

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS\*  
OF FEBRUARY 29, 2012**

**PROVISIONAL MEASURES  
REGARDING THE DOMINICAN REPUBLIC**

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

**HAVING SEEN:**

1. The brief of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of May 30, 2000, and its attachments, in which it submitted to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") the request for provisional measures in favor of Haitians and Dominicans of Haitian origin who are subject to the jurisdiction of the Dominican Republic (hereinafter "the State" or "the Dominican Republic") and who are at risk being collectively "expelled" or "deported", in relation to case No. 12,271. The case is currently being processed before the Commission.

2. The Orders of the Inter-American Court of June 16, August 7 and 18, September 14, and November 12, 2000; May 26, 2001; October 5, 2005, and February 2, 2006, in which measures were adopted in favor of the beneficiaries Benito Tide Méndez, Antonio Sensión, Andrea Alezy, Janty Fils-Aimé, William Medina Ferreras, Berson Gelin, Rafaelito Pérez Charles, Father Pedro Ruquoy and Solain Pie or Solain Pierre or Solange Pierre\*\* and her children.

3. The Order of the Court of July 8, 2009, in which the Court ordered that the provisional measures in favor of Rafaelito Pérez Charles, Andrea Alezy and the priest Pedro Ruquoy be lifted.

4. The Order of the Inter-American Court of December 1, 2011, in which the Court ordered that the provisional measures in favor of Janty Fils-Aimé and Benito Tide Méndez be lifted, and that the measures in favor of Antonio Sensión, William Medina Ferreras and Berson Gelin be maintained for eight months as of notification of the order. The measures were also maintained for Solain Pierre or Solain Pie or Solange Pierre and her children. Furthermore, in this order, the State, the representatives of the beneficiaries (hereinafter "the representatives"), and the Inter-American Commission on Human Rights (hereinafter "the Commission") were required to submit a clear and detailed report on the information requested in Considering paragraphs 15, 20, 33 and 39.

5. The State's report of February 1, 2012.

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\* Judge Rhadys Abreu Blondet, a Dominican national, excused herself from considering the provisional measures in the instant case, in accordance with Articles 19.2 of the Statute and 19 and 21 of the Court's Rules of Procedure.

\*\* It is noted that throughout the instant case the parties have made reference to Solain Pie or Solain Pierre or Solange Pierre. The Court points out that this is the same person and that therefore, henceforward, the Court shall refer to her as "Solange Pierre or Mrs. Pierre."

6. The observations of the representatives submitted on December 20, 2011, and February 1 and 10, 2012.

7. The observations of the Inter-American Commission of February 17, 2012.

8. The communication of the Secretariat of February 3, 2012, in which it asked the representatives to submit, by February 10, 2012 at the latest, a complementary report with observations on the State's report received on February 1, 2012. Likewise, the Inter-American Commission was granted an additional period, which expired on February 17, 2012, to submit its observations. In addition, the State was asked to submit its observations concerning the representatives' request to extend the provisional measures in its next bi-monthly report.

#### **CONSIDERING THAT:**

1. The Dominican Republic has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since April 19 1978 and, in accordance with Article 62 thereof, accepted the compulsory jurisdiction of the Court on March 25, 1999.

2. Article 63.2 of the 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. The provisions of Article 63.2 of the Convention mean that the provisional measures ordered by this Court are compulsory for States, because a basic principle of international law, supported by international jurisprudence, indicates that States must comply with their treaty-based obligations in good faith (*pacta sunt servanda*).<sup>1</sup>

4. In this regard, the pertinent part of Article 27 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure")<sup>2</sup> establishes that:

1. At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, on its own motion, order such provisional measures as it deems appropriate, 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. Under International Human Rights Law provisional measures are not only preventive in nature, in that they preserve a legal situation, but are also protective, because they protect human rights, inasmuch as they seek to avoid irreparable harm to persons. The measures are applied provided that the basic requirements of extreme gravity and urgency

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<sup>1</sup> Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of June 14, 1998, Considering paragraph 6; and *Matter of the Socio-educational Internment Unit.* Provisional measures regarding Brazil. Order of the Inter-American Court of Human Rights, September 1, 2011, Considering paragraph 3.

<sup>2</sup> Rules of Procedure of the Court approved at its Eighty-fifth Ordinary Period of Sessions, held from November 16 to 28, 2009.

and the need to avoid irreparable harm to persons are met. In this way, provisional measures become a true jurisdictional guarantee of a preventive nature.<sup>3</sup>

6. Article 63.2 of the Convention requires that, for the Court to order provisional measures, three conditions must be met: (i) "extreme gravity"; (ii) "urgency," and (iii) the need "to avoid irreparable harm to persons." These three conditions must coexist and be present in any situation in which the Court's intervention is requested. Similarly, these three conditions must persist for the Court to maintain the protection ordered. If one of the conditions is no longer valid the Court must assess the pertinence of maintaining the protection ordered.<sup>4</sup>

7. By virtue of its jurisdiction, in the context of the request to extend the provisional measures, the Court may consider only and strictly those arguments that are directly related to the extreme gravity, urgency and need to prevent irreparable harm to persons. Any other fact or argument may only be examined and decided during consideration of the merits of a contentious case.<sup>5</sup>

8. On October 13, 2005, the Inter-American Commission issued the Admissibility Report No. 68/05 concerning petition No. 12,271 in the case of Benito Tide Méndez, Antonio Sensión, Andrea Alezi, Janty Fils-Aimé, William Medina Ferreras, Rafaelito Pérez Charles, Berson Gelin *et al.* - Dominican Republic, in which it concluded that "the case is admissible and that it [was] competent to examine the claim presented by the petitioners [...] under the provisions of Articles 46 and 47" of the American Convention.<sup>6</sup>

9. In the Order issued on December 1, 2011 (*supra* Having Seen paragraph 4), the Inter-American Court decided to lift the provisional measures in favor of Benito Tide Méndez and Janty Fils-Aimé, and required the State: (a) to maintain the measures adopted and to order immediately any other measures necessary to protect the life and personal integrity of Antonio Sensión, William Medina Ferreras and Berson Gelin, for an additional period of at least eight months as of notification of said Order; (b) to maintain the necessary measures to protect the life and personal integrity of Solange Pierre, and of her children; (c) to appoint a State authority in the Dominican Republic to whom the beneficiaries and/or their representatives can have recourse in order to resolve any aspect relating to the implementation of the provisions of these measures; (d) to renew or to issue, as soon as possible, safe conducts for the beneficiaries of the provisional measures; (e) to continue the periodic meetings of the working group or team of State officials, with the participation of the beneficiaries and/or their representatives, to collaborate on the implementation of the measures ordered by the Court; (f) to designate, in coordination with the beneficiary, Solange Pierre, an appropriate person to provide protection and establish the most effective mechanism to respond to any eventuality regarding her safety and personal integrity and

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<sup>3</sup> Cf. *Case of the Newspaper "La Nación"*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights, September 7, 2001, Considering paragraph 4; *Case of de la Cruz Flores v. Peru*. Order of the Inter-American Court of February 29, 2012. Considering paragraph 5.

<sup>4</sup> Cf. *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights, July 6, 2009, Considering paragraph 14; and *Case of de la Cruz Flores v. Peru*, *supra* note 3, Considering paragraph 2.

<sup>5</sup> Cf. *Matter James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 20, 1998, Considering paragraph 6, and *Matter of the Prison of Urso Branco*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of August 25, 2011, Considering paragraph 4.

<sup>6</sup> Cf. <http://www.cidh.oas.org/annualrep/2005sp/RepDominicana12271sp.htm>

that of her children, and (g) require the State, the representatives and the Commission to submit, at the latest by February 1, 2012, a clear and detailed report on the specific steps taken to implement these measures.

*A) Regarding the appointment of a State authority, the issue and renewal of safe conducts, and a working group or team to collaborate in the implementation of the measures ordered by the Court as well as the scheduling of work meetings*

*A.1) Regarding the appointment of a State authority*

10. In its brief of February 1, 2012, the State advised that it had appointed Rafael Cruz, of the General Directorate of Immigration, and Santo Miguel Octavio Román García, Deputy Director General for Immigration, to be responsible for delivering the safe conducts, and provided their contact details.

11. In their briefs of February 10 and 17, 2012, the representatives and the Commission, respectively, took note of the information provided by the State on the contact details of the State authorities. In this regard, the representatives observed that Messrs. Cruz and Román no longer worked with the said Directorate.

*A.2) Regarding the issue and renewal of safe conducts*

12. With regard to the issue and renewal of the safe conducts in favor of the beneficiaries, the State reiterated its willingness to grant the remaining safe conducts, but alleged that those individuals who had not received a safe conduct had not contacted the authorities. In this regard, the State indicated that these individuals could go to the General Directorate of Immigration to obtain the safe conducts.

13. In their observations of February 1, 2012, the representatives indicated that no State representative had responded to their efforts before the General Directorate of Immigration. In their brief of February 10, 2012, in response to the State's report of February 1, 2012, the representatives reiterated their commitment to take the necessary steps to ensure that the State complied with its obligation to take action, given that the State had failed to comply with the provisional measures.

14. Furthermore, together with their brief of February 1, 2012, the representatives forwarded the Court a list with the names of the individuals who had been granted safe conducts or whose safe conducts had been renewed. The list shows that four members of the Medina Ferreras family; Berson Gelin; four members of the Sensión family, and eight members of the Fils-Aimé family received safe conducts. In addition, eight members of the Jean family received safe conducts. According to this list, 10 members of the above-mentioned families have not yet received a safe conduct.<sup>7</sup>

15. The representatives also pointed out that, due to disregard for the validity of the safe conducts, the beneficiaries were subjected to "episodes of violence" from the authorities. The representatives attributed those incidents to the State's failure to take the measures agreed at the first meeting of the working group that collaborates in the implementation of the measures ordered by the Court. Likewise, they indicated that those measures are essential to ensure the effectiveness of the safe conducts.

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<sup>7</sup> Namely: Kimberly Pérez Medina, Pili Sainlis (partner of Berson Gelin), William Gelin, Jamson Gelin, Kenson Gelin, and Faica Gelin resident in Anse-A-Pitre, Haiti, and Reyita Antonia Sensión, Emiliano Mache Sensión, Maximiliano Sensión and the daughter of Ana Lidia Sensión, all resident in Dominican Republic.

16. In its observations of February 17, 2012, the Commission indicated that the State had expressed "its willingness to grant the remaining safe conducts." It also noted that "from the information provided, it is evident that the usefulness or legitimacy of the safe conducts would be questioned more at the border posts than within the Dominican Republic, and therefore [it] consider[ed] it crucial that the complementary measures duly agreed by the parties be implemented." In addition, it asked the Court to "require the State to issue safe conducts for the children identified in the attachment to the representatives' brief."

*A.3) Regarding a working group or team to collaborate in the implementation of the measures ordered by the Court and the scheduling of work meetings*

17. In its most recent report dated February 1, 2012, the State indicated that, on January 17, 2012, it had received a communication from the petitioners asking that it coordinate the resumption of the tasks of the working group, and that it is currently taking steps, within the State apparatus, to hold a meeting.

18. In their observations of February 1, 2012, the representatives stated that, ever since the group was established, there has never been fluid communication and that, despite their attempts, they had not been able to organize a new meeting with those appointed, and therefore nothing had changed since the last meeting, which was held in January 2011. They added that, despite their efforts, they had been unable to communicate with the State to arrange the next meetings of the working group, because the State had not collaborated. Consequently, they asked the Court to order the State to set up a new working group to coordinate and supervise compliance with the provisional measures, provide information on the new members of the group, and communicate with the representatives to coordinate the scheduling of the group's meetings.

19. In its observations of February 17, 2012, the Commission indicated that "the State had not presented specific information" on the scheduling of the next working meetings. It added that "priority should be given to establishing a fluid and constructive communication to allow for progress in the implementation of the provisional measures and to respond satisfactorily to the needs of the beneficiaries."

***Considerations of the Court***

20. Based on the foregoing, the Court notes that the State has provided information on the appointment of State authorities to whom the beneficiaries of the measures may have recourse in relation to their implementation, as well as on the creation of the working group; also, it has expressed its willingness to issue the safe conducts to those who do not yet have them. Although the Commission and the representatives acknowledge that the State has made those appointments and created the working group, their observations reveal that they are dissatisfied with the lack of concrete actions on the part of the aforementioned State authorities due, on the one hand, to the fact that some of those appointed no longer hold public office and, on the other, that they have had difficulty in communicating with those authorities and have not received any response from the State to follow up on the implementation of the measures, particularly with regard to the delivery of safe conducts, and the coordination to hold meetings in this regard. Accordingly, they considered that the State has not taken the necessary steps to comply with the measures ordered by the Court.

21. In this regard, the Court acknowledges the efforts made by the State to comply with the instant measures and the willingness shown to move forward with their implementation.

However, in view of the observations of the Commission and the representatives on this matter, this Court considers that the State must take the necessary measures to ensure that the persons it has appointed to implement the measures, as well as the members of the working group, take concrete steps to implement the measures as regards, *inter alia*, the issuing of the remainder of the safe conducts and the scheduling of meetings with the participation of the beneficiaries or their representatives. In addition, the Court takes note of the commitment expressed by the representatives to facilitate compliance with these measures. Based on the foregoing, the Court reiterates the provisions of considering paragraph 20 of the Order of December 1, 2011, and considers it essential that, in its next report, the State indicate the steps it has taken, and also that it continue to implement the necessary and sufficient measures: (a) to continue the periodic meetings of the working group composed of State officials, with the participation of the beneficiaries and/or their representatives to collaborate on the implementation of the measures ordered by the Court, and (b) to submit a report with the timetable of the next meetings.

*B) Regarding the situation of Solain Pie or Solain Pierre or Solange Pierre*

22. In its report of February 1, 2012, the State requested that the provisional measures in favor of Solain Pierre be lifted, because she had died in December 2012.

23. In this regard, in their briefs of December 20, 2011, and February 1, 2012, based on the decease of Solain Pierre on December 4, 2011, the representatives asked the Court to lift the measures in her favor. On February 17, 2012, the Commission also referred to the death of Ms. Pierre.

***Considerations of the Court***

24. Since Solange Pierre is now deceased the provisional measures in her favor are rescinded.

*C) Regarding the situation of the children of Solain Pie or Solain Pierre or Solange Pierre*

25. In its report of February 1, 2012, the State requested that the measures in favor of the children of Solange Pierre be lifted, because, with their mother's death, the reasons for the provisional measures granted in their favor had ceased to exist.

26. In their observations of December 20, 2011, and February 1 and 10, 2012, the representatives indicated that Solange Pierre's children are in a situation of extreme gravity and urgency with respect to their life and personal integrity, because they continue to be subjected to harassment and criticism due to their work. In this regard, the representatives indicated that her daughter Manuela began to work in the legal department of the Dominican-Haitian Women's Movement (MUDHA), and to have greater public exposure in representation of the organization, and that her son Carlos has worked for several months in this organization's transportation department. They added that Solange Pierre's children had informed them that, in the last two weeks, they had been subjected to various acts of intimidation, such as the fact that, on several occasions, they have observed a car with tinted windows drive slowly by their home, turn round and then drive rapidly away. Consequently, and given the close ties between the surname Pierre and the activities of MUDHA, the representatives requested that the provisional measures be maintained in favor of Solain Pierre's children, and that the working group be ordered to meet with the representatives to agree on and implement the necessary measures to protect their life and personal integrity.

27. In its observations of February 17, 2012, the Commission considered that “the main source of risk for the children of Solain Pierre arose from her activity as a human rights defender.” Nevertheless, it noted that “recently, Mrs. Pierre’s children have been followed and subjected to other acts of intimidation,” such as: (a) on November 5, Leticia Dandre Pie, was followed by an unknown man while returning from the university; (b) Manuela began to work in the legal department of MUDHA and to receive public exposure; (c) for several months, Carlos has been working in the transportation department of this organization, and (d) on several occasions, they had seen a car with tinted windows driving slowly by their home. In addition, it indicated that several MUDHA employees had been followed and that, on November 22, 2011, they had filed a complaint before the National District Public Prosecutor based on these incidents. Finally, it considered that “until the Court has verified that, owing to Mrs. Pierre’s death, the reasons for the risk to and vulnerability of her children have ceased, the provisional measures in their favor should be maintained.”

28. The Court recalls that, when ordering provisional measures, the standard for the assessment of these requirements by the Court or its President is *prima facie* because, at times, presumptions must be made when faced with the need for protection.<sup>8</sup> Nevertheless, maintaining measures of protection requires the Court to make a more rigorous assessment regarding the continuation of the situation that gave rise to the measures.<sup>9</sup> If a State requests that the provisional measures ordered be lifted or modified, it must present sufficient evidence and arguments to allow the Court to appreciate that the risk or the threat no longer meet the requirements of extreme gravity and urgency to prevent irreparable harm. However, the burden of proof and arguments of the beneficiaries and the Commission will increase with the passage of time during which no new acts occur of the magnitude of those that resulted in the provisional measures.<sup>10</sup> Furthermore, in order to determine whether it is appropriate to maintain the provisional measures, the Court cannot lose sight of the fact that protection measures should be of an essentially provisional and temporary nature.<sup>11</sup>

29. Based on the foregoing, the Court notes that the State requested the lifting of the measures in favor of the children of Solange Pierre owing to her death, without making a specific analysis of the current situation of each one. Meanwhile, in its observations, the Commission recalled the comments of the representatives, and gave a general description of the situation of the children and the fact that they have allegedly been followed. The Commission did not refer specifically to the current situation of risk of each one, even though, according to the Court’s case law, the burden of proof and argument increases with the passage of time in order to prove the need to maintain the provisional measures based on the concurrence of the three conditions: extreme gravity, urgency and the need to

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<sup>8</sup> Cf. *Case Raxcacó Reyes et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of August 30, 2004, Considering paragraph 10, and *Case of González Medina and Family*. Provisional Measures regarding the Dominican Republic. Order of the Inter-American Court of August 30, 2011, Considering paragraph 13.

<sup>9</sup> Cf. *Matter of the Kankuamo Indigenous People*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of April 3, 2009, Considering paragraph 7, and *Matter of the Penitentiaries of Mendoza*. Provisional Measures regarding Argentina. Order of the Inter-American Court of July 1, 2011, Considering paragraph 30.

<sup>10</sup> Cf. *Matter of Gallardo Rodríguez*. Provisional Measures regarding Mexico. Order of the Inter-American Court of July 11, 2007, Considering paragraph 11, and *Case of Caballero Delgado et al.* Provisional Measures regarding Colombia. Order of the Inter-American Court of February 25, 2011, Considering paragraph 15.

<sup>11</sup> *Matter of Haitians and Dominicans of Haitian origin in the Dominican Republic*. Provisional Measures regarding Dominican Republic. Order of the Inter-American Court of July 8, 2009, Considering paragraph 20.

prevent irreparable harm to persons. Accordingly, this Court considers it essential that both the State and the Inter-American Commission forward a precise and detailed report, authenticating the current situation of extreme gravity and urgency to protect each of Mrs. Pierre's children from irreparable harm, in relation to the purpose for which these measures were adopted and, as appropriate, provide grounds for maintaining the measures in their favor.

30. Consequently, this Court considers it appropriate to maintain the measures in favor of the children of Solange Pierre for an additional period of at least six months as of notification of this Order, during which time the State must guarantee, using the necessary means, their life and personal integrity, and to this end it must establish the most appropriate mechanism to respond to any eventuality relating to their safety and integrity, in coordination with the designated authority, the working group and the beneficiaries.

*D) Regarding the situation of extreme gravity and urgency of Berson Gelin, Antonio Sensión and William Medina Ferreras*

31. In its report of February 1, 2012, the State did not provide specific information on the specific situation of Berson Gelin, Antonio Sensión and William Medina Ferreras.

32. For their part, the representatives indicated that "[t]he context in which the families live has not changed since [their] last brief of November 20, 2011." Newspaper articles and reports by civil society confirm that the State continues to carry out arbitrary mass deportations and expulsions that do not respect due process. The representatives then referred to the situation of Messrs. Berson Gelin, Antonio Sensión and William Medina Ferreras, which is described below:

a) Berson Gelin

He has a safe conduct. The representatives stated that he lives with his partner and three children in the town of Anse-a-Pitre, Haiti. His son, William Gelin, lives in the Dominican Republic and contact with his son is difficult, because he is afraid that the immigration officials may again destroy his safe conduct. For this reason, the measure allowing him to return to the Dominican Republic and be reunited with his son has not been implemented.

b) Antonio Sensión

Mr. Sensión and his next of kin reside in Dominican Republic. His partner lives with a daughter and his two granddaughters; the other daughter (both born in Dominican Republic) lives with her husband and her son. His other grandson died in 2011 due to lack of access to health care services. The report states that this family lives in the *bateyes*, high-risk areas characterized by high rates of crime and a large population of immigrants, mostly of Haitian origin. The representatives allege that the State has not ceased its arbitrary mass deportations and expulsions. The raids take place at the weekend, without due process, and those detained cannot communicate with their family members. They indicated that there is no complete and comprehensive list of those detained, which would enable their families to assist them or find them. Consequently, they affirmed that "in these circumstances, they are at greater risk of being victims of raids and deportations, due to the extreme brutality of the security forces in these *bateyes*."

c) William Medina Ferreras



William Medina, who lives in Haiti, obtained his safe conduct in March 2002. However, the representatives indicated that the family is fearful of travelling to the Dominican Republic due to the acts of violence and discrimination, as well as to the lack of sufficient funds because, according to the representatives, the border authorities illegally ask them for money in order to allow them to enter Dominican territory. The family continues to live in precarious conditions, without any hope of being able to return to the country where William, Wilda and Luis Ney were born. Even though some of them have documents that prove their birth and previous legal residence in Dominican Republic, the border authorities only allow them to cross the border with safe conducts. The border authorities deny the legitimacy of the safe conducts.

33. In its observations of February 17, 2012, the Commission noted that the information presented by the representatives “reveals that the situation of extreme gravity and urgency that justified the adoption of these provisional measures continues.” In addition, it considered that “the international protection provided through the Court’s provisional measures is essential to help reduce the risk to the beneficiaries and to guarantee their life and personal integrity.”

#### ***Considerations of the Court***

34. Based on the provisions of Considering paragraph 33 and Operative paragraph 2 of the Court’s Order of December 1, 2011, the Court finds it appropriate to maintain the provisional measures in favor of Berson Gelin, Antonio Sensión and William Medina Ferrer, under the terms set forth in the aforesaid Order, for an additional period of least six months as of notification of this Order. Subsequently, the Court shall assess in due course the maintenance of those measures in favor of the beneficiaries.

#### *E) Regarding the request to extend the measures*

35. In their brief of February 1, 2012, the representatives requested that the measures be extended to include all members of the Medina Ferreras, Gelin, Fils-Aimé, Sensión and Jean families. The information presented by the representatives reveals that this extension is requested for Lilia Jean Pierre, partner of William Medina, their daughter Wilda Medina, their son Luis Nery Medina, and their granddaughter Kimberly Pérez Medina (Wilda’s daughter), all members of the Medina Ferreras family; Pili Sainlis, partner of Berson Gelin, their sons William Gelin, Jamson Gelin, Kenson Gelin, and their daughter Faica Gelin, all members of the Gelin family; Ana Virginia Nolasco, partner of Antonio Sensión, their daughters Ana Lidia Sensión and Reyita Antonia Sensión, their grandson Emiliano Mache Sensión (son of Reyita) and their granddaughters Ana Dileidy Sensión and Analideire Sensión (daughters of Ana Lidia). In addition, the representatives requested the extension of the measures to members of the family of Janty Fils-Aimé, who is deceased, namely Janise Midi, his partner, their sons Antonio Fils-Aimé, Endry Fils-Aimé, Juan Fils-Aimé, Andren Fils-Aimé and Nene Fils-Aimé, and their daughters Diane Fils-Aimé, Marilobi Fils-Aimé and Carolina Fils-Aimé. Finally, they requested that the measures be extended to Víctor Jean, his partner Marlene Mesidro, their sons Miguel Jean, Markenson Jean and Victor Manuel Jean, and their daughters Victoria Jean, Natalie Jean and Jessica Jean, all members of the Jean family.

36. The representatives indicated that the context in which the families live has not changed since its last report of November 30, 2011, and pointed out that the news and the reports by civil society “confirm that the State has not ceased to carry out arbitrary mass deportations and expulsions using several security agencies.” They also reiterated that the

alleged raids and deportations “take place at night or at weekends, due process is not respected, those detained cannot communicate with their families or legal representatives and there is no complete and comprehensive list of those detained to enable their families to assist them and/or find them.” Also, they stated that “amendments to the law are leaving more and more Dominicans of Haitian origin without documents and also contemplate automatic deportation.” According to the representatives, these laws “have a direct impact on the families that are parties to the instant matter, particularly those members who do not have a safe conduct or other identity document that indicates their right to be in the country. These individuals, including their newborns, are at risk of being victims of fresh expulsions, putting the family at risk of being separated once again.”

37. The representatives also referred to the situation of each family, providing a general description of its composition (*supra* Considering paragraph 35), the situation of poverty of the Sensión and Jean family, who live in the *bateyes* characterized by a large immigrant population with high levels of exclusion, violence and crime and where the General Directorate of Immigration frequently carries out raids, mass detentions and deportations. They added that, due to the lack of identity documents, some members of the families “without a safe conduct would not have any type of documentation to guarantee their right to freedom of movement and residence in the country.” Consequently, they argued that “[i]n this context, they are at greater risk of becoming victims of raids and deportations given the extreme brutality of the security forces in the *bateyes*.” In addition, they stated that the Medina Ferreras, Gelin and Fils-Aimé families continued to live in the border town of Anse-a-Pitre, in conditions of precariousness and extreme poverty. Regarding the Jean family, they indicated that its members live in a *bateye* in the Dominican Republic and have safe conducts granted by the State; according to the representatives, this prevented Markenson, the eldest son of the family, from possibly being removed and abandoned on the other side of the border, in Haiti, in December 2011, when he was detained during a police raid in the area. Finally, they indicated that “[t]he Court has not referred to the Jean family in its previous orders. Nevertheless, the State has granted them safe conducts, and they asked for the extension of the measures.”

38. The representatives argued that the measures should be extended to all members of the families, for the purpose of: (a) protecting the family unit: the safe conducts help prevent a person from being deported or expelled and, therefore, should be granted to all the members of the family; (b) implementing the preventive nature of the measures: until the matter being processed before the Commission is decided, the victims in case No. 12,271 being processed before the Commission continue to live in a situation of extreme vulnerability and latent threat, and (c) the parties have considered the family unit as the *de facto* beneficiary of the measures. In addition, they indicated that some family members do not have safe conducts, because: (a) they were unable to attend the meetings at which safe conducts were handed out, or (b) they are new members who joined the family after the last meeting at which safe conducts were handed out. Finally, they reiterated the situation of extreme gravity and urgency facing the members of the aforesaid families, who appear on the list of victims in case No. 12,271 before the Commission, and they requested that the State comply with its commitment to grant safe conducts to all the family members who do not have them.

39. In view of the representatives’ application for an extension of the measures, the Commission was asked to refer to this request. In its brief of February 17, 2012, the Commission reiterated that “those who maintain a fluid contact with the beneficiaries and represent their direct interests are the representatives, for which reason the Commission, based on the information they have provided, will proceed to make its observations.” In this regard, it considered that, in this matter, “one the elements considered in granting

international protection was not only to guarantee individual life and personal integrity, but also to preserve the unity and integrity of the family as a whole." Accordingly, the Commission referred to the representatives' observations concerning the situation of each family and reiterated its previous observations that "it is evident that they face the same risk factors due to their close ties to the situation of extreme gravity and urgency that justified recognizing them as beneficiaries, taking into account the presumed context of continuous collective expulsions described by the representatives, and the possibility that the beneficiary families could be separated because they do not have the relevant documentation to enter or remain in Dominican territory."

40. Finally, the Commission noted that the information provided by the representatives reveals that the situation of extreme gravity and urgency that justified the adoption of provisional measures continues; also, "the current situation in the Dominican Republic in which hundreds of Haitians and Dominicans of Haitian origin continue to be expelled, using procedures that do not respect the principle of due process, contributes to the situation of risk of the beneficiaries, who more than 10 years ago were subjected to this type of practice." Consequently, the Commission asked the Court to "issue an order declaring all the members of the Jean, Medina Ferreras, Gelin, Fils-Aimé and Sensión families beneficiaries of these provisional measures."

### ***Considerations of the Court***

41. First of all, it should be noted that, based on the provisions of the Convention and the Rules of Procedure that regulate the adoption of provisional measures (*supra* Considering paragraphs 2 and 4), the request by the representatives to extend these measures cannot be considered because it was not submitted by the Inter-American Commission.

42. However, given that an extension of the provisional measures to the members of the Medina Ferreras, Gelin, Fils-Aimé, Sensión and Jean families was subsequently requested by the Commission in its brief of February 17, 2012, the Court shall proceed to examine the matter.

43. Based on the allegations of the representatives, the Commission considered that the current context of the Dominican Republic, in which the alleged deportation and expulsion of Haitians and Dominicans of Haitian origin continues, using procedures that supposedly fail to respect the principles of due process, which contributes to a situation of risk for the beneficiaries, remains unchanged. As background information, the Commission mentioned that, for more than 10 years, the beneficiaries in this case have been subjected to this type of practice. In addition, it reproduced the information provided by the representatives concerning the situation of each family.

44. Likewise, in order to justify the request, the Commission stated that the purpose of the provisional measures in this matter is not only to guarantee the life and personal integrity of each individual, but also to preserve the unity and integrity of the family as a whole, because the families are, in fact, in the same situation. Moreover, taking into account the alleged context of continuing expulsions and deportations, the members of the aforesaid families could be separated because they do not have the relevant documentation to remain in or to enter the Dominican Republic. In this regard, it emphasized the importance of the providing safe conducts to the members of each family, in particular to the new members – the children. Consequently, from the information received, the Commission considered that the beneficiaries continue to be in a situation of risk and extreme vulnerability, given the obstacles associated with obtaining identity documents that would allow them to enter the Dominican Republic and prevent their expulsion, as applicable, as well as the difficulties in

gaining access to basic services – health care and education. Accordingly, it considered that the international protection provided by the Court’s provisional measures is fundamental “to help reduce the risk to the beneficiaries and to guarantee their life and personal integrity.”

45. The Court considers that an adequate assessment of the request to extend the provisional measures involves an analysis of the situation described by the Commission, since the mechanism of provisional measures requires that the requisites established in Article 63.2 of the Convention be proved in relation to the individuals in whose favor the measures are requested. The Court recalls that the burden of proof and argument of the beneficiaries and the Commission will increase with the passage of time to determine whether it is appropriate to modify the provisional measures, since the Court cannot lose sight of the fact that protection measures should be of an essentially provisional and temporary nature.

46. The Commission referred, in general terms, to the alleged mass deportations and expulsions that continue in the Dominican Republic, which places the potential beneficiaries in a situation of risk. In this regard, the Court, in accordance with its case law, reiterates that the information provided cannot conclude that the alleged context or the existence of “risk factors” constitutes *per se* grounds for granting the provisional measures. Furthermore, the Court recalls that in any situation in which the intervention of the Court is requested, so that provisional measures may be granted, there must be a concurrence of three conditions, namely extreme gravity, urgency and the need to prevent irreparable harm to persons. This Court notes that the information presented does not reveal specific acts that have occurred against the proposed beneficiaries that could constitute effects of the alleged context. Moreover, the Inter-American Commission used as grounds for its request the general statements made by the representatives regarding the situation of members of the families, without indicating recent acts that had put their integrity or safety at risk, or providing additional details of possible means, time and place that would allow the Court to adequately appreciate the specific situation of extreme gravity and urgency, and the danger of irreparable harm to each one in accordance with Article 63.2 of the Convention.

47. Based on the foregoing, the Court considers that there is not an observable configuration of a situation of extreme gravity and urgency that could cause irreparable harm to members of the Medina Ferreras, Gelin, Fils-Aimé, Sensión and Jean families in this matter, and therefore it does not consider admissible the request to extend the provisional measures in their favor at this time.

48. Furthermore, bearing in mind the characteristics of the instant matter, the Court records the fact that these provisional measures were granted on June 16, 2000 (*supra* Having Seen paragraph 2), and that they have been in force for more than 11 years, and that the Commission issued its Admissibility Report on October 13, 2005. The Court has already indicated that provisional measures are exceptional in nature, are ordered due to the need for protection and, once ordered, must be maintained as long as the basic requirements of extreme gravity and urgency persist.<sup>12</sup> Thus, provisional measures are related to a specific temporary situation and, by their very nature, cannot be perpetuated indefinitely.<sup>13</sup>

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<sup>12</sup> Cf. Matter Clemente Teherán et al. (Zenú Indigenous Community). *Provisional Measures* regarding Colombia. Order of the Court of December 1, 2003, Considering paragraph 3, and *Case of Cruz Flores v. Peru*, *supra* note 3 Considering paragraph 30.

<sup>13</sup> *Matter of the Communities of Jiguamiandó and Curbaradó, Provisional Measures regarding Colombia*, Order of the Inter-American Court of August 30, 2010, Considering paragraph 70, and *Matter of the Peace*

49. The Court reiterates that Article 1.1 of the Convention establishes the general obligations that States Parties have to respect the rights and freedoms recognized therein and to ensure their free and full exercise to all persons subject to their jurisdiction. These obligations must be complied with fully, regardless of the existence of provisional measures.<sup>14</sup>

**THEREFORE:**

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

In exercise of its authority under Articles 63.2 of the American Convention on Human Rights and 27 of its Rules of Procedure,

**DECIDES:**

1. To rescind the provisional measures granted in favor of Solain Pierre or Solain Pie or Solange Pie, in accordance with Considering paragraph 24 of this Order.
2. To reject the request to extend the provisional measures submitted by the Inter-American Commission on Human Rights in its communication of February 17, 2012, under the terms of Considering paragraphs 41 to 48 of this Order.
3. To ratify the pertinent indications contained in the Orders of the Inter-American Court of Human Rights of June 16, August 7 and 18, September 14, and November 12, 2000; May 26, 2001; October 5, 2005; February 2, 2006, July 8, 2009, and December 1, 2011, to the effect that the State must maintain any measures it has adopted in favor Antonio Sensión, William Medina Ferreras and Berson Gelin for an additional period of at least six months as of notification of this Order, after which time the Court shall consider the appropriateness of maintaining them in force, as established in Considering paragraph 34 of this Order.
4. To ratify the pertinent indications contained in the Orders of the Inter-American Court of Human Rights (*supra* Operative paragraph 3), in order to maintain the measures in favor of the children of Solain Pie or Solain Pierre or Solange Pierre for a further period of at least six months as of notification of this Order, under the terms of Considering paragraph 30.
5. To require the State to continue implementing the sufficient and necessary measures to: (a) continue the periodic meetings of the working group or team composed of State officials, with the participation of the beneficiaries and/or their representatives, in order to collaborate effectively in the implementation of the measures ordered by the Court, and (b) submit a report with the schedule of the next meetings. The foregoing, in accordance with the provisions of Considering paragraphs 20 and 21 of this Order.

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*Community of San José of Apartadó*. Provisional Measures regarding Colombia. Order of the Inter-American Court of August 30, 2010, Considering paragraph 46.

<sup>14</sup> Cf. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Inter-American Court of January 15, 1988, Considering paragraph 3, and *Case of de la Cruz Flores v. Peru*, *supra* note 3, Considering paragraph 30.

6. To require the State, by mutual agreement with the children of Solange Pierre, to establish the most appropriate mechanism to respond to any eventuality related to their safety and personal integrity, and to provide the required information as indicated in Considering paragraph 29 of this Order.
7. To require the State to submit to this Court, by May 22, 2012 at the latest, a clear and detailed report on the specific steps taken to implement these measures, in accordance with the information required in Considering paragraphs 21, 29 and 48 of this Order.
8. To require the representatives to submit to this Court, by June 12, 2012 at the latest, a clear and detailed report containing the information required in Considering paragraph 29 of this Order.
9. To require the Commission to submit to this Court, by June 26, 2012 at the latest, a clear and detailed report containing the information required in Considering paragraph 29 of this Order.
10. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights, and the victims or their representatives.

Diego García-Sayán  
President

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary