

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JULY 9, 2004**

**PROVISIONAL MEASURES REQUESTED BY THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
IN THE MATTER OF VENEZUELA**

CASE OF CARLOS NIETO *ET AL.* V. VENEZUELA

HAVING SEEN:

1. The July 7, 2004 brief of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") where, pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 25 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), it submitted to the Court a request seeking provisional measures with respect to Venezuela (hereinafter "the State" or "Venezuela"), "to protect the life, integrity of person, freedom of expression and freedom of association of Carlos Nieto Palma, who works as General Coordinator of *Una Ventana a la Libertad*, a nongovernmental organization[, and] to protect the life and integrity of person of his family, including that of his nine-month-old nephew, John Carmelo Laicono Nieto."

2. The Inter-American Commission's arguments are based on the following allegations of fact:

- a) in its Report on the Situation of Human Rights in Venezuela, the Commission underscored the considerable number of complaints of attacks, acts of intimidation and threats made against human rights defenders in Venezuela. The information available indicates that human rights defenders and the organizations of which they are members are frequently harassed, either in the form of direct attacks on their physical person or more shadowy forms of intimidation such as veiled threats. The human rights defenders generally become selective targets of attack when no serious judicial inquiries are conducted to investigate threats and attempts made upon them. The situation is often exacerbated by the States' refusal to acknowledge the obstacles that human rights defenders are up against in their work and the States' refusal to admit that because of those obstacles, human rights defenders require special protection;
- b) on June 22 and July 5, 2004, the Inter-American Commission received a request seeking precautionary measures for attorney Carlos Nieto Palma, who has for eight years been coordinator general of a nongovernmental human rights organizations called "*Una Ventana a la Libertad*," an organization devoted to defending and promoting human rights in Venezuelan prisons and jails. Mr. Nieto Palma is also a

* Judges Alirio Abreu Burelli and Diego García-Sayán informed the Court that, for reasons of *force majeure*, they could not be present for, and therefore did not participate in the discussion and signing of this Order.

professor at the *Universidad Católica Andrés Bello* and the *Universidad Central de Venezuela*. The request filed with the Commission came from the Human Rights Center (*Centro de Derechos Humanos*) of the *Universidad Católica Andrés Bello*, the Venezuelan Programme for Human Rights Education-Action (*Programa Venezolano de Educación-Acción en Derechos Humanos - PROVEA*), the Vicariate of Human Rights of the Archdiocese of Caracas, the Jesuit Refugee Service, the Community Learning Centers (*Centros Comunitarios de Aprendizaje - CECODAP*), the Peace and Justice Support Network, assisted by Mr. Héctor Faúndez Ledesma;

- c) on Sunday, June 6, 2003, at 3:30 p.m., Mr. Carlos Nieto Palma was visited by three civilian intelligence agents (DISIP) from the Ministry of the Interior and Justice, who informed him that while they had the order to make a household visit, they did not have a court order to search his home. They went on to say, however, that as members of the government's civilian intelligence agency (DISIP) they wanted to speak with him. Only one of the agents showed Mr. Nieto his credentials and identified himself as "Chief Rodríguez." The police were at the door to his home for more than ten minutes. As they insisted on speaking with him inside, Mr. Nieto Palma relented and allowed them into his living room;
- d) the representatives stated that the police made it plain that that they were aware of the activities of Mr. Carlos Nieto Palma and of his family, and knew "intimate details of his private life." Mr. Nieto Palma was questioned about his work as a human rights defender, the work he does in Venezuelan prisons, and whether he was acquainted with the political prisoners from Plaza Altamira, whether he had defended them and why. They also asked him to explain why he was receiving money from a foreign government to finance his nongovernmental organization "*Una Ventana a la Libertad*." Throughout the questioning, Mr. Nieto Palma felt intimidated by the police agents' repeated references to his nine-month-old nephew John Carmelo Laicono Nieto, "how pretty he was in the photographs, the climate of insecurity in Caracas, and the possibility that something untoward might happen to him;"
- e) at 10:00 a.m. on Friday, June 18, 2004, Mr. Carlos Nieto Palma received a summons to appear "immediately" at the Office of Prosecutor 27 for the Caracas Metropolitan Area. That same day, at 3:30 p.m., Mr. Nieto Palma appeared at the Prosecutor's Office, in the company of attorneys Carlos Simón Bello and Alejandro Rodríguez. Prosecutor Antonio Rodríguez Landaeta was the person who spoke with him, and told him that he had been summoned as a witness, but did not indicate the case in question. The questioning to which he was subjected "seemed to suggest that Mr. Nieto Palma was accused of committing some crime." The line of questioning centered around the funding of the nongovernmental organization "*Una Ventana a la Libertad*" and whether he was the attorney for the "*Altamira rock throwers*" [*"los tira piedra de Altamira"*], an expression the prosecutor used in reference to a number of leaders of the opposition of President Hugo Chávez Frías' administration. These were people that Mr. Nieto

Palma had represented as an attorney. During the questioning, the prosecutor accused him of being a "traitor;"

- f) that same day, June 18, 2004, when Mr. Nieto Palma returned home from the Prosecutor's office, he noticed that his computer was no longer working, even though it had been working perfectly that very morning. He does not know whether someone entered his home and got into his computer while he was away. The representatives pointed out the coincidence of the computer problem and the earlier visit from the police and the fact that the house had been empty for several hours as Mr. Nieto Palma had to answer the summons and report to the Prosecutor's Office;
- g) on Sunday, June 20, 2004, someone from a neighboring apartment asked him if he was Mr. Carlos Nieto Palma; when he answered that he was, the neighbor gave him a pamphlet that had been slipped beneath his door. The pamphlet contained an express threat against Mr. Nieto Palma and stated, *verbatim*, the following: "[...] you'll never live to tell about it [...]" Later, three other neighbors handed him pamphlets identical to the first. Apparently, those pamphlets had been circulated throughout the entire building and were also inserted into mail boxes at the apartment building; and
- h) on June 23, 2004, Mr. Carlos Nieto Palma reported the facts of the case to the Ombudsman's Office. He did not file a complaint with the Office of the Attorney General, since it had been the Public Prosecutor's Office "that ha[d] violated the interested party's human rights by putting his personal liberty and safety in jeopardy." According to the representatives, because of the tone of the questioning and the situation of other human rights defenders like María Corina Machado and Alejandro Plaz (members of SUMATE), who had already been accused of the crime of treason, Mr. Nieto Palma might be formally charged with treason.

3. The Inter-American Commission's comments to the effect that the facts recounted above demonstrate the government's clear intention to instill fear in Mr. Carlos Nieto Palma and are a serious threat to his life, the integrity of his person, and his personal liberty and security, and also pose a danger of irreparable harm to his family. According to the Commission the death threats, their tone, the acts of harassment experienced, and the involvement of agents of the State, suggest that this person's situation is one of grave and imminent danger. The predicament of human rights defenders is one of the Commission's chief concerns. In recent months, the Commission has received abundant information that "reveals a pattern of intimidation targeted at human rights defenders in Venezuela." For the Commission, the acts of intimidation against Mr. Nieto Palma are part of this pattern; therefore, "all the mechanisms of protection that the inter-American system offers must be deployed" to protect his life and the integrity of his person.

Based on the foregoing and pursuant to Article 63(2) of the American Convention, the Commission requested that the Court call upon the State to:

- a. [a]dopt the measures necessary to protect the life and the integrity of the person of Mr. Carlos Nieto Palma and his family, particularly his nine-month-old nephew John Carmelo Laicono Nieto, by mutual agreement with the beneficiary and the petitioners[.];

- b. [a]dopt the measures necessary to enable him to carry on [...] his work of defending human rights [; and]
- c. [r]eport the measures taken to identify the source of the threats on the life and the integrity of person of Carlos Nieto Palma and his family, threats that justify invocation of Article 63(2) of the Convention.

CONSIDERING:

1. That the State ratified the American Convention on August 9, 1977 and, pursuant to Article 62 thereof, recognized the Court's contentious jurisdiction on June 24, 1981.
2. That article 63(2) of the American Convention provides that "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission."
3. That article 25(1) of the Court's Rules of Procedure 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."
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 their free and full exercise to all persons subject to their jurisdiction.
5. That the purpose of provisional measures in domestic legal systems (domestic procedural law) in general, is to preserve the rights of the parties to a dispute, thereby ensuring that execution of the judgment on the merits is not obstructed or otherwise prejudiced by their actions *pendente lite*.
6. That under the International Law of Human Rights, urgent and provisional measures serve a further purpose, which is to protect fundamental human rights, thereby avoiding irreparable harm to persons.
7. That the information presented by the Commission in this case reveals, *prima facie*, a threat to the life, integrity of person, and personal liberty of human rights defender Carlos Nieto Palma, and a threat to the life and integrity of person of his family, particularly his nephew John Carmelo Laicono Nieto (*supra* 'Having Seen' 2 and 3). On a number of occasions, when protective measures were called for, this Court has ordered provisional measures applying the standard of *prima facie* assessment of a case and on the basis of presumptive evidence.¹
8. That states must grant effective and adequate guarantees to human rights defenders so that they are able to freely engage in their activities; particular attention should be paid to any actions that constrain or obstruct their work.²

¹ Cf., *inter alia*, *The Case of the "El Nacional" and "Así es la Noticia" Newspapers*. Order of the Inter-American Court of Human Rights of July 6, 2004, 'Considering' seven; *Case of the Indigenous Community of Sarayaku*. Order of the Inter-American Court of Human Rights of July 6, 2004, 'Considering' seven; and *Case of Kankuamo Indigenous People*. Order of the Inter-American Court of Human Rights of July 5, 2004, 'Considering' seven.

9. That to effectively ensure the rights recognized in the American Convention, the State Party has an obligation, *erga omnes*, to protect all persons subject to its jurisdiction. As this Court has previously held, this means that this general obligation applies not only with respect to the power of the State but also with respect to actions by third parties.³ The Court observes that given the characteristics of the instant case, provisional measures are needed to protect Mr. Carlos Nieto Palma, his family, and particularly his nephew John Carmelo Laicono Nieto, based on the provisions of the American Convention.

10. That the case to which the Commission's request refers is not now pending with the Court for a decision on the merits; therefore, adoption of provisional measures does not imply a decision on the merits of the dispute between the petitioners and the State.⁴ In adopting provisional measures, the Court is merely guaranteeing that it is able to faithfully execute its mandate under the Convention for cases of extreme gravity and urgency that require measures of protection to avoid irreparable harm to persons.

11. That the State has an obligation to investigate the facts that gave rise to this request for provisional measures, in order to identify those responsible and punish them accordingly.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

RESOLVES:

1. To call upon the State to adopt forthwith the measures necessary to safeguard and protect the life, integrity of person and personal liberty of Mr. Carlos Nieto Palma, and the life and integrity of person of his family, especially that of his nephew John Carmelo Laicono Nieto.

² Cf. *Case of Lysias Fleury*. Provisional Measures. Order of the Inter-American Court of Human Rights of December 2, 2003, '*considering*' ten; Resolution 1842 (XXXII-O/02) of the General Assembly of the Organization of American States; Resolution 1818 (XXXI-O/01) of the General Assembly of the Organization of American States, and the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144.

³ Cf., *inter alia*, *The Case of the "El Nacional" and "Así es la Noticia" Newspapers*. Order of the Inter-American Court of Human Rights of July 6, 2004, '*Considering*' twelve; *Case of the Indigenous Community of Sarayaku*. Order of the Inter-American Court of Human Rights of July 6, 2004, '*Considering*' ten; and *Case of Kankuamo Indigenous People*. Order of the Inter-American Court of Human Rights of July 5, 2004, '*Considering*' eleven.

⁴ Cf., *inter alia*, *The Case of the "El Nacional" and "Así es la Noticia" Newspapers*. Order of the Inter-American Court of Human Rights of July 6, 2004, '*Considering*' thirteen; *Case of the Indigenous Community of Sarayaku*. Order of the Inter-American Court of Human Rights of July 6, 2004, '*Considering*' twelve, and *Case of Kankuamo Indigenous People*. Order of the Inter-American Court of Human Rights of July 5, 2004, '*Considering*' thirteen.

2. To call upon the Inter-American Commission on Human Rights to submit, within seven days of receiving notification of this Order, a list of the family members on whose behalf the State must adopt the aforementioned measures of protection.
3. To call upon the State to investigate the facts that necessitated the adoption of these provisional measures, in order to identify those responsible and punish them accordingly.
4. To call upon the State to allow the beneficiaries of these measures to participate in their planning and implementation and, in general, to keep them informed of the progress made in carrying out the measures ordered by the Inter-American Court of Human Rights.
5. To call upon the State, within ten days of being notified of this Order, to report to the Inter-American Court of Human Rights on the provisional measures it has adopted in compliance therewith.
6. To call upon the representative of the beneficiaries of these provisional measures to submit his comments within five days of being notified of the State's report.
7. To call upon the Inter-American Commission on Human Rights to submit its comments within seven days of receiving notification of the State's report.
8. To call upon the State, subsequent to its first communication (*supra* operative paragraph 5), to continue to file reports with the Inter-American Court of Human Rights every two months on the provisional measures adopted; to call upon the beneficiaries of these measures to submit their comments within one month from the date of notification of the State's reports; and to call upon the Inter-American Commission on Human Rights to present its observations on the State's reports within six weeks of their receipt.
9. To send notification of the present Order to the State, the Inter-American Commission on Human Rights and the representative of the beneficiaries.

Sergio García-Ramírez
President

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