

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JULY 6, 2006**

**REQUEST FOR PROVISIONAL MEASURES SUBMITTED BY THE INTER-
AMERICAN COMMISSION ON HUMAN RIGHTS
REGARDING THE STATE OF ARGENTINA**

IN FAVOR OF MARÍA LEONTINA MILLACURA LLAIPÉN ET AL.

HAVING SEEN:

1. The brief of June 20, 2006, and its attachments in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Court"), pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), a request for provisional measures, for the State of Argentina (hereinafter "the State" or "Argentina") to adopt the necessary measures to protect the life and personal integrity of the following thirteen persons: "María Leontina Millacura Llaipén, her children, Marcos and Valeria Torres, her son-in-law, Juan Pablo Caba; Gerardo Colín; Patricio Oliva; Tamara Bolívar; Walter Mansilla; Silvia de los Santos; Verónica Heredia; Miguel Ángel Sánchez, and Viviana and Sonia Hayes".

2. The grounds indicated by the Commission in its request for provisional measures (*supra* Having seen paragraph 1), which are summarized below:

- a) On November 14, 2003, Mrs. Millacura Llaipén submitted a petition to the Commission, "registered as No. 960/03, which has been the subject of Admissibility Report 69/05, and which is currently being processed as case No. 12,533. The request for provisional measures has been registered [by the Commission] as No. 6-05." This petition contains an allegation regarding "the international responsibility of agents of the Argentine State for the [alleged] illegal detention, incommunicado detention, torture and forced disappearance of her son in Comodoro Rivadavia, Chubut Province, which started on October 2, 2003 [in the First Departmental Police Station [*Comisaría Seccional Primera*]]." The petition refers also to the alleged denial of judicial protection and guarantees owing to the absence of an adequate investigation and the punishment of the officials who allegedly tortured and disappeared Mr. Torres. Since the investigation process was initiated, three witnesses who testified in the case have allegedly been "murdered";
- b) On January 10, 2005, Mrs. Millacura Llaipén and the lawyers, Silvia de los Santos and Verónica Heredia, requested the Commission to issue

* Judges Oliver Jackman and Diego García-Sayán did not take part in the deliberation and signature of this Order, for reasons beyond their control. Judge Jackman advised that he would be unable to take part in the seventy-first regular session of the Court.

- precautionary measures, "owing to the threats and harassment experienced" by the persons in whose favor the measures were requested. In this regard, they stated that: they were being threatened, harassed and under constant police surveillance; "Tamara Bolívar was raped after she had made her statement in the case, allegedly by a police agent, who, after he had raped her, asked her whether she was the sister of Iván Eladio Torres"; "Marcos Torres was detained, for no reason, in the street, by [police agents] who alleged that his mother had implicated them in the disappearance of Iván Eladio Torres"; and "Valeria Torres was arrested together with Tamara Bolívar for allegedly stealing food which, they said, they were accused of." The Inter-American Commission adopted the measures on January 18, 2005, a day after one of the witnesses was allegedly murdered. Subsequently, the Commission expanded the measures to protect other individuals;
- c) Following the issue of the precautionary measures, information was received concerning the murder of two individuals who had testified about the disappearance of Mr. Torres. Moreover, when requesting the expansion of measures in January 2005, the representatives reported that Juan Pablo Caba "had received death threats from police officers," that Gerardo Colín had been detained by agents of the First Departmental Police Station, and that Mrs. Millacura Llaipén and Viviana Hayes had received death threats. During the proceedings before the Commission, the State reported on the implementation of protection measures, "such as custody and mobile telephone services for the beneficiaries of the measures;
- d) The measures were requested in favor of the following persons: María Leontina Millacura Llaipén, Marcos and Valeria Torres, mother and siblings of Iván Eladio Torres; Juan Pablo Caba, son-in-law of Mrs. Millacura Llaipén, who is detained in the Municipal Jail [*Alcaldía*] in Comodoro Rivadavia; Gerardo Atilio Colín and Patricio Oliva, "witnesses of the [alleged] enforced disappearance of Mr. Torres"; Walter Mansilla, friend of Iván Eladio Torres, who was the last person to see him; Tamara Bolívar, who testified in the case; Miguel Ángel Sánchez, who had been detained with Mr. Torres; Viviana and Sonia Hayes, next of kin of David Alberto Hayes, witness who has allegedly been murdered; and Verónica Heredia and Silvia de los Santos, Mrs. Millacura Llaipén's lawyers;
- e) On April 23, 2006, Mrs. Millacura Llaipén received a telephone call informing her that a detainee named Luis Alberto Alcaína was being beaten in the Municipal Jail, and that he had been transferred to the Third Departmental Police Station. Accordingly, Mrs. Millacura Llaipén visited this Police Station with her daughter Valeria. At the Police Station, Valeria realized that "they were mistreating her mother, and interceded to help her." About "6 or 7 police agents, all men, began to push Valeria around and to hit her on her legs, her ankles, her stomach, and between her legs, [and] to pull her hair; they locked her up in a prison cell and handcuffed her with her arms behind her." The police agents "made fun of her saying 'so you are Ivan's sister; he screamed like you; more than you; but now he is worse off,' 'he will never be found.'" "At one moment, one of the police agents [...] asked her to turn her back to him with the evident intention of raping her." The agents "wanted Valeria to sign a paper, which presumably they would have sent to the judge, admitting responsibility for breaking a window and resisting authority; and when they let her go, they warned her not to make a report, because, if she

did so, things would get worse for her." The Commission was given a certificate from a private doctor;

- f) Regarding the said facts of April 23, 2006, "it should be underscored that the State did not make any reference to this event in the brief it forwarded to the Commission. It merely sent, as an attachment, a copy of an official record prepared by personnel of the Third Departmental Police Station itself about the way in which the facts allegedly occurred." The State reported, *inter alia*, that: the official record of the Ombudsman's Office states that on Sunday, April 23, 2006, at 20:25 hours, Luis Alberto Alcaína "was transferred to the Regional Hospital where he receive medical care and was prescribed medication"; according to an official communication of the Third Departmental Police Station, on April 23, 2006, Mr. Alcaína tried to escape; also Valeria Torres was detained for the offense of causing damage, injury and resisting authority, when she visited the Guard's Office of the Departmental Police State with her mother at 15:15 hours, saying that they were members of Mr. Alcaína's family, and an investigation has been opened for the offenses of damage, injury and resisting authority. According to this communication, both Mr. Alcaína and Valeria Torres injured themselves;
- g) The ineffectiveness of the protection measures applied by the State in favor of the beneficiaries. The events of April 2006 "provide clear evidence that the security measures adopted by the State have been inadequate." Furthermore, Miguel Ángel Sánchez and Juan Pablo Caba have not been transferred to other detention centers, "so that, at this time, they do not have protection in keeping with the gravity of the situation and the imminence of the danger to their life";
- h) Regarding the urgent need to adopt measures, "it should be recalled that the case that gave rise to the precautionary measures is related to the [alleged] disappearance of Iván Torres, which has not yet been clarified. Also that three witnesses in the case opened in relation to this disappearance have died in violent circumstances, one of them while he was detained in the Comodoro Rivadavia Municipal Jail. Added to this, other witnesses in this case and other beneficiaries have been subjected to constant threats, so that there is imminent danger for their life and personal integrity"; and
- i) The gravity of the threat relates not only to the certainty and imminence of the damage that is feared, but particularly to the fundamental nature of the rights threatened. The insecurity created as a result of the statements made by the witnesses of the facts relating to the disappearance of Iván Eladio Torres, added to the aforementioned events of April 23, 2006, lead to the reasonable conclusion that the beneficiaries of these measures are exposed to grave danger.

3. In light of the above, the Commission requested the Court to require the State:

- a) That it adopt, forthwith, all necessary measures to ensure the protection of the personal integrity and life of María Leontina Millacura Llaipén, her children Marcos and Valeria Torres, her son-in-law Juan Pablo Caba; Gerardo Colín; Patricio Oliva; Tamara Bolívar; Walter Mansilla; Silvia de los Santos; Verónica Heredia; Miguel Ángel Sánchez; and also Viviana and Sonia Hayes;

- b) That, it coordinate with the beneficiaries and their representatives the most appropriate mechanisms for the implementation of the measures of protection, so that the effectiveness and pertinence of the measures are ensured;
- c) That it implement all necessary actions to transfer Miguel Ángel Sánchez and Juan Pablo Caba to detention centers that guarantee due protection for their personal integrity;
- d) That it conduct genuine, complete and prompt investigations into each of the facts that gave rise to this request for provisional measures; individualize those responsible and impose the corresponding sanctions, as a mechanism of prevention to avert acts of violence; and
- e) That it inform the Court about the specific actions it has undertaken to implement the provisional measures.

The Commission requested the Court that "it duly program a hearing for the Argentine State to report in detail on the specific actions it has taken."

4. The Order that the President, in consultation with the Court, issued on June 21, 2006, in which he decided, *inter alia*: (1) to require the State to adopt, forthwith, all necessary measures to protect the rights to life and personal integrity of María Leontina Millacura Llaipén, Marcos and Valeria Torres, Juan Pablo Caba, Gerardo Colín, Patricio Oliva, Tamara Bolívar, Walter Mansilla, Miguel Ángel Sánchez, Silvia de los Santos, Verónica Heredia, and Viviana and Sonia Hayes; to this end, it should take into account the gravity of the situation and the particular situation of danger; (2) to require the Inter-American Commission, within five days, to inform the Inter-American Court about the situation of Luis Alberto Alcaína and to clarify whether he requires measures of protection; (3) to require the State to take all pertinent steps to ensure that the measures of protection decided in the Order are planned and implemented with the participation of the beneficiaries of the measures or their representatives, so that the measures are provided diligently and effectively and, in general, that they are kept informed about progress in the implementation of the measures; (4) to require the State to report to the Inter-American Court of Human Rights within nine days on the measures it had adopted to comply with the Order; (5) to request the beneficiaries of the measures or their representatives and the Inter-American Commission to submit to the Inter-American Court, within four and seven days, respectively, any observations they deemed pertinent on the said report; and (6) to convene the Inter-American Commission, the representatives of the beneficiaries of the measures, and the State to a public hearing to be held in San José, Costa Rica, at the seat of the Inter-American Court starting at 3 p.m. on July 6, 2006, for the Court to hear their arguments on the facts and circumstances relating to the request for provisional measures.

5. The brief of June 26, 2006, in which the representatives of the beneficiaries of the measures (hereinafter "the representatives") indicated that the three persons who would take part in the public hearing convened by the President (*supra* Having seen paragraph 4) "c[ould] not confirm that they w[ould] be able to travel" to San José, "because they did not have the necessary financial resources," and asked the Court, *inter alia*, that:

- a) "It expand the provisional measures ordered so as to require the Argentine State to ensure that the representatives of the beneficiaries had access to the jurisdiction; in the short term and without detriment to other measures, this means providing the funds necessary for [the said] three persons to be able to attend the hearing scheduled for July 6, 2006";

- b) "It ensure the protection of the life and integrity of Iván Eladio Torres"; and
- c) Other specific measures.

6. The brief of June 27, 2006, in which the Inter-American Commission presented information on the situation of Luis Alberto Alcaína, in response to the request in the Order of the President (*supra* Having seen paragraph 4). In this regard they indicated that:

- a) On April 25, 2006, Verónica Heredia, representative of those requesting the provisional measures, met with Mr. Alcaína in the Comodoro Rivadavia Municipal Jail. Mr. Alcaína told her that the police agents had invented that he had tried to escape on April 23, 2006 (*supra* Having seen paragraph 2(f)) and indicated that what happened that day was that the police agents curtailed his conjugal visit, so he complained and resisted; consequently, they began to hit him and dragged him to the Third Departmental Police Station, next door to the Municipal Jail. While he was in the cell, he saw several police agents bring in Valeria Torres forcibly and shut her up in one of the cells, handcuffed; he heard her cries and the police mistreatment. He also stated that "he told all this to the judge in Sarmiento";
- b) The report of the head of the Comodoro Rivadavia Municipal Jail of May 29, 2006, addressed to the No. 1 Court of First Instance, that Luis Alberto Alcaína had escaped from the Municipal Jail;
- c) On May 30, 2006, the No. 1 Court of First Instance declared Luis Alberto Alcaína in contempt of court and ordered his immediate detention;
- d) The Inter-American Commission has no information about the whereabouts of Mr. Alcaína or the State's efforts to locate him; and
- e) It requested the Court to require the State to provide detailed information on the circumstances of "Mr. Alcaína's alleged escape," the State's efforts to locate him, and also on the investigations opened as a result of the facts that Mr. Alcaína reported to the judge in Sarmiento and the results.

7. The brief of June 27, 2006, in which the State, through the Comodoro Rivadavia Ombudsman's Office, presented "the statement prepared in conjunction with Miguel Ángel Sánchez, detained at the Moscón Departmental Police Station, because he is protected by the measures ordered by the Court" and "so that [his] prison situation[...] and his wishes are known." On June 30, 2006, the Secretariat of the Court (hereinafter "the Secretariat") sent a note to the State, indicating that the document received was illegible and requesting that it should be retransmitted as soon as possible.

8. The brief of June 29, 2006, with which María Leontina Millacura Llaipén presented two unsigned letters in relation to what allegedly happened to her son, Iván Torres.

9. The brief of June 30, 2006, in which the Commission submitted its observations on the brief of June 26, 2006, presented by the representatives of the beneficiaries of the measures (*supra* Having seen paragraph 5). The Commission

stated that "with regard to the information provided by the representatives of the beneficiaries concerning the difficulties they face to attend the hearing, [...] it considers [...] it would be advisable to consider postponing it" and indicated, *inter alia*, that it deemed it very important that the beneficiaries be able to present to the Court their position regarding the measures the State has advised that it has adopted.

10. The brief of June 30, 2006, in which Argentina forwarded its observations on the brief of June 26, 2006, presented by the representatives of the beneficiaries of the measures (*supra* Having seen paragraph 5) and indicated, *inter alia*, that:

- a) It was evaluating the possibility of assuming the cost of the air transportation of María Leontina Millacura Llaipén and her lawyers. This possibility should be interpreted in the context of the traditional policy of cooperation between the Argentine State and the Inter-American Court and Commission; and
- b) The representatives' request that the provisional measures ordered should be expanded to require the State to guarantee the representatives' access to the jurisdiction had insufficient legal grounds, because it was not based on either the Convention or the Rules of Procedure in force and, moreover, access to the jurisdiction had already been made effective by the issue of the urgent measures requested by the Commission, which, in addition to being a legitimate party, will be present at the hearing, thus guaranteeing plurality.

11. The note of the Secretariat of June 30, 2006, in which, on the instructions of the President, it informed the State that, owing to the imminence of the public hearing that had been convened, it was urgent that it provide information, as soon as possible, about the decision it had adopted regarding the possibility of assuming the cost of the air transportation of María Leontina Millacura Llaipén and her lawyers (*supra* Having seen paragraph 10(a)), so that the Court could take the appropriate decisions.

12. The brief of July 1, 2006, in which the representatives stated that "the three parties to the case would attend the prior meeting and the hearing, if they obtained sufficient funds," and requested information about whether the State had submitted the report it had been required to present in the fourth operative paragraph of the Order of President of June 21, 2006 (*supra* Having seen paragraph 4).

13. The note of the Secretariat of July 3, 2006, in which, on the instructions of the President of the Court, it requested the State to submit, as soon as possible, the report required in the fourth operative paragraph of the Order of the President of June 21, 2006 (*supra* Having seen paragraph 4), which was supposed to have been presented by June 30, 2006.

14. The brief of July 3, 2006, in which the State indicated, *inter alia*, that:

- a) "The Human Rights Secretariat [...] had confirmed by telephone [...] that it would assume the cost of the air transportation of the lawyers and the government of Chubut Province had confirmed that it would assume the transportation costs of María Leontina Millacura Llaipén"; and
- b) Regarding the request made in the Secretariat's note of June 30, 2006 (*supra* Having seen paragraph 7), it indicated that this documentation had not been

forwarded to the Ministry of Foreign Affairs and, therefore, it was not possible to comply with the request.”

15. The public hearing on the request for provisional measures held at the seat of the Inter-American Court on July 6, 2006, at which there appeared: (a) for the Inter-American Commission: Víctor H. Madrigal Borloz and Nerea Aparicio, legal advisers; (b) for the representatives: María Leontina Millacura Llaipén, beneficiary; and Verónica Heredia and Silvia de los Santos, beneficiaries and representatives; and (c) for the State: Jorge Nelson Cardozo, Adviser to the Cabinet of the Minister of Foreign Affairs; Ambassador Horacio Méndez Carreras, Special Representative for Human Rights in the International Sphere of the Ministry of Foreign Affairs, International Trade and Worship; Alberto Javier Salgado, of the Human Rights Directorate of the Ministry of Foreign Affairs, International Trade and Worship; Andrea Gladis Gualde, National Director of International Affairs of the Human Rights Secretariat; Pilar Mayoral and Martín Rico, of the Human Rights Secretariat; Máximo Pérez Catán, Minister of the Chubut Province Government; Federico Horacio Ramos, Deputy Secretary for Prison Affairs of the Ministry of Justice and Human Rights; and Ambassador Juan José Arcuri, Ambassador of the Argentine Republic to the Government of Costa Rica.

16. The arguments adduced by the Commission during the said hearing, in which, in brief, it referred to:

- a) The precautionary measures adopted by the Commission and the criteria used to request the Court to adopt provisional measures. When deciding to request the adoption of provisional measures, the Commission made its assessment bearing in mind the “overall situation,” evaluating the effectiveness of the measures and taking into consideration, in particular, the events of April 23, 2006, with regard to persons under the protection of precautionary measures, and the fact that there was total disagreement about the circumstances in which these events occurred;
- b) The risk of irreparable damage for the beneficiaries of the measures. In particular, it stated that, in its request for measures, it had only included those persons with regard to whom it had information that they were in danger and who they had contacted. It referred to the situation of the witnesses of what happened to Iván, the next of kin of Iván Torres and of David Hayes, and of the other individuals who had been “inadvertently involved.” In addition, it indicated that the representatives had requested measures for another group of people, based on their actions since the Order of the President of the Court;
- c) Regarding Mr. Alcaína, it indicated that “apparently, he would be included” in these measures because he was a witness of what happened to Valeria Torres on April 23, 2006. The State should provide information on his situation;
- d) The need to implement adequate and concrete measures to ensure the life and personal integrity of the beneficiaries; to this end, the measures should not be provided by the police units that are alleged to have committed the violations; and
- e) The State has not questioned the situation of urgency that has been ratified.

17. The arguments put forward by the representatives during this public hearing (*supra* Having seen paragraph 15), in which, in brief, they stated the following:

- a) They had requested provisional measures owing to the ineffectiveness of the measures adopted by the State in the context of the precautionary measures. Guards are only provided to the places of residence; the measures were adopted unilaterally by the State, and they are provided by officials who do not have appropriate training to offer this service: they are unarmed and they require the support of the local police to carry out their tasks. In addition, the guards at the domiciles do not even know the family or the other beneficiaries who are protected. The mobile telephones given to the beneficiaries so that they can communicate with the Coastguard are the only measure that has been mutually agreed with the State. However, it has not been an effective measure, because the Coastguard has no protocol regarding what to do when it receives a telephone call. The beneficiaries have telephoned and no one answered or the person who answered did not know who they were;
- b) They stated that, according to the official explanation, Tamara Bolívar, Iván Torres, Luis Alberto Alcaína and Marcos Gallardo are fugitives from justice and their whereabouts is being sought. They indicated that David Hayes, Gustavo Cruz, Dante Caamaño and Hugo Álvarez have met violent deaths;
- c) Regarding the transfers that had been requested, it required a year and a half to obtain authorization to transfer Miguel Ángel Sánchez, and, on July 4, 2006, this measure had not been executed. They are opposed to the transfer that the State says it will make of Juan Pablo Caba, because they have not requested it. He should not be transferred 800 kilometers from his family. Following the issue of the President's Order, the State has not been in communication with the representatives to coordinate any type of measure. Most of the beneficiaries of the measures have filed denunciations before the Judiciary;
- d) They requested that, as a measure of protection, members of the Hayes and Torres families should be protected by guards; the latter should be trained personnel and not personnel of the security forces who work side by side with the police of Chubut Province. They stressed that what happened to Valeria Torres on April 23, 2006, occurred outside her home. They also requested the following measures: a guarantee that the granddaughters of María Millacura can attend school normally; a subsidy for Marcos and Valeria Torres since they are unable to work owing to their "situation which is well known throughout the town and the Province, so that the labor market is totally closed to them," and both they and their mother are looking for Iván every day during daylight hours and "every day they are threatened"; financial resources so that María Millacura can continue looking for her son; a guarantee that Miguel Ángel Sanchez will be transferred to Río Grande urgently, because he has denounced that in the police station where he is currently detained, he is tortured by the chief of police and his deputy; a "special protection program" for Tamara Bolívar, Gerardo Colin and Walter Mansilla, because they are street children; and an urgent and effective investigation, since this is the only way to safeguard the life and physical integrity of all the beneficiaries and to ensure that those responsible for the disappearance of Iván Torres realize that they will be prosecuted; and

- e) They requested that, based on new facts and information that have come to light following the Order of the President of June 21, 2006, the measures should be expanded to the following persons: Iván Eladio Torres, in order to protect his life and physical integrity; the granddaughters of María Millacura Llaipén (daughters of Marcos and Valeria Torres), because they had not attended school for the past week at the request of the Director of the establishment, since she said that she did "not want to have problems with them, in direct relation to this case"; Marcela, "wife of Marcos Torres"; Luis Alberto Gajardo¹, witness in the case, who was with David Hayes in the First Departmental Police Station and who, last Sunday, reported that he had been the victim of unlawful coercion at the hands of the Fifth Departmental Police State where he was detained; Alberto and Noelia Hayes, father and sister of David Hayes, because the whole family group required protection; and Miguel Ángel Gallardo, friend of Iván Torres, who the police were trying to hold responsible for Iván's disappearance. They also indicated that there were other individuals regarding whom "they could request the Court to provide protection, but whose situation is unknown." They were Diego Álvarez, Mauricio Agüero and Cristian Gamín, friends of Iván Torres and witnesses of what happened to him.

18. The arguments presented by the State during the said public hearing (*supra* Having seen paragraph 15), in which it indicated, *inter alia*, that:

- a) It wanted to adopt the necessary measures to clarify the facts and safeguard the integrity and life of the beneficiaries. The measures implemented had been mutually agreed. The situation of each of the beneficiaries had been taken into consideration, including the young people who lacked a fixed domicile. The State was "open to dialogue" with the petitioners and the Inter-American Commission to evaluate all the necessary measures that should be implemented. This willingness of the State had even been apparent in aspects that could not be required legally, such as the assistance provided so that the representatives and Mrs. Millacura could attend the hearing before the Court;
- b) From the outset, the Chubut government had shown its concern regarding the disappearance of Iván Torres and had supported all the measures to protect the next of kin and the witnesses. It had undertaken to collaborate with the national Government in complying with all the measures ordered by the Commission and the Court. The State made itself available to the Inter-American Commission to visit Argentina and verify the situation;
- c) Regarding the Commission's precautionary measures, in March 2006, the Commission had been invited to assist Chubut, owing to the difficulties of the case, and to talk to the representatives, but the Commission had not done so. On May 5, 2006, Argentina submitted its last report. Since then there had been no other communication with the Commission. The Commission did not inform the State that it was unsatisfied with the report;
- d) Regarding the measures of protection and their effectiveness, the State had been adopting all the measures that had been mutually agreed. Protection

¹ Attachment 1 to the brief with the request for provisional measures of June 20, 2006, explains that Luis Alberto Gajardo has the same name as the witness Luis Alberto Gajardo, who testified in the Iván Torres case and allegedly died of a shot to the head.

services had been provided to the domiciles of the Millacura family and the Hayes family by Coastguard personnel. The beneficiaries had been given mobile telephones to communicate with the Coastguard in case of emergency. However, the beneficiaries had not made appropriate use of them; most of the beneficiaries frequently keep their mobile telephones turned off or at home, which reduced the effectiveness of the measures. With regard to the transfer of the detainee, Miguel Ángel Sánchez, the Governor of the Province of Tierra del Fuego had issued a decree deciding to place him in Detention Unit No. 1, and implementation of this measure was being processed;

- e) "It is surprising that it is not [until] now that the [representatives] have expressed their wish that the Government of Argentina protect other persons. If they had provided this information [...] they know it would have been taken into consideration";
- f) If some of the matters raised at the hearing had been raised in the appropriate sphere, they would have obtained a favorable response at the time they occurred. It reiterated its complete willingness to implement "all additional measures reasonably necessary to safeguard the life and physical integrity of the beneficiaries." Regarding the transfer of Juan Pablo Caba, his transfer to a safe place had been requested. To this end, the Ministry of the Interior had ordered his transfer to a section of the Comodoro Rivadavia Coastguard. However, "if the place suggested is not where [the representatives] want, [the State] is ready to discuss this and to take Juan Pablo Caba to any place that can reasonably be found, and to safeguard his life." Regarding the request for a subsidy made by the representatives, "the government of the Province is willing to provide a subsidy to the persons who have requested it; unfortunately [...] there has been no formal request for this subsidy";
- g) Regarding the investigation into the death of David Hayes, an individual had been convicted of his murder during a quarrel, and this person was in prison following a final judgment;
- h) It was not necessary to order provisional measures, because the precautionary measures were being implemented fully;
- i) Regarding the situation of Mr. Alcaína, the State had not received a report of his disappearance; and
- j) The need for dialogue on the implementation of the measures should be stressed. There were requests for measures that the State had only been made aware of for the first time during the hearing before the Court.

19. At the conclusion of the said public hearing held on July 6, 2006, the President of the Court urged the representatives of the State, the beneficiaries and the Inter-American Commission to discuss the implementation of the measures of protection, taking into account that they had all expressed their willingness to discuss them, to ensure that effective measures were adopted.

CONSIDERING:

1. That Argentina has been a State Party to the American Convention since September 5, 1984, and, pursuant to Article 63 thereof, accepted the compulsory jurisdiction of the Court in the act of ratification.

2. That Article 63(2) of the Convention establishes that:

In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent, in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

3. That, in this regard, Article 25 of the Rules of Procedure establishes that:

1. At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.

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

5. If the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt such urgent measures as may be necessary to ensure the effectiveness of any provisional measures that may be ordered by the Court at its next session.

6. The beneficiaries of urgent measures or provisional measures ordered by the President may address their observations on the report made by the State directly to the Court. The Inter-American Commission of Human Rights shall present observations to the State's report and to the observations of the beneficiaries or their representatives.

7. The Court, or its President if the Court is not sitting, may convoke the parties to a public hearing on provisional measures.

4. That Article (1)1 of the Convention embodies the obligation of States Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms. Moreover, in this regard, the State's position as guarantor of the rights of the persons in its custody is underscored.

5. That, under international human rights law, provisional measures are not merely preventive, in that they preserve a juridical situation, but rather they are essentially protective, since they protect human rights, inasmuch as they seek to avoid irreparable damage to persons. Provided that the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met, provisional measures become a real jurisdictional guarantee of a preventive nature.²

6. That, from the background information presented by the Commission in its request, it is clear that this is related to a petition submitted by Mrs. Millacura Llaipén, which is at the merits stage before that organ. In this petition Mrs. Millacura

² Cf. *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional measures. Order of the Inter-American Court of Human Rights of March 30, 2006, fifth considering paragraph; and *Matter of the Jiguamiandó and Curbaradó Communities*. Provisional measures. Order of the Inter-American Court of Human Rights of February 7, 2006, fifth considering paragraph; and *Matter of the Peace Community of San José de Apartadó*. Order of the Inter-American Court of Human Rights of February 2, 2006, fifth considering paragraph.

Llaipén alleged, *inter alia*, “the international responsibility of agents of the Argentine State for the [alleged] illegal detention, incommunicado detention, torture and forced disappearance of her son in Comodoro Rivadavia, Chubut Province, commencing on October 2, 2003, [in the First Departmental Police Station, as well as the alleged] denial of judicial protection and guarantees owing to the absence of an adequate investigation and the punishment of the officials who allegedly tortured and disappeared Mr. Torres.”

7. That, regarding the obligation of the State to adopt, immediately, all necessary measures to protect the rights to life and personal integrity of the beneficiaries of the urgent measures, according to the provisions of the first operative paragraph of the Order of the President (*supra* Having seen paragraph 4), the Court appreciates that, according to information provided by the Commission in its brief requesting provisional measures (*supra* Having seen paragraph 2) and also submitted to the Court during the public hearing (*supra* Having seen paragraph 18), the State has adopted certain measures of protection in favor of the beneficiaries and that, in the context of the precautionary measures, some meetings have been held concerning implementation of the measures. However, both the Commission and the representatives have stated that the said measures have been insufficient and ineffective to provide adequate protection in view of the gravity of the situation and the imminence of danger. In this regard, the Court emphasizes the positive nature of the fact that, during the public hearing, both the representatives and the Commission, and also the State, expressed their willingness to discuss the implementation of the measures, since they all indicated that the objective is to adopt effective measures.

8. That, although some measures have been adopted and there is a willingness to discuss how to implement them in order to ensure that they are as effective as possible, the Court notes with concern that, while the precautionary measures were in force, Valeria Torres and María Millacura were victims of serious harassment and threats to their right to personal integrity. The Court also observes with concern that since Mrs. Millacura Llaipén and her two lawyers requested the Commission to issue precautionary measures, three individuals involved in the case relating to the investigation into the alleged disappearance of Iván Eladio Torres have allegedly been murdered. Even though the deceased were not protected by the Commission’s precautionary measures, this situation reveals the potential danger for other persons related to this investigation, the next of kin of one of the murdered witnesses, and the next of kin of the person who has allegedly disappeared, and their lawyers.

9. That, having examined the facts and circumstances that motivated the Order issued by the President in consultation with the Court of June 21, 2006, requiring the adoption of urgent measures in favor of thirteen beneficiaries (*supra* Having seen paragraph 4), as well as the statements of the Commission, the representatives and the State during the public hearing (*supra* Having seen paragraphs 16 to 18), it is clear that, despite the measures adopted by the State to protect the rights to life and personal integrity of the beneficiaries, a situation persists of extreme gravity and urgency and possible irreparable damage to the rights to life and personal integrity of the beneficiaries of the measures. Hence, the Court considers it advisable to ratify the decisions taken by the President, because the information presented reveals, *prima facie*, that María Leontina Millacura Llaipén, Marcos and Valeria Torres, Juan Pablo Caba, Gerardo Colín, Patricio Oliva, Tamara Bolívar, Walter Mansilla, Miguel Ángel Sánchez, Silvia de los Santos and Verónica Heredia, and Viviana and Sonia Hayes, are in a situation of extreme gravity and urgency, because their lives and

personal integrity are threatened and in grave danger. The standard for the *prima facie* assessment of a case and the application of presumptions in the face of the need for protection have led the President and the Court to order measures on different occasions.³

10. That the Court appreciates the cooperative attitude of the State that enabled María Leontina Millacura Llaipén and her two lawyers to appear before the public hearing held at the seat of the Court (*supra* Having seen paragraphs 5, 9, 10 and 14). The State indicated that this "should be interpreted in the context of the Argentine State's traditional policy of cooperation with the Inter-American Court and Commission."

11. That, with regard to the request for the expansion of the measures requested by the representatives during the public hearing, in favor of the granddaughters of María Millacura Llaipén (daughters of Marcos and Valeria Torres), of Marcela ("wife of Marcos Torres"), of Alberto and Noelia Hayes (father and sister of David Hayes) and of Luis Alberto Gajardo (witness), the Court considers that their life and personal integrity should also be protected by provisional measures, for the reasons indicated in the eighth and ninth considering paragraphs of this Order, because these persons are also in a situation of danger.

12. That, regarding the expansion of measures in favor of Miguel Ángel Gallardo, requested by the representatives during the public hearing, the Court considers that the representatives should justify this request in writing.

13. That, during the public hearing, the representatives also indicated that there were other individuals for whom they "could request the Court to provide protection, but whose situation is unknown." They stated that these persons were Diego Álvarez, Mauricio Agüero and Cristian Gamín, "friends and witnesses in the case of Iván" Torres. If the representatives consider that those persons should be protected by provisional measures, they can present a duly justified request in writing.

14. That, regarding the representatives' request (*supra* Having seen paragraphs 5(b) and 17(e)), to the effect that the provisional measures should be expanded in favor of Iván Eladio Torres, in order to protect his life and physical integrity, the Court considers that this request is not admissible, because it relates to a matter that is the object of a case before the Inter-American Commission on Human Rights regarding his alleged forced disappearance. However, the Court expresses its concern in view of the failure to determine the whereabouts of Iván Eladio Torres, who allegedly disappeared approximately two years and nine months ago.

15. That the Court has taken note of the information provided by the Commission regarding Luis Alberto Alcaína, in reply to the Court's request in the Order of June 21, 2006 (*supra* Having seen paragraphs 4 and 6). To date, neither the Commission nor the representatives have justified a request for measures in favor of Mr. Alcaína. Nevertheless, owing to his connection to the events of April 23, 2006 (*supra* Having

³ Cf. *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional measures. Order of the Inter-American Court of Human Rights of March 30, 2006, twentieth considering paragraph; *Matter of the Monagas Judicial Confinement Center ("La Pica")*. Urgent Measures. Order of the President of the Inter-American Court of Human Rights of January 13, 2006, sixteenth considering paragraph; and *Matter of Children Deprived of Liberty in the "Complejo do Tatuapé" of FEBEM*. Provisional measures. Order of the Inter-American Court of Human Rights of November 30, 2005, twenty-second considering paragraph.

seen paragraph 2(e) and 2(f)), the Court considers it necessary that Argentina provide updated information on Mr. Alcaína's situation and whether it knows his whereabouts.

16. That the State should take all necessary steps to ensure that the measures of protection decided in this Order are planned and implemented with the participation of the beneficiaries of the measures or their representatives, so that the said measures are provided diligently and effectively. In this regard, the Court emphasizes that, during the public hearing, Argentina expressed its absolute willingness to hold discussions in order to adopt all necessary measures to protect the rights to life and integrity of the beneficiaries, and the representatives also expressed the need to hold these discussions. Furthermore, following the hearing, the representatives of the beneficiaries, the Commission and Argentina had a meeting to this end.

17. That, regarding the specific measures of protection to guarantee effectively the rights to life and personal integrity of the beneficiaries of the provisional measures, the Court reiterates that all necessary measures to achieve this goal must be adopted and, to this end, the gravity of the situation and the specific circumstances of the danger must be taken into account; also, they must be implemented as indicated in the preceding paragraph. On this point, during the public hearing, the representatives expressed their opinion about the different measures they consider should be adopted (*supra* Having seen paragraph 17). In this regard, it is worth noting that, during this hearing, Argentina indicated that it "reiterated its complete willingness to implement all those additional measures reasonably necessary to safeguard the life and physical integrity of the beneficiaries" (*supra* Having seen paragraph 18(f)). Also, it indicated that "if some of the matters raised at the hearing had been raised in the appropriate sphere, they would have obtained a favorable response [from the State] at the time they occurred" (*supra* Having seen paragraph 18(f)). In particular, it is worth emphasizing what Argentina indicated with regard to the measures in favor of Miguel Ángel Sánchez and Juan Pablo Caba (*supra* Having seen paragraphs 17(c) and 18(d)), and with regard to the request for a subsidy (*supra* Having seen paragraphs 17(d) and 18(f)).

18. That the Court is concerned about what is happening to the granddaughters of María Leontina Millacura Llaipén, the daughters of Marcos and Valeria. As the Court was informed, at the request of the director of the establishment they have not attended school for the last week, because she "did not want to have problems with them in direct relation to the case" (*supra* Having seen paragraph 17(d) and 17(e)). In this regard, the Court wishes to indicate that the measures of protection for these beneficiaries must include those measures necessary to ensure that the girls can attend school freely.

19. That, regarding the official statement made by Miguel Ángel Sánchez, beneficiary of the measures (*supra* Having seen paragraph 7), which the State was requested to retransmit, since the copy sent to the Secretariat was illegible (*supra* Having seen paragraphs 7 and 14(b)), the Court considers that the State should take the pertinent steps to provide the Court with a complete copy of the official statement made by Mr. Sánchez, who is deprived of liberty.

20. That effective compliance with the obligation to inform the Court about the implementation of the urgent and provisional measures requires the formal submission of a document, within the established time, and with specific, true,

current and detailed information on the issues to which this obligation refers.⁴ The failure of the State to comply with this obligation is especially grave, given the juridical nature of these measures.⁵

21. That the Court considers that Argentina should provide information on the implementation of the provisional measures so that the Court can duly evaluate compliance with them and the need to maintain these measures.

22. That the merits of the case that originated these provisional measures have not been submitted to the Court's consideration and that the adoption of these provisional measures does not imply a decision on the merits of the dispute that exists between the petitioners and the State.⁶ By adopting urgent or provisional measures, the President and the Court are merely exercising their mandate, pursuant to the Convention, in cases of extreme gravity and urgency that require measures of protection to avoid irreparable damage to persons.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority conferred by Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of its Rules of Procedure,

DECIDES:

1. To ratify all the terms of the Order of the President of the Inter-American Court of Human Rights of June 21, 2006, and, consequently, to require the State to maintain the measures it has adopted and to adopt, forthwith, all necessary measures to protect the rights to life and to personal integrity of María Leontina Millacura Llaipén, Marcos and Valeria Torres, Juan Pablo Caba, Gerardo Colín, Patricio Oliva, Tamara Bolívar, Walter Mansilla, Miguel Ángel Sánchez, Silvia de los Santos,

⁴ Cf. *Matter of the Mendoza Prisons*. Provisional measures. Order of the Inter-American Court of Human Rights of March 30, 2006, fourteenth considering paragraph; *Matter of the Jiguamiandó and Curbaradó Communities*. Provisional measures. Order of the Inter-American Court of Human Rights of February 7, 2006, sixteenth considering paragraph; and *Matter of Luisiana Ríos et al. (Radio Caracas Televisión - RCTV)*. Provisional measures. Order of the Inter-American Court of Human Rights of September 12, 2005, seventeenth considering paragraph.

⁵ Cf. *Matter of the Mendoza Prisons*. Provisional measures. Order of the Inter-American Court of Human Rights of March 30, 2006, fourteenth considering paragraph; *Matter of the Jiguamiandó and Curbaradó Communities*. Provisional measures. Order of the Inter-American Court of Human Rights of February 7, 2006, sixteenth considering paragraph; and *Matter of the Peace Community of San José de Apartadó*. Provisional measures. Order of the Inter-American Court of Human Rights of February 2, 2006, seventeenth considering paragraph.

⁶ Cf. *Matter of the Forensic Anthropology Foundation*. Urgent Measures. Order of the President of the Inter-American Court of Human Rights of April 21, 2006, seventh considering paragraph; *Matter of Yare I and Yare II Capital Region Penitentiary Center (Yare Prison)*. Provisional measures. Order of the Inter-American Court of Human Rights of March 30, 2006, seventh considering paragraph; and *Matter of the Monagas Judicial Confinement Center ("La Pica")*. Provisional measures. Order of the Inter-American Court of Human Rights of February 9, 2006, seventh considering paragraph.

Verónica Heredia, and Viviana and Sonia Hayes, and to this end, it should take into consideration the gravity of the situation and the particular circumstances of danger.

2. To require the State to adopt, forthwith, all necessary measures to protect the rights to life and to personal integrity of the granddaughters of María Leontina Millacura Llaipén (daughters of Marcos and Valeria Torres), of Marcela ("wife of Marcos Torres"), of Alberto and Noelia Hayes, and of Luis Alberto Gajardo, and to this end, it should take into consideration the gravity of the situation and the particular circumstances of danger.

3. To require the State to investigate the facts that motivated the adoption of these provisional measures and, if applicable, identify those responsible and impose the corresponding sanctions.

4. To require the State of Argentina to allow the beneficiaries of these measures or their representatives to take part in the planning and implementation of the measures and, in general, to keep them informed about progress in the implementation of the measures.

5. To require the representatives of the beneficiaries of the measures, within two weeks of notification of this Order, to submit a brief justifying their request to expand the measures in favor of Miguel Ángel Gallardo. Also, if the representatives consider that Luis Alberto Alcaína, Diego Álvarez, Mauricio Agüero and Cristian Gamín should be protected by provisional measures, they can submit this request, duly justified, in the same brief.

6. To require the State of Argentine to submit a report to the Inter-American Court of Human Rights, within one month of notification of this Order, on compliance with the measures ordered, taking into account the contents of the fifteenth and twentieth considering paragraphs of this Order, so that the Court can evaluate the need to maintain the said measures.

7. To require the beneficiaries of these measures or their representatives to submit their observations on the said report of the State, within two weeks of receiving it and the Inter-American Commission on Human Rights to submit its observations on this report of the State within four week of receiving it.

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

Sergio García Ramírez
President

Alirio Abreu Burelli

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