

**Order of the
Inter-American Court of Human Rights
of February 06, 2008
Provisional Measures
with regard to Argentina
Matter of Millacura Llaipén *et al.***

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter "the President of the Court") of June 21, 2006.
2. The public hearing on the request for provisional measures held at the headquarters of the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court", "the Court" or "the Tribunal") of July 6, 2006.
3. The Order of the Court of July 6, 2006, ratifying in whole the Order of the President of the Court of June 21, 2006 (*supra* Having Seen clause No. 1) and ordering the State to, *inter alia*:

1. [...] 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, 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. [...] 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. [...] investigate the facts that motivated the adoption of these provisional measures and, if applicable, identify those responsible and impose the corresponding sanctions.

4. [...] 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.

Moreover, the Order compelled the representatives of the beneficiaries of these provisional measures (hereinafter, "the representatives") to:

5. [...] 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.

[...]

4. The memorandum signed by the State, the representatives and the Inter-American Commission on Human Rights (hereinafter "the Inter-American

Commission" or "the Commission") following the conclusion of the above-mentioned public hearing (*supra* Having Seen Clause 2), stating as follows:

1. The petitioners agree to forward to Mr. Juan Pablo Caba prior to July 13, 2006 the alternatives for transfer afforded by the State and to request his opinion in that regard [...].
2. The Government of the Province of Chubut agrees to conduct within 10 days as of Monday, July 11, 2006 a feasibility study for the installation of a closed circuit TV system in the Comodoro Rivadavia Penitentiary No. 1 for surveillance and monitoring purposes, with the participation of the petitioners. To that end, the Human Rights Department of the province of Chubut shall coordinate said measures.
3. Taking into account that Decree No. 2713-06 issued by the Governor of the Province of Tierra del Fuego provided that Mr. Miguel Ángel Sánchez would be accommodated in the Rio Grande Penitentiary, the petitioners agree to take any such judicial action as is appropriate to duly implement such Decree. Moreover, the Province agrees to have its Human Rights Department assist in such transfer.
4. As regards the ongoing investigations into the case of Iván Torres, the petitioners suggest that the Special Investigation Unit be reactivated. The Human Rights Department agrees to forward that suggestion to the competent authorities as soon as possible. For that purpose, the Human Rights Department states that Martín Rico would be a focal point in the initiative.
5. As regards bodyguards, the petitioners ratify their request that the State provide personal bodyguards or residence guards for the members of the Torres and Hayes families. The State agrees to submit such request to the Department of Home Security for consideration as soon as possible.
6. The parties agree to hold regular meetings to further discuss the above-mentioned issues. The first such meeting shall be held during the first week of August 2006, at the time and place to be mutually agreed by the parties.
5. The Center for Legal and Social Studies (CELS)'s submission of 28 July 2006 as *amicus curiae*, containing a "report on the disappearance of Iván Torres."
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7. The State's reports of July 20 and 27 and August 24, 2006, April 20, 2007 and July 27, 2007.
8. The representatives' comments of August 3 and 8, September 27 and October 13, 2006, June 14 and 15, October 17 and 23, 2007, and the undated submission to the President of the Court made on November 7, 2007 in Buenos Aires, Argentina by María Leontina Millacura-Llaipén, the beneficiary of these provisional measures.
9. The Inter-American Commission's comments of November 21, 2006 and the note of September 6, 2007. The Inter-American Commission has not filed any comments to the State's reports since November 21, 2006.

CONSIDERING:

1. That Argentina has been a State Party to the American Convention since September 05, 1984 and, pursuant to Article 62 thereof, on ratifying it Argentina acknowledged the Court's contentious jurisdiction.

2. Under Article 63(2) of the American Convention, "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to matters not yet submitted to it, the Court may act at the request of the Commission."

3. In this regard, Article 25 of the Rules provides that:

[...]

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

[...]

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

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4. That, in relation to the duty to immediately adopt all such measures as are necessary to preserve the rights to life and to physical integrity of the beneficiaries of these provisional measures (*operative paragraph No. 1 of the Order of July 6, 2006*), the State informed that, following his escape and subsequent capture, Mr. Juan Pablo Caba was transferred from the Comodoro Rivadavia Penitentiary to the "Rawson Security and Resocialization Institute, Unit 6, a maximum security prison under the authority of the Federal Penitentiary Service, where he is kept in a cellblock considered to be 'quiet' and where he has had visits." Furthermore, the State informed that it has taken steps towards installing of a surveillance closed circuit TV system in Comodoro Rivadavia Penitentiary No. 1. In that regard, it pointed out that the representatives stated to the State that the surveillance closed circuit system "bec[ame] useless as Juan Pablo Caba was no longer being kept in that place, so they dropped their request." The State pointed out that Mr. Miguel Ángel Sánchez was transferred on August 17, 2006 to Detention Center No. 1 of Río Grande, Tierra del Fuego, escorted by members of staff of the Chubut Human Rights Department. As regards the protection of Tamara Bolívar, Patricia Oliva, Gerardo Colin and Watler Mansilla (*infra*, Considering Clause No. 5), who have no fixed residence, the State informed that the incorporation of such persons into the witness protection program requires a request from the authorized party to the judicial authority; however, it stated that no such request had been made. Finally, it stated that the Executive Power of the Province of Chubut "provided cell phones to each of the individuals subject to provisional measures so they would be in direct touch with the National Border Police."

As regards the duty to adopt the measures needed to protect the rights to life and physical integrity of María Leontina Millacura-Llaipén's granddaughters, of Ms Marcela, of Alberto and Noelia Hayes, and of Luis Alberto Fajardo (*operating paragraph No. 2 of the Order of July 6, 2006*), the State pointed out that it would submit consult the competent authorities of the Home Department about the possibility to committing a Naval Police guard to protect María Leontina Millacura-Llaipén's granddaughters, escorting them on their way to and back from school. In addition, it stated that the residences of the Torres and Hayes are being guarded by Argentine Naval Police officers.

5. That the representatives reported that the beneficiaries of these measures continue to receive threats and other types of intimidations; that Juan Pablo Caba, Miguel Antonio Gallardo and Luis Alberto Alcaina continue to suffer repressive acts in the prisons where they are kept and that their living conditions in jail get worse and worse; and that Walter Mansilla, beneficiary of these measures, died on May 24, 2007 (*infra* Considering clause No. 10). The representatives stated that some of the beneficiaries, including María Millacura, do not feel that the custody provided by the State is adequate, as "the guards [have been] found at times talking with the very policemen who [have been] reported [to be responsible for Iván's disappearance]."

The representatives have stated their dissatisfaction with the prerequisites argued by the State for providing adequate protection for Tamara Bolívar, Patricio Oliva and Gerardo Colín (*supra* Considering clause No 4), according to which a court order is needed for the above-mentioned beneficiaries to be incorporated into the special witness protection program. The representatives pointed out "that the Court's decisions are effective for the Argentinean State." However, they stated that they "expressly required judicial protection on December 29, 2004."

6. The Inter-American Commission, in its brief of November 21, 2006, stated that "the information available reflects the adoption of positive measures in connection with three specific issues related to these provisional measures, namely: the transfer of Miguel Ángel Sánchez, the previous adoption of other measures necessary for installing a closed circuit TV system in the local Penitentiary, and the issuance of an instruction to exclude local police agents from maintaining unnecessary contact with the beneficiaries." Notwithstanding the foregoing, the Commission stated that the information available both from the State and from the representatives reflects a lack of progress and concrete measures with regard to the other aspects of protection ordered by the Court with the aim to protect the life and physical integrity of the beneficiaries. Therefore, it requested the Court to require the State to submit a detailed account of the actual protection measures adopted and ongoing. In addition, the Commission stated that the provisional measures ordered by the Court call for immediate and compulsory implementation, so "the States have the duty to implement them and may not require the beneficiaries to take any further action."

7. That according to the information submitted by the parties, the State has adopted a number of protection measures in consultation with the representatives and the beneficiaries, and has stated its willingness to implement other appropriate measures to protect the beneficiaries' rights to life and physical integrity, Pursuant to the provisions in *operating paragraphs*

No. 1 and 2 of the Court's Order of July 6, 2006. This notwithstanding, the representatives observe that the measures adopted would not be effective or adequate to counter the peril and insecurity they allege in their numerous submissions (*supra* Having Seen clause No. 7).

8. That, in particular, no information has been reported to the Court on the effective measures adopted by the State to protect beneficiaries Tamara Bolívar, Patricia Oliva, Gerardo Colín and Walter Mansilla (*infra* Considering clause No. 10). It follows from the information provided by the representatives that these persons would have been required by the State to request protection measures from the competent national authorities, so the measures are not yet effective. Neither does the Court have precise information on the protection afforded to the granddaughters of María Leontina Millacura (i.e., Evelyn Caba and Ivana Torres), which must consist of "everything, which is required for the girls to freely attend school." In addition, according to the representatives, the Homeland Department would have denied such protection, as it "does not have suitable staff with experience in tasks of this kind, as they are not provided for in the law governing the functions of that force."

9. That in view of the foregoing, it is necessary that the State take all such steps as are appropriate for the protection measures set forth in the Court's Order of July 6, 2006 to be carried out immediately, diligently and effectively, in order to protect the life and physical integrity of the beneficiaries. In this connection, the State should assess the risk run by each of the beneficiaries and debrief the Court on the specific measures implemented for each of them with regard to such risk. The Court repeats that the State must allow the beneficiaries to take part in the planning and implementation of the measures (*supra* Having Seen clause no. 3, *operating paragraph No. 4 of the Order of July 6, 2006*). Furthermore, it should be noted that the provision contained in Article 63(2) of the Convention gives binding effect to the State's order adopting provisional measures as directed by this Court, inasmuch as, under the basic principle of the State's responsibility as sustained by international case law, the States must perform their conventional obligations in good faith (i.e., *pacta sunt servanda*).

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10. That in their submission of comments of June 14, 2007 (*supra* Having Seen Clause No. 7) the representatives reported the death of beneficiary Walter Mansilla. In that regard, they stated that "[o]n June 5, 2007, María Leontina was informed that Walter was in the morgue of the Comodoro Rivadavia Regional Hospital, labeled as 'NN'. Representative Verónica [Heredia] went to the Hospital on June 6, where she was told that on May 28 an unidentified person had been admitted, the record being signed by Dr. Pérez-Cerra, a Chubut Police physician. Ms Silvia [de los Santos] was told off-the-record that Walter was admitted to the Hospital on June 1, 2007, that his body would have been transferred by Chubut Police staff, and that his death had been due to a row.

11. In that regard, in its report of July 27, 2007 (*supra* Having Seen clause No. 6), the State informed that, "the provincial government reported that the admission of Walter Mansilla into the Public Hospital of the city of Comodoro Rivadavia was entered in the applicable records as is usual practice in the public health system." In this regard, it stated that, according to Dr. José Luis Corominas —the Director of the Comodoro Rivadavia Regional Hospital—, on "May 24, 2007, [he was] admitted at 4.30 pm into the emergency room, brought from the Bus Terminal by an undocumented person, suffering bilateral pneumonia and general sepsis, showing clear signs of intoxication with alcohol and possibly other psychotropic substances." In addition, he reported that "as he was being washed, he experience[d] respiratory arrest, so he was transfer[red] to the Medical Clinic Special Care room, to be later referred to the Intensive Care Unit of the Presidente Alvear Hospital, where he [was] admitted and administered mechanical ventilation until June 1, 2007, when he die[d] at 11.30 am as a result of a multiple organ failure [...]."

12. That the Inter-American Commission has made no statement in this regard.

13. That the State must clarify the circumstances surrounding the death of a beneficiary of provisional measures. In view of the specific characteristics of the case at hand, the information submitted by the State and the representatives is not sufficient to satisfy the Court that the death of Mr. Mansilla was linked to the events that triggered the adoption of these provisional measures. It is thus necessary for the State to submit a thorough report on the issue.

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14. That with regard to the duty to look into the events that triggered the adoption of these measures (*supra* Having Seen clause No. 3, *operating paragraph No. 3 of the Order of July 6, 2006*), the State reported that the Argentine Department of Human Rights took a number of steps towards reactivating the Special Investigation Unit. Additionally, it reported that on March 13, 2007 the Argentine Supreme Court of Justice ruled that "the Federal Trial Court in and for Comodoro Rivadavia has jurisdiction over the case re: *Millacura Llaipén María Leontina s/ denuncia desaparición de Persona* (Millacura-Llaipén, María Leontina over reported disappearance)."

15. That the representatives reported that, "not even preliminary investigations of the events that triggered the Provisional Measures before the Court have been conducted." Additionally, in their note of October 23, 2007, the representatives reported that, "the proceedings against all the officers investigated on the forced disappearance [...] of Iván Eladio Torres [...] have been discontinued." The Commission voiced its concern about the failure to adopt specific measures aimed at prosecuting and punishing those responsible for the events that triggered the provisional measures, so it required the State to submit a detailed account of the investigation measures aimed at clarifying the events that triggered the measures ordered by the Court.

16. That in its submission of September 6, 2007 (*supra* Having Seen clause No. 8), the Commission reported that it is "examining the merits" of the case at hand. As a result of the foregoing, this Court considers that the analysis of the effectiveness of the investigations and proceedings concerning the events that triggered these provisional measures, should be comprised in the examination of the merits of the case by the Inter-American Commission¹ (*supra* Having Seen Clause No. 8).

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17. That the Court required the representatives to state the grounds for their request for expansion of provisional measures in favor of Miguel Ángel Gallardo. Furthermore, the Court informed the representatives that, in the event they considered that Luis Alberto Alcaína, Diego Álvarez, Mauricio Agüero and Christian Gamín should be protected by provisional measures, they could submit such request with the appropriate grounds (*supra*, Having Seen Clause No. 3, *operating paragraph No. 5 of the Order of July 6, 2006*).

18. That in their submission of July 28, 2006, the representatives replied to the Court's requirement and stated that they lack adequate information to justify the expansion of the measures in favor of Luis Alberto Alcaína. The representatives informed that Diego Álvarez expressly stated that he needed no protection for the time being.

19. That in their comments of June 14, 2007, the representatives requested the expansion of measures in favour of Iván Eladio Torres, Cristian Gamín, Miguel Antonio Gallardo and Mauricio Agüero. They also stated that Cristian Gamín "is afraid of the police [...] all the more so since Iván [Eladio Torres]'s disappearance." They further stated that Cristian Gamín was aware that Walter Mansilla had been threatened with death. As regards Miguel Ángel Gallardo, the representatives stated that "the Chubut Province Police is trying to blame him for the disappearance of Iván Eladio Torres." They also pointed out that "Miguel Ángel [Gallardo] is currently detained at the Police Station [...] of the city of Comodoro Rivadavia." The representatives informed that on July 5, 2006 Mauricio Agüero was released from prison, and they have not been able to contact him since. The representatives submitted a writing drawn up by a number of people who were detained at the Police Station No. 1, including Mauricio Agüero, describing situations of violent repression in the premises after the escape of some prisoners.

20. That in its report of July 27, 2007, (*supra* Having Seen clause No. 6) the State expressed that, with regard to the request for expansion of provisional measures, "the State does not see the grounds stated by the attorneys in requesting them, as their submission fails to state a situation of clear risk, but they merely gave general and imprecise references."

¹ Cf. Matter of Monagas Judicial Confinement Center ("La Pica"). Provisional Measures regarding Venezuela, Order of July 3, 2007, Considering clause No. 23.

21. That "the *prima facie* standard of evidence in one case and the reliance on presumptions when faced with a request for protection have led this [...] Court to order measures on a number of occasions"²; but, in order to expand the measures, the proven situation of extreme gravity and urgency and necessary to prevent irreparable damage must be directly linked to the events that triggered the ordering of the provisional measures in the case at hand, so the request must be duly grounded (*supra* Having Seen clause No. 3, *operating paragraph No. 5 of the Order of the Court of July 6, 2006*).

22. That, after analyzing the argument presented by the representatives, the Court deems that there are no compelling reasons that warrant an expansion of these provisional measures in favor of Cristian Gamín, Diego Álvarez, Luis Alberto Alcáina and Mauricio Agüero.

23. That, with regard to the request for expansion of measures in favor of Iván Eladio Torres, pursuant to Considering clause No. 4 of the Order of July 6, 2006, the Court ordered that "such request [was] not admissible as the matter is part of a case being heard by the Inter-American Commission on Human Rights regarding his forced disappearance."

NOW THEREFORE

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

in exercise of the powers conferred upon it under Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of the Court's Rules of Procedure,

DECLARES,

1. That the provisional measures adopted through the Order of the Inter-American Court of Human Rights of July 6, 2006 regarding Walter Mansilla have become futile as he has died, pursuant to Considering clauses No. 10 and 11 of this Order.

AND DECIDES:

1. To insist that the Argentinean State maintains the measures adopted and adopts all such measures as are necessary to protect the rights to life and to physical integrity of María Leontina Millacura Llaipén, Marcos and Valeria Torres, Juan Pablo Caba, Gerardo Colín, Patricio Oliva, Tamara Bolívar, Miguel Ángel Sánchez, Silvia de los Santos, Verónica Heredia, and Viviana and Sonia Hayes, as well as of the granddaughters of María Leontina Millacura-Llaipén (daughters of Marcos and Valeria Torres), of Mrs Marcela Torres ("the wife of

² Cf. *Matter of Adrián Meléndez-Quijano et al.*, Provisional Measures regarding El Salvador, Order of March 24, 2007, Considering clause No. 9; *Matter of Gloria Giralte de García Prieto et al.*, Provisional Measures regarding El Salvador, Order of September 26, 2006, Considering clause No. 10, *Case of 19 Tradesmen (Sandra Belinda, Montero Fuentes and next of kin, Salomón Flores and next of kin, Luis José Pundor Quinteros and next of kin, Ana Diva Quintero Pundor and next of kin)*, Provisional Measures regarding Colombia, Order of July 4, 2006, Considering clause No. 4.

Marcos Torres”), of Alberto and Noelia Hayes, and of Luis Alberto Fajardo, taking into account the gravity of the situation and the specific risk circumstances.

2. To require the Argentinean State that, in its next report, provides an assessment of the risk situation of each of the beneficiaries of these measures, specifying the measures that have been implemented accordingly, pursuant to Considering clauses No. 7 and 9 hereof.

3. To require the Argentinean State that in its next report it relates the events and circumstances that caused the death of Walter Mansilla, pursuant to Considering clause No. 13 hereof.

4. To declare that in these provisional measures proceeding the effectiveness of the investigations into the events that triggered the measures will not be taken into consideration, as it is a matter to be examined by the Inter-American Commission on Human Rights.

5. To dismiss the request for expansion of these provisional measures in favor of Cristian Gamín, Iván Eladio Torres, Miguel Antonio Gallardo, Mauricio Agüero, Luis Alberto Alcaína and Diego Álvarez, pursuant to Considering clauses No. 21 to 23 hereof.

6. To require the Argentinean State that, in conjunction with the representatives and the beneficiaries of the measures, it evaluates the appropriate methods for attaining the effective protection of the rights to life and to physical integrity of the beneficiaries, pursuant to Considering clause No. 9 hereof.

7. To require the State to continue to inform the Inter-American Court of Human Rights every two months on the provisional measures adopted, and to require the beneficiaries of those measures or their representatives to submit their comments within four weeks as from the notification of the Argentinean State's reports, and the Inter-American Commission on Human Rights to submit its comments to such reports within six weeks as from receipt thereof.

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

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel E. Ventura-Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary