre or Solange Pierre's children has worsened, threats received through phone calls have increased and their content is increasingly aggressive. Ms. Solain Pierre is currently out of the country with her children, and took said decision to protect her children from damage that she deemed imminent. The State must comply with its duty to protect the children and guarantee that they can return peacefully to the Dominican Republic;

c) when Ms. Solain Pie or Solain Pierre or Solange Pierre rejected the protection of an officer of the Dominican Armed Forces, as the State pointed out in its report, she justified herself by explaining that she felt threatened by State agents. Ms. Solain Pie or Solain Pierre or Solange Pierre requested special protection by a trustworthy person, but obtained no answer from the State;

d) despite the protection afforded by the State to Father Pedro Ruquoy, he was "recently taken out of the Dominican Republic by the Church, out of fear for his personal security";

e) the alleged event of August 20, 2005, when "at Oviedo military checkpoint, [beneficiary] Berson Gelim [was purportedly] stopped and returned to Haiti despite his [showing] his safe-conduct [to the authorities] constitutes serious lack of compliance with provisional measures. Upon submitting his safe-conduct, the military officer [allegedly tore it up and threw it] to the floor". Aided by a non-governmental organization, Mr. Gelim complained at the military base of that region, "where they admitted that the officer at Oviedo had made a mistake", and Mr. Gelim was allowed to enter Santo Domingo. Beneficiary Janty Fils-Aime went through a similar experience, he also had his safe-conduct torn up. The State must grant and deliver new safe-conducts to said beneficiaries;

f) after the Memorandum of Understanding was declared unconstitutional by the Supreme Court of Justice, the State did not take measures to remedy this difficulty. The lack of a follow-up mechanism deprives beneficiaries of appropriate means to denounce actions or situations that infringe the measures, and

g) the State has not fulfilled its duty to investigate the facts that prompted the adoption of these measures, which encourages threats and acts of aggression and harassment against the beneficiaries.

11. The State's communication of January 28, 2006, whereby a thirty-day extension was requested to submit the twenty-eighth report on the provisional measures adopted by the Court in the instant case. The Secretary's communication of January 30, 2006, whereby, pursuant to the President's instructions, the State was given up to the non-postponable deadline of February 28, 2006 to submit said report.

CONSIDERING:

1. That the Dominican Republic has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since April 19, 1978, and has recognized the jurisdiction of the Court, pursuant to Article 62 of the Convention, on March 25, 1999.

2. That Article 63(2) of the American Convention establishes that, “[i]n 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. With respect to a case not yet submitted to the Court, it may act at the request of the Commission”.

3. That, in relation to this matter, Article 25(1) and 25(2) of the Rules of Procedure of the Court provides that:

[a]t 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.

[w]ith respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

4. That Article 1(1) of the Convention establishes the duty of States Parties to respect the rights and freedoms recognized therein and to ensure all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

5. That in International Human Rights Law, urgent and provisional measures are not only of a precautionary nature, in the sense that they preserve a legal situation, but also, and mainly, of a protective nature, in the sense that they safeguard human rights, to the extent that they seek to avoid irreparable damage to persons. Provided the basic requirements of extreme gravity and urgency and prevention of irreparable damage to persons are met, urgent and provisional measures become a true judicial guarantee of a preventive nature³.

6. That the instant case, which gave rise to the determination of provisional measures, is not being heard by the Court on its merits, and, therefore, the adoption of provisional measures does not imply a decision on the merits of the dispute between the petitioners and the State. By adopting provisional measures, the Tribunal is only guaranteeing that its mandate will be faithfully executed pursuant to the Convention, in cases of extreme gravity and urgency that require measures of protection to avoid irreparable damage to persons⁴.

³ Cfr. *Matter of Ramírez- Hinostrroza et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 21, 2005, Considering clause 5; *Matter of Pilar Noriega-García et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of June 29, 2005, Considering clause 4; and *Matter of the Mendoza Prisons.* Provisional Measures. Order of the Inter-American Court of Human Rights of June 18, 2005, Considering clause 4.

⁴ Cfr. *Case of Raxcacó et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of August 30, 2005, Considering clause 11; *Matter of Carlos Nieto et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of July 9, 2004, Considering clause 10; and *Matter of "El*

7. That in order to effectively safeguard the rights enshrined in the American Convention, the State Party is obliged to protect all the people living within its jurisdiction. In the Court's opinion, said general obligation has to be fulfilled not only in relation to the power of the State but also in relation to third parties' acts⁵.

8. That the provision established in Article 63(2) makes it mandatory for a State to adopt such provisional measures as this Tribunal may order, inasmuch as according to the basic principle of the law of States' responsibility, supported by international precedents, States must abide by their conventional obligations in good faith (*pacta sunt servanda*).

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9. That in accordance with Court's Orders of August 18, 2000, November 12, 2000 and May 26, 2001, and the President's Order of October 5, 2005 (*supra* Having Seen clauses 1, 2, 3 and 7), the State must:

- a) adopt such measures as may be necessary to protect the life and personal integrity of Benito Tide-Méndez, Antonio Sension, Andrea Alezy, Janty Fils-Aime, William Medina-Ferreras, Rafaelito Pérez-Charles, Berson Gelim, Father Pedro Ruquoy, Solain Pie or Solain Pierre or Solange Pierre and her four children;
- b) refrain from arbitrarily deporting or expelling Benito Tide-Méndez, Antonio Sension, Rafaelito Pérez-Charles and Ms. Solain Pie or Solain Pierre or Solange Pierre's four children from its territory;
- c) allow Janty Fils-Aime, William Medina-Ferreras and Berson Gelim to immediately return to its territory;
- d) enable, forthwith, the reunification of Antonio Sension, Andrea Alezy and Berson Gelim with their underage children living in the Dominican Republic;
- e) collaborate with Antonio Sension to gather information on the whereabouts of his next of kin in Haiti or the Dominican Republic;
- f) continue to follow-up on the investigations launched by competent authorities in relation to people protected by these provisional measures, as well as investigate the facts that prompted the adoption of urgent measures to protect the rights to life and personal integrity of Ms. Solain Pie or Solain Pierre

Nacional" and "Así es la Noticia" Newspapers. Provisional Measures. Order of the Inter-American Court of Human Rights of July 6, 2004, Considering clause 13.

⁵ *Cfr. Matter of Eloisa Barrios et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause 7; *Matter of Eloisa Barrios et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of June 29, 2005, Considering clause 8; and *Matter of the Mendoza Prisons.* Provisional Measures. Order of the Inter-American Court of Human Rights of June 18, 2005, Considering clause 4.

or Solange Pierre's four children, and, as appropriate, identify those responsible and impose the corresponding punishment on them;

g) furnish detailed information on the situation of members of bordering communities or "bateyes" who may be the target of forced repatriations, deportations or expulsions;

h) notify competent authorities in writing that Messrs. Benito Tide-Méndez, Antonio Sension, Rafaelito Pérez-Charles, Janty Fils-Aime, William Medina-Ferreras and Berson Gelim are beneficiaries of provisional measures of protection ordered by the Inter-American Court, to stop them from being deported or expelled from the Dominican Republic;

i) provide Messrs. Benito Tide-Méndez, Antonio Sension, Rafaelito Pérez-Charles, Janty Fils-Aime, William Medina-Ferreras and Berson Gelim with identification documents showing that they are beneficiaries of provisional measures of protection ordered by the Inter-American Court to stop them from being deported or expelled from the Dominican Republic, and

j) adopt such steps as may be necessary to create an adequate mechanism to coordinate and supervise the aforementioned measures with the Inter-American Commission, as well as perform all relevant actions so that the ordered measures of protection are planned and implemented with the participation of the beneficiaries thereof or their representatives, in such a manner that the aforementioned measures are executed diligently and effectively and that, in general, they are permanently informed about any progress made in said execution.

10. That the State has informed, *inter alia*, that it notified competent authorities that Messrs. Benito Tide-Méndez, Antonio Sension, Rafaelito Pérez-Charles, Janty Fils-Aime, William Medina-Ferreras and Berson Gelim are beneficiaries of the provisional measures ordered by the Court, and also that it granted safe-conducts to Messrs. Benito Tide-Méndez, Janty Fils-Aime, William Medina-Ferreras, Rafaelito Pérez-Charles, Berson Gelim, Antonio Sesion and his next of kin. It further remarked that it has been three years since the beneficiaries of the safe-conducts last contacted state authorities, and that the Commission and the representatives had not denounced any infringement whatsoever of their human rights until October 31, 2005. It stated that protection had been afforded to Father Pedro Ruquoy and that Ms. Solain Pie or Solain Pierre or Solange Pierre had declined it. As regards the destruction of Messrs. Berson Gelim's and Janty Fils-Aime's safe-conducts, it expressed that they will be replaced and that the Court will be informed about the outcome of the investigations into the incidents concerning said documents. It pointed out that authorities are open to discussing and solving any setback that may imperil the efficacy of the safe-conducts. It reiterated that it has complied with the provisional measures for more than four years, as well as its will to continue complying with them. Lastly, the Dominican Republic asserted that it is issuing instructions so that the urgent measures ordered by the President on October 5, 2005 in favor of Ms. Solain Pie or Solain Pierre or Solange Pierre's four children become effective (*supra* Having Seen clauses 4 and 8).

11. That representatives stated, *inter alia*, that they acknowledge that safe-conducts were given to the persons mentioned by the State in its report; however, the State must issue and furnish new safe-conducts to Messrs. Berson Gelim and Janty

Fils-Aime, who allegedly had their original safe-conducts destroyed by policemen. They expressed their concern for the State's failure to provide information on the measures adopted to comply with President's Order of October 5, 2005, since the situation of insecurity faced by Ms. Solain Pie or Solain Pierre or Solange Pierre's children has allegedly worsened, which fact purportedly caused them to leave the country with their mother. Therefore, the State must fulfill its duty to protect the children and guarantee that they can return, untroubled, to the Dominican Republic. They referred to the alleged worsening situation of expulsion operations against Haitians or persons of Haitian origin, which could generate a risky situation for the beneficiaries of these measures, inasmuch as they belong to said population. In view of the foregoing, they reiterated the need to go on guaranteeing the effectiveness and efficacy of the safe-conducts, which constitute a guarantee that their beneficiaries will not be expelled from the Dominican Republic. Lastly, they affirmed that the State has not fulfilled its duty to investigate the facts that prompted the adoption of these measures, which may foster threats and acts of aggression and harassment against the beneficiaries, and reiterated the importance of the active participation of beneficiaries in the supervision and implementation mechanism of provisional measures (*supra* Having Seen clauses 6 and 10).

12. That the Commission has affirmed, *inter alia*, that the State must adopt, forthwith, such steps as may be necessary to ensure the efficacy of these measures, especially in connection with restoring, as soon as possible, the safe-conducts to the persons who were deprived of them, considering the vulnerability they face in light of this fact; and in connection with protecting Ms. Solain Pie or Solain Pierre or Solange Pierre's children, "who, out of fear of the threats they received, are out of their country". It held that, although beneficiaries are called to collaborate with the elucidation of the facts, in no case should [they] be charged with the responsibility of the commencement or efficacy of the investigation that the State should foster". Finally, it reiterated the lack of information on the actions taken so that the measures of protection are planned and implemented with the participation of the beneficiaries or their representatives and the need for the State to submit "specific, accurate, up-to-date and detailed [information] pertaining to [...] the matter giving rise to and effectiveness to the protection requested for all beneficiaries", taking into consideration the "persistent public information on mass deportations or 'repatriation' processes of people of Haitian origin or descent", (*supra* Having Seen clauses 5 and 9).

13. That this Tribunal notes the importance of furnishing the aforementioned beneficiaries with safe-conducts (*supra* Having Seen clause 4), inasmuch as they constitute measures to safeguard the life or physical integrity of said persons, and, as appropriate, to prevent them from being deported or expelled from the Dominican Republic. Hence, the Court is concerned about the statements of the Commission and the representatives that state authorities allegedly destroyed Mr. Berson Gelim's and Janty Fils-Aime's safe-conducts (*supra* Having Seen clauses 9 and 10). As a consequence, the State, pursuant to what it informed, must proceed with the relevant actions to restore said documents and conduct relevant investigations (*supra* Having Seen 8).

14. That the Court has learned, through information provided by the Commission, the representatives and the State, that on August 10, 2005, the Supreme Court of Justice of the Dominican Republic entered a judgment declaring the unconstitutionality of the Memorandum of Understanding, an agreement signed by the State Secretariat

of Foreign Relations, whereby the *Comité de Impulso de Medidas Provisionales* (Committee for the Implementation of Provisional Measures) had been created (*supra* Having Seen clauses 4, 5 and 6). In this respect, the Court observes that the State has not explained the actions it is currently carrying out to create a new adequate coordination mechanism for an effective joint planning of the implementation of these measures.

15. That as regards the background information submitted by the representatives in the instant case, as well as the observations submitted by the Commission, it is *prima facie* evident that the lives and personal integrity of Ms. Solain Pie or Solain Pierre or Solange Pierre's four children are under threat (*supra* Having Seen clauses 5, 6, 9 and 10).

16. That the situation of Ms. Solain Pie or Solain Pierre or Solange Pierre's four children should still be regarded as one of extreme gravity and urgency. Protection through provisional measures is necessary to avoid irreparable damage to said persons' rights to life and personal integrity. Therefore, this Court deems it appropriate, once the conditions set forth in Article 63(2) of the Convention are met, to ratify the President's Order and instruct the State to extend the provisional measures to Ms. Solain Pie or Solain Pierre or Solange Pierre's children, in order to protect their rights to life and personal integrity.

17. That the Commission and the representatives have informed the Court that the threats and harassment suffered by Ms. Solain Pie or Solain Pierre or Solange Pierre and her four children have forced them to leave the Dominican Republic, by reason of which this Tribunal deems it necessary that the State create due conditions for those people to return to their homes⁶ and ensure that said beneficiaries of measures do not face any threats or other sources of fear that may prevent them from continuing to live in their habitual places of residence (*supra* Having Seen clauses 9 and 10).

18. That even though Ms. Solain Pie or Solain Pierre or Solange Pierre and her four children are not in the Dominican Republic at present, the State must maintain the measures adopted in their favor with a view to making them effective when said beneficiaries return to their country.

19. That the Commission and the representatives have informed that Father Pedro Ruquoy left the Dominican Republic out of fear for his life and personal security (*supra* Having Seen clauses 9 and 10). Since Father Pedro Ruquoy is a beneficiary of the provisional measures granted by the Court, the State must offer whatever conditions are necessary so that, should Father Ruquoy return to the Dominican Republic, he can remain within Dominican territory and have his life and personal integrity duly protected. In this respect, it is appropriate for the Commission and the representatives to inform the Court on the current situation of Father Pedro Ruquoy, so that the Tribunal can timely assess the maintenance of these measures in his favor.

⁶ *Cfr., inter alia, Matter of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 6, 2003, Considering clause 10; *Matter of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 24, 2000, Considering clause 8, and *Matter of Giraldo-Cardona*, Provisional Measures. Order of the Inter-American Court of Human Rights of February 5, 1997, Considering clause 5.

20. That the State is obliged to investigate the facts that prompted the adoption and extension of these provisional measures with a view to identifying those responsible and imposing the corresponding punishment on them, without it being necessary for beneficiaries to file a complaint before competent authorities (*supra* Having Seen clauses 1, 2, 3 and 7).

21. That, based on what the Commission and the representatives expressed (*supra* Having Seen clauses 5, 6, 9 and 10) regarding the need to maintain these measures of protection in favor of Messrs. Benito Tide-Méndez, Antonio Sension, Janty Fils-Aime, William Medina-Ferreras, Rafaelito Pérez-Charles, Berson Gelim, Father Pedro Ruquoy, Mss. Andrea Alezy and Solain Pie or Solain Pierre or Solange Pierre and her four children, this Court deems it necessary to remind the State to implement and take, in an immediate and effective fashion, whatever steps are necessary to guarantee the protection of the life and personal integrity of the beneficiaries of these provisional measures, as well as to prevent them, if appropriate, from being deported or expelled from the Dominican Republic.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred on it by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

DECIDES:

1. To ratify the Order of the President of the Inter-American Court of Human Rights of October 5, 2005, wherein the State was instructed to extend and implement whatever measures are necessary to protect the life and personal integrity of Ms. Solain Pie or Solain Pierre or Solange Pierre's four children.

2. To reiterate what was expressed in the Orders of the Inter-American Court of Human Rights of August 18, 2000, November 12, 2000 and May 26, 2001, in the sense that the State must maintain whatever measures it may have adopted and immediately provide for those that prove necessary to effectively protect the life and personal integrity of Messrs. Benito Tide-Méndez, Antonio Sension, Janty Fils-Aime, William Medina-Ferreras, Rafaelito Pérez-Charles, Berson Gelim, Father Pedro Ruquoy and Mss. Andrea Alezy and Solain Pie or Solain Pierre or Solange Pierre.

3. To call upon the State to create due conditions for Solain Pie or Solain Pierre or Solange Pierre and her four children to return to their home in the Dominican Republic and, as soon as this happens, to adopt whatever measures are necessary to protect their lives and personal integrity.

4. To call upon the State to perform all relevant actions so that the ordered measures of protection are planned and implemented with the participation of the beneficiaries thereof or their representatives, in such a manner that said measures are executed diligently and effectively, and that, in general, they are permanently informed about any progress made in said execution, particularly as regards the creation of an adequate mechanism to jointly coordinate and plan the implementation and adoption of these measures.

5. To call upon the State to investigate the facts that prompted the adoption, maintenance and extension of these measures and, as appropriate, to identify those responsible and impose the corresponding punishment on them, and, in particular, to investigate the facts that prompted the adoption of measures in favor of Ms. Solain Pie or Solain Pierre or Solange Pierre's four children, as well as the incidents involving Messrs. Berson Gelim and Janty Fils-Aime, in accordance with the parameters established in the American Convention of Human Rights.

6. To call upon the State to inform the Inter-American Court of Human Rights, within 30 days as from the notification hereof, about the measures implemented in relation to each of the beneficiaries of these provisional measures, and the measures adopted to comply with the provisions included in operative paragraphs 3, 4 and 5 hereof.

7. To call upon the representatives of the beneficiaries of these measures to submit their observations and refer to what was expressed in Considering clause 19, within ten days as from the notification of the State's report requested in operative paragraph 6.

8. To call upon the Inter-American Commission of Human Rights to submit its observations and refer to what was expressed in Considering clause 19, within fifteen days as from the notification of the State's report requested in operative paragraph 6.

9. To call upon the State of the Dominican Republic to continue informing the Inter-American Court of Human Rights, following its first communication and on a two-month basis, about the fulfillment of provisional measures, and to call upon the beneficiaries thereof or their representatives to submit their observations on the State's bimonthly reports, within four weeks of receiving them, and the Inter-American Commission of Human Rights to submit its observations on said State's reports within six weeks of receiving them.

10. To give notice of this Order to the Inter-American Commission of Human Rights, the representatives of the beneficiaries of the provisional measures and the State.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary