

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS  
OF DECEMBER 2, 2003**

**PROVISIONAL MEASURES**

**LYSIAS FLEURY CASE\*  
IN THE MATTER OF HAITI\*\***

**HAVING SEEN:**

1. The March 18, 2003 Order of the President of the Inter-American Court of Human Rights (hereinafter "the President") in which he decided:

1. To order the State to adopt, forthwith, such measures as m[ight] be necessary to protect the life and the right to humane treatment of Lysias Fleury.
2. To order the State to investigate the facts that gave rise to adoption of the[...] urgent measures, with the aim of identifying those responsible and punishing them as appropriate.
3. To order the State to allow the beneficiary of these measures to participate in their planning and implementation and, in general, to inform him of progress regarding implementation of the measures ordered by the President of the Inter-American Court of Human Rights.
4. To order the State to report to the Inter-American Court of Human Rights, within 15 days of when it receives notice of the [...] Order, on the urgent measures it ha[d] adopted to comply with this Order.
5. To order the Inter-American Commission on Human Rights to submit its observations within two weeks of when it receive[d] notice of the report filed by the State.
6. To order the State, subsequent to its first report (*supra* operative paragraph four), to continue reporting to the Inter-American Court of Human Rights, every 30 days, on the urgent measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations on said reports by the State within two weeks of when it receive[d] notice of the respective reports filed by the State.

2. The April 3, 2003 letter by the Secretariat of the Court (hereinafter "the Secretariat"), under instructions by the President, in which it reminded the State to submit its first report on the urgent measures ordered by the President on March 18, 2003 (*supra* Having Seen 1).

3. The April 16, 2003 brief by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), in which it reported that the State had not adopted any measures to protect the life and the right to humane treatment of Mr. Fleury since the President ordered the urgent measures.

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\* Judge Salgado Pesantes informed the Court that, due to reasons of *force majeure*, he would be unable to participate in the deliberation and signing of the instant Order.

\*\* Drafted in Spanish and French, the Spanish text being authentic.

4. The April 24, 2003 communication by the State of Haiti (hereinafter "the State"), received at the Secretariat on the following May 20, in which it acknowledged receipt of the April 3, 2003 reminder of the Secretariat (*supra* Having Seen 2) and stated that it was forwarded to the Ministry of Justice and Public Security "for the relevant purposes."

5. The May 22, 2003 note by the Secretariat, in which it asked the State to send its communications "by fax or courier for them to arrive in a timely manner [and therefore to make] the processing of the instant matter more expeditious and agile."

6. The May 22, 2003 communication in which the Inter-American Commission forwarded to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") a March 21, 2003 note, received on May 6, 2003 by the Secretariat of the Commission, in which the State referred to the precautionary measures ordered by the Commission. The Commission also reiterated its the content of the observations made in its April 16, 2003 communication (*supra* Having Seen 3).

7. The May 30, 2003 brief in which the Commission referred to the letters filed by the State before the Inter-American Court on May 20, 2003 (*supra* Having Seen 4) and it pointed out that they were received seven weeks after expiry of the term set in the March 18, 2003 Order of the President (*supra* Having Seen 1). It also stated that said letters do not constitute "a report before the Inter-American Court of Human Rights [...] on the urgent measures adopted [by the State]." On the other hand, the Commission reported that Mr. Fleury's situation was the same as described in the April 16 and May 22, 2003 communications (*supra* Having Seen 3 and 6), "in other words, that he continue[d] to live undercover and not at his home." Finally, the Commission asked the Court to:

1. find that the State of Haiti ha[d] not fulfilled its obligation to effectively implement the March 18, 2003 Order of the President of the Inter-American Court of Human Rights;

2. ratify the March 18, 2003 Order of the President of the Inter-American Court of Human Rights, issue an Order on provisional measures in favor of Lysias Fleury, all the above in reiteration of each of the operative paragraphs of the March 18, 2003 Order of the President of the Inter-American Court of Human Rights; [and]

3. order the State to report to the Court, within a brief term, on concrete and effective measures adopted by Haiti to carry out the provisional measures, and secondly to report to the Court in the same manner every two months.

8. Resolutions 1818/01 and 1842/02 of the General Assembly of the Organization of American States, in which it decided:

1. To reiterate its support for the work carried out, at both the national and regional levels, by human rights defenders; and to recognize their valuable contribution to the protection, promotion, and observance of human rights and fundamental freedoms in the Americas.

2. To deplore acts that directly or indirectly prevent or hamper the work of human rights defenders in the Americas.

3. To urge member states to step up their efforts to adopt the necessary measures, in keeping with their domestic law and with internationally accepted principles and standards, to guarantee the life, personal safety, and freedom of expression of human rights defenders.

[...]

9. The June 7, 2003 Order of the Court, in which it decided:

1. To ratify in its entirety the March 18, 2003 Order of the President of the Inter-American Court of Human Rights.
2. To find that the State has not effectively implemented urgent measures ordered by the President of the Inter-American Court in his March 18, 2003 Order.
3. To order the State to adopt, forthwith, such measures as m[ight] be necessary to protect the life and the right to humane treatment of Lysias Fleury.
4. To order the State to investigate the facts that gave rise to adoption of the[.] provisional measures, with the aim of identifying those responsible and punishing them as appropriate.
5. To order the State to allow the beneficiary of the[...] measures to participate in their planning and implementation and, in general, to inform him of progress regarding implementation of the measures ordered by the Inter-American Court of Human Rights.
6. To order the State to continue reporting to the Inter-American Court of Human Rights, every 30 days, on the provisional measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations on said reports by the State within two weeks of when it receive[d] notice of them.

10. The September 10, 2003 letter by the Secretariat, under instructions by the Court, in which it reminded the State of its obligation to submit monthly information on the provisional measures that it must adopt to protect Mr. Fleury's right to life and to humane treatment.

**CONSIDERING:**

1. The State ratified the American Convention on Human Rights (hereinafter "the Convention" or the "American Convention") on September 27, 1977 and, pursuant to Article 62 of the Convention, it accepted contentious jurisdiction of the Court on March 20, 1998.
2. Article 63(2) of the American Convention establishes that, "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court 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. Article 25(1) of the Rules of Procedure of the Court establishes 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. Article 1(1) of the Convention enshrines the duty of the States Party to respect the rights and liberties recognized in that treaty and to ensure their free and full exercise by all persons under their jurisdiction.
5. The aim of provisional measures, in national legal systems (domestic procedural law) in general, is to protect the rights of the parties to a dispute,

ensuring that the judgment on the merits is not hindered by their actions *pendente lite*.

6. The aim of provisional measures, in International Human Rights Law, goes further, inasmuch as, in addition to their essentially preventive nature, they effectively protect fundamental rights, insofar as they seek to avoid irreparable damage to persons.

7. Article 68(1) of the Convention provides “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” Furthermore, the States must fulfill their treaty obligations in good faith (*pacta sunt servanda*) as set forth in Article 26 of the 1969 Vienna Convention on the Law of Treaties, which codifies a basic principle of general international law. In addition, as this Court has stated and Article 27 of that same Vienna Convention provides, the States cannot avoid fulfilling their previously established international obligation due to domestic reasons.

8. The instant case is not being heard by the Court regarding the merits and, therefore, adoption of provisional measures does not entail a decision on the merits of the dispute between the applicant and the State.<sup>1</sup>

9. When the Court ordered the State to adopt provisional measures in favor of Lysias Fleury (*supra* Having Seen 9), the Court also ordered it to report on implementation of said measures.

10. The States must provide effective and adequate guarantees for human rights advocates to freely conduct their activities, and they should pay special attention to actions that limit or obstruct their work.<sup>2</sup>

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<sup>1</sup> Cf., *inter alia*, *Lysias Fleury Case*. Provisional Measures. Order of the Court of June 7, 2003. Series E No. 4, Considering ten; *Lysias Fleury Case*. Provisional Measures. Order of the President of March 18, 2003. Series E No. 4, Considering ten; *Case of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Court of March 6, 2003. Series E No. 4, Considering twelve ; *Case of the Urso Branco Prison*. Provisional Measures. Order of June 18, 2002. Series E No. 4, Considering ten; *Lilliana Ortega et al. Case*. Provisional Measures. Order of the Court of November 27, 2002. Series E No. 4, Considering six; *Luis Uzcátegui Case*. Provisional Measures. Order of the Court of November 27, 2002. Series E No. 4, Considering six; *Luisiana Ríos et al. Case*. Provisional Measures. Order of November 27, 2003. Series E No. 4, Considering six; *Case of the Miguel Agustín Pro Juárez Human Rights Center et al.* Provisional Measures. Order of the Court of November 30, 2001. Series E No. 4, Considering nine and ten; *Case of the Miguel Agustín Pro Juárez Human Rights Center et al.* Provisional Measures. Order of the Court of October 25, 2001. Series E No. 4, Considering ten; *Case of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Court of November 24, 2000. Series E No. 3, Considering thirteen; *Alvarez et al. Case*. Provisional Measures. Order of the Court of October 11, 2000. Series E No. 3, Considering eleven; *Case of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the President of October 9, 2000. Series E No. 3, Considering eleven; *Case of Haitians and Dominicans of Haitian origin in the Dominican Republic*. Provisional Measures. Order of the Court of September 14, 2000. Series E No. 3, Considering seven; *James et al. Case*. Provisional Measures. Order of the Court of September 25, 1999. Series E No. 2, Considering eight; *James et al. Case*. Provisional Measures. Order of the President of June 19, 1999. Series E No. 2, Considering seven; *James et al. Case*. Provisional Measures. Order of the Court of May 27, 1999. Series E No. 2, Considering seven; *James et al. Case*. Provisional Measures. Order of the Court of May 25, 1999. Series E No. 2, Considering two e); *James et al. Case*. Provisional Measures. Order of the Court of May 11, 1999. Series E No. 2, Considering five; *James et al. Case*. Provisional Measures. Order of the Court of August 29, 1998. Series E No. 2, Considering six; *James et al. Case*. Provisional Measures. Order of the President of July 22, 1998. Series E No. 2, Considering six; *James et al. Case*. Provisional Measures. Order of the President of July 13, 1998. Series E No. 2, Considering six; *James et al. Case*. Provisional Measures. Order of the President of July 29, 1998. Series E No. 2, Considering six; *James, Briggs, Noel, Garcia and Bethel Cases*. Provisional Measures. Order of the Court of June 14, 1998. Series E No. 2, Considering five; and *James, Briggs, Noel, Garcia and Bethel Cases*. Provisional Measures. Order of the President of May 27, 1998. Series E No. 2, Considering seven.

11. The Court already found, in its June 7, 2003 Order, that the information supplied by the Commission in this case demonstrates *prima facie* the existence of a situation of extreme gravity and urgency regarding the life and personal safety of Lysias Fleury.<sup>3</sup> Furthermore, in operative paragraph six (*supra* Having Seen 9) it established the obligation of the State to report to the Court, every thirty days, on the measures adopted.

12. Based on its analysis of the documents in the file regarding the instant measures, the Court deems it necessary to reiterate to the State that it has the responsibility of adopting security measures to protect all persons under its jurisdiction and that this duty becomes even more evident with respect to those involved in proceedings before the protection bodies of the American Convention.<sup>4</sup>

13. To date the State has not submitted any of the reports ordered both by the President and by the Court, regarding measures adopted to comply with the March 18, 2003 Order of the President and the June 7, 2003 Order of the Court, and the April 3, May 22 and September 10, 2003 notes of the Secretariat (*supra* Having Seen 1, 2, 5, 9 and 10).

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<sup>2</sup> 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 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. General Assembly Res. 53/144.

<sup>3</sup> *Cf., Lysias Fleury Case*. Provisional Measures. Order of the Court of June 7, 2003. Series E No. 4, Considering nine.

<sup>4</sup> *Cf., inter alia, Bámaca Velásquez Case*. Provisional Measures. Order of the Court of November 20, 2003. Considering six; *Liliana Ortega et al. Case*. Provisional Measures. Order of the Court of February 21, 2003. Series E No. 4, Considering eight; *Luisiana Ríos et al. Case*. Provisional Measures. Order of the Court of February 20, 2003. Series E No. 4, Considering eight; *Luis Uzcátegui Case*. Provisional Measures. Order of the Court of February 20, 2003. Series E No. 4, Considering eleven; *Luis Uzcátegui Case*. Provisional Measures. Order of the Court of November 27, 2002. Series E No. 4, Considering seven; *Luisiana Ríos et al. Case*. Provisional Measures. Order of the Court of November 27, 2002. Series E No. 4, Considering seven; *Liliana Ortega et al. Case*. Provisional Measures. Order of the Court of November 27, 2002, Series E No. 4, Considering seven; *Case of the Urso Branco Prison*. Provisional Measures. Order of the Court of August 29, 2002. Series E No. 4, Considering five; *Helen Mack et al. Case*. Provisional Measures. Order of the Court of August 26, 2002. Series E No. 4, Considering seven; *Helen Mack et al. Case*. Provisional Measures. Order of the President of August 14, 2002. Series E No. 4, Considering seven; *Case of the Urso Branco Prison*. Provisional Measures. Order of the Court of June 18, 2002. Series E No. 4, Considering eight; *Gallardo Rodríguez Case*. Provisional Measures. Order of the President of December 20, 2001. Series E No. 4, Considering seven; *Case of the Miguel Agustín Pro Juárez Human Rights Center et al.* Provisional Measures. Order of the President of the Court of October 25, 2001. Series E No. 4, Considering eight; *Loayza Tamayo Case*. Provisional Measures. Order of the Court of February 3, 2001. Series E No. 3, Considering eight; *Paniagua Morales et al. Case*. Provisional Measures. Order of the Court of January 29, 2001. Series E No. 3, Considering nine; *Loayza Tamayo Case*. Provisional Measures. Order of the President of the Court of December 13, 2000. Series E No. 3, Considering nine; *Case of the Haitians and Dominicans of Haitian Origin in the Dominican Republic*. Provisional Measures. Order of the Court of November 12, 2000. Series E No. 3, Considering six; *Case of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Court of November 24, 2000. Series E No. 3 Considering ten; *Case of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the President of the Court of October 9, 2000. Series E No. 3, Considering eight; *Case of the Haitians and Dominicans of Haitian Origin in the Dominican Republic*. Provisional Measures. Order of the Court of August 18, 2000. Series E No. 3, Considering eleven; *Case of the Constitutional Court*. Provisional Measures. Order of the Court of August 14, 2000. Series E No. 3, Considering nine; *Case of the Constitutional Court*. Provisional Measures. Order of the President of the Court of April 7, 2000. Series E No. 2, Considering nine; and *Case of Digna Ochoa and Plácido et al.* Provisional Measures. Order of the Court of November 17, 1999. Series E No. 2, Considering seven.

14. The State has the duty to supply sufficient information on the measures adopted, as this is a duty of the State that has repeatedly been established by this Court.<sup>5</sup>

15. The State must comply with all orders of this Court and regularly inform on all measures adopted to protect the life and the right to humane treatment of Lysias Fleury, on the investigation of the facts that gave rise to the provisional measures, and on steps taken for the applicant to participate in their planning and implementation. This obligation for the State to inform the Court of how it is complying with its orders is crucial for evaluation of the case.

16. Pursuant to Article 65 of the American Convention,

To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

17. Article 30 of the Statute of the Court provides that:

[t]he Court shall submit a report on its work of the previous year to each regular session of the OAS General Assembly. It shall indicate those cases in which a State has failed to comply with the Court's ruling. It may also submit to the OAS General Assembly proposals or recommendations on ways to improve the inter-American system of human rights, insofar as they concern the work of the Court.

18. Due to the fact that the State has not effectively implemented the provisional measures ordered by this Court; has not investigated the facts that gave rise to them; has not involved the applicant in their planning and implementation; and has not fully complied with the obligation to report, therefore if the current situation continues the Court –applying Article 65 of the Convention (*supra* Considering 17) and Article 30 of the Statute of the Court (*supra* Considering 18)- will include the instant Order in its Annual Report for the year 2003, for it to be considered by the General Assembly of the Organization of American States.

## **NOW THEREFORE:**

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<sup>5</sup> *Cf., inter alia, Case of Marta Colomina and Liliana Velásquez. Provisional Measures. Order of the Court of September 8, 2003. Considering ten and eleven and Operative paragraphs five and seven; Lysias Fleury Case. Provisional Measures. Order of the Court of June 7, 2003. Series E No. 4, Operative paragraph six; Blake Case. Provisional Measures. Order of the Court of June 6, 2003. Series E No. 4, Considering six and seven and Operative paragraphs three and four; Helen Mack Chang et al. Case. Provisional Measures. Order of the Court of June 6, 2003, Operative paragraphs six and eight; Case of the Communities of Jiguamiandó and Curbaradó. Provisional Measures. Order of the Court of March 6, 2003. Series E No. 4, Operative paragraphs eight and ten; Bámaca Velásquez Case. Provisional Measures. Order of the Court of February 21, 2003. Series E No. 4, Operative paragraphs six and eight; Helen Mack Chang et al. Case. Provisional Measures. Order of the Court of February 21, 2003. Series E No. 4, Operative paragraphs six and eight; Liliana Ortega et al. Case. Provisional Measures. Order of the Court of February 21, 2003, Series E No. 4, Operative paragraphs six and eight; Luis Uzcátegui Case. Provisional Measures. Order of the Court of February 20, 2003. Series E No. 4, Operative paragraphs five and seven; Luisiana Ríos et al. Case. Provisional Measures. Order of the Court of February 20, 2003. Series E No. 4, Operative paragraphs six and eight; Liliana Ortega et al. Case. Provisional Measures. Order of the Court of November 27, 2002, Series E No. 4, Operative paragraphs four and six; Luis Uzcátegui Case. Provisional Measures. Order of the Court of November 27, 2002, Operative paragraphs four and six; and Luisiana Ríos et al. Case. Provisional Measures. Order of the Court of November 27, 2002. Series E No. 4, Operative paragraphs four and six.*

**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

in view of the authority granted to it by Articles 63(2), 65, and 68(1) of the American Convention on Human Rights, Article 30 of the Statute of the Court, and Articles 25 and 29(2) of its Rules of Procedure,

**DECIDES:**

1. To reiterate that the State has not effectively implemented the provisional measures ordered by the Inter-American Court of Human Rights in the instant case.
2. To declare that the State has not complied with the duty set forth in Article 68(1) of the American Convention on Human Rights.
3. To declare that the State did not comply with its duty to report to the Inter-American Court of Human Rights on implementation of the provisional measures ordered by the Court.
4. To inform the General Assembly of the Organization of American States, if the current situation continues, of non-compliance by the State with the decisions of the Inter-American Court of Human Rights, applying Article 65 of the American Convention on Human Rights and Article 30 of the Statute of the Inter-American Court of Human Rights.
5. To reiterate to the State the order to adopt, forthwith, such measures as may be necessary to protect the life and the right to humane treatment of Lysias Fleury.
6. To reiterate to the State the order to investigate the facts stated in the claim that gave rise to adoption of these provisional measures, with the aim of identifying those responsible and punishing them as appropriate.
7. To reiterate to the State the order to allow participation of the beneficiary of these measures in their planning and implementation, and in general to inform him of progress regarding implementation of the measures ordered by the Inter-American Court of Human Rights.
8. To order the State to report to the Inter-American Court of Human Rights, no later than January 20, 2004, on the provisional measures it has adopted to comply with the instant Order.
9. To order the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights whatever comments it deems pertinent within two weeks of when it receives notice of the report filed by the State.
10. To order the State, subsequent to its communication as set forth in operative paragraph eight, to report to the Inter-American Court of Human Rights every two months on the provisional measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations to said reports by the State within six weeks of when it receives notice thereof.

11. To notify the State and the Inter-American Commission on Human Rights of the instant Order.

Antônio A. Cançado Trindade  
President

Sergio García-Ramírez

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles  
Secretary

So ordered,

Antônio A. Cançado Trindade  
President

Manuel E. Ventura-Robles  
Secretary