

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 15, 2011**

**PROVISIONAL MEASURES
REGARDING VENEZUELA**

GUERRERO LAREZ MATTER

HAVING SEEN:

1. The Order issued by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") on November 17, 2011, in which the Tribunal adopted provisional measures in this matter and ruled, *inter alia*:

1. To require the State to adopt, immediately, the measures necessary to determine the situation and whereabouts of Francisco Dionel Guerrero Larez and to protect his life and personal integrity.

2. To require the State to inform the Inter-American Court of Human Rights by November 20, 2009, regarding Operative Paragraph 1 of the present Judgment, hence the State report can be heard by the Tribunal at its headquarters in San Jose, Costa Rica, in the LXXXV Period of Ordinary Sessions.

3. To require, likewise, that the State inform the Inter-American Court of Human Rights every two months, beginning on November 20, 2009, of the provisional measures adopted in conformity with this decision.

[...]

2. The briefs dated November 20, 2009 and May 7, 2010, in which the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") submitted, respectively, its first and second bimonthly reports on the implementation of these provisional measures.

3. The briefs dated November 20, 2009, and February 3, 2010, in which the representatives of the beneficiary (hereinafter "the representatives") provided additional information, as well as the briefs dated November 25, 26 and 30, 2009, and June 21, 2010, in which they submitted their comments on the State's first and second reports (*supra* Having Seen 2).

4. The communication dated November 20, 2009, in which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted a note sent by the Venezuelan State with regard to these measures and its comments on it, as well as the briefs dated November 25, 2009, and July 28, 2010, in which it submitted its comments on the first and second State reports, respectively (*supra* Having Seen 2).

5. The notes from the Secretariat dated January 29, February 8, March 25, and May 4, 2010, in which it reiterated to the State its deadline for submitting its second report on the adoption of the measures necessary for establishing the status and whereabouts of the beneficiary and protecting his life and personal integrity, in keeping with the third operative paragraph of the Order issued by the Tribunal on November 17, 2009 (*supra* Having Seen 1).

6. The notes from the Secretariat dated November 11, 2010, and February 11 and April 8, 2011, reminding the Venezuelan State that it must report to the Inter-American Court every two months starting on November 20, 2009, with regard to the implementation of the provisional measures ordered in this matter (*supra* Having Seen 1). As of the issuing of this Order, the State’s bimonthly reports have not been received.

CONSIDERING THAT:

1. Venezuela has been a State Party to the American Convention on Human Rights (hereinafter “the Convention”) since August 9, 1977, and, in keeping with Article 62 of the Convention, recognized the contentious jurisdiction of the Court on June 24, 1981.

2. Article 63(2) of the American Convention holds that, “In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.”

3. The provisions established in Article 63(2) of the Convention make the provisional measures ordered by this Tribunal obligatory, as the basic principle of International Law, based on international case law, has indicated that States must comply with their obligations under the Convention in good faith (*pacta sunt servanda*).¹ These orders imply a special duty to protect the beneficiaries of the measures as long as they are in force. A failure to comply with them can leave the State internationally responsible.²

4. Article 63(2) of the Convention requires that in order for the Court to issue provisional measures, three conditions must be met: i) “extreme gravity;” ii) “urgency,” and

¹ Cf. *Case of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998. Considering 6; *Matter of Mery Naranjo et al.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of March 4, 2011. Considering 4, and *Case of Caballero Delgado and Santana.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 25, 2011, Considering 3.

² Cf. *Case of Hilaire, Benjamin, Constantine et al. v. Trinidad and Tobago. Merits, Reparations and Costs.* Judgment of June 21, 2002. Series C No. 94, paras. 196 to 200; *Matter of Aalvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of November 26, 2010, Considering 4. and *Case of 19 Tradesmen.* Provisional Measures regarding Colombia. Judgment of the Inter-American Court of Human Rights of August 26, 2010. Considering 3.

iii) "avoiding irreparable damage to persons." These three conditions coexist and must be present in every situation in which the Tribunal's intervention is requested. In the same way, the three conditions described must persist in order for the Court to maintain the protection it has ordered. If one of those conditions has ceased to be relevant, it will be up to the Tribunal to weigh the pertinence of continuing with the protective measures ordered.³

5. Since these provisional measures were ordered, the Venezuelan State has submitted only two bimonthly reports, the last of those on May 7, 2010 (*supra* Having Seen 2). In those reports, it indicated that with regard to the complaint filed on September 9, 2009, by the father of Mr. Guerrero Larez, the Third District Attorney's Office of the Public Prosecutor's Office of the Circuit Court of Guárico state launched a criminal investigation that same day into his alleged physical disappearance or escape from the place where he had been imprisoned. On September 10, 2009, the Ninth Auxiliary District Attorney of the Public Prosecutor in charge of Judgment Execution for the Second Judicial Circuit of Guárico state went to the General Penitentiary of Venezuela and the Court Jail in order to physically locate Guerrero Larez. In the presence of other government officials, "they carried out the roll call procedure several times in the aforementioned prison facilities, reporting that it was not possible to find Guerrero Larez in those prisons." On September 11, 2009, a new inspection of those two prison facilities in the state of Guárico was carried out. Mr. Guerrero Larez was not found in either of them. The Third Prosecutor of the Public Prosecutor's Office of the Guárico State Circuit requested other procedures, including the carrying out of interviews with possible witnesses to the incident, visual inspection of the place of the event, and the legal situation of the prisoner. The State later reported that through February 2010, the Office of the District Attorney was carrying out complimentary procedures, consisting of an official letter sent to the director of the General Penitentiary of Venezuela demanding information on the juridical situation of Mr. Guerrero Larez, a description of the calls originating and terminating with the mobile phones referred to by the father of Mr. Guerrero Larez, interviewing an official with the Bolivarian National Guard, and sending an official letter to the director of the General Penitentiary of Venezuela asking that security be provided for the officials in charge of doing a visual inspection of the prison. As far as the writ of *habeas corpus* requested by the wife of Mr. Guerrero Larez, on December 3, 2009, the oral constitutional hearing was held before the Second Court of the First Supervisory Instance of the Criminal Judicial Circuit of Guárico state. The following day, the Court granted the writ of constitutional *amparo* in the form of *habeas corpus* "in view of the fact that the specific place where the prisoner is located is not known [...] and in view of the version expressed by the directorship of the prison to the effect that the prisoner is currently 'evading' serving his sentence." The Court also ordered the Office of the Public Prosecutor to conduct an immediate investigation to establish the whereabouts of Mr. Guerrero Larez. The Court also ordered the Ministry of the People's Power for Domestic Relations and Justice and the General Command of the Bolivarian National Guard to take the measures necessary to assist the Office of the Public Prosecutor and the People's Ombudsman's Office in determining the juridical situation, whereabouts and physical condition of Mr. Guerrero Larez, providing protection of his fundamental rights to life and personal integrity. As of May 2010, the technical inspection of the General Penitentiary of Venezuela's prison facilities had yet to be carried out by the Forensic and Criminal Investigation Team (CICPC in its Spanish acronym). No further information has been provided by the State.

³ Cf. *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering 14; *Matter of the Forensic Anthropology Foundation of Guatemala*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of February 22, 2011, Considering 2, and *Matter of A.J. et al.* Provisional Measures regarding Haiti. Order of the Inter-American Court of Human Rights of February 22, 2011, Considering 10.

6. The representative reported that the *habeas corpus* action was submitted on November 16, 2009, before the Fortieth Court of the First Supervisory Instance of the Metropolitan Caracas Criminal Circuit, which referred the petition to a First Supervisory Instance Tribunal of Guárico state on November 29, 2009. Later, they indicated that they recognized the State's efforts as far as the execution of a visual inspection, but highlighted that the procedures requested had not been carried out "continuously and systematically." Separately, they also reported that on February 25, 2010, a visual inspection of the General Penitentiary of Venezuela was carried out that included the participation of family members of the beneficiary. However, the inspection "could not be completed effectively because the necessary security conditions and tools for carrying out the activity were not available." Finally, the representatives indicated with regard to the alleged evasion mentioned by the State that Mr. Guerrero Larez "was 'disappeared' while being held in the General Penitentiary of Venezuela, for which reason the State had a special duty to protect this individual." Thus they were waiting for up-to-date information on the investigations carried out, specifically with regard to the visual and forensic inspections.

7. For its part, the Commission expressed that "the situation of the beneficiary remains undetermined. Additionally, domestic mechanisms were activated only when the father of Mr. Guerrero Larez filed a complaint," indicating a lack of oversight in the penitentiary on the part of the respective authorities who had not noticed that he had disappeared. It also pointed out that there is no information on whether the procedures ordered by the Third Prosecutor of the Office of the Public Prosecutor of the Guárico State Circuit were carried out, how they were carried out, or what kind of results were obtained. The Commission expressed its concern over the fact that the State "is not deploying the resources at its disposal to establish the whereabouts of the beneficiary and that the actions taken do not in any way address the urgency or immediacy that the gravity of this case merits," given that the last reported procedure dates to January 2010. Finally, the Commission highlighted that the opening of a criminal investigation could be an important measure, but that it does not exhaust all the efforts that the State must deploy in the search for an individual who disappeared while under State custody. It also noted that the *habeas corpus* action has not contributed to speeding up the procedures that were ordered in the context of the investigation. Additionally, it noted with concern the amount of time that had passed without any inspection of the interior of the prison being carried out due to reasons of safety of the personnel in charge of the procedure. For this reason, it considered that the State should make the necessary efforts to overcome "the obstacles present as of this moment and move forward with the investigation into the whereabouts of the beneficiary."

8. In this regard, it is important to recall that whenever there is a good reason to suspect that an individual has been subjected to a disappearance, it is crucial that prompt and immediate action be taken by prosecutorial and judicial authorities to order timely and necessary measures aimed at determining the whereabouts of the victim or the place where the victim might be found deprived of liberty.⁴ Separately, in situations of individuals deprived of liberty - like this one - *habeas corpus* represents, within the range of indispensable judicial guarantees, the ideal measure for determining the status and the whereabouts of Mr. Guerrero Larez, as well as for overseeing respect for his life and protecting his personal integrity.

⁴ Cf. *Case of Anzualdo Castro v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 134; *Matter of Alvarado Reyes et al.*, *supra* footnote 2, Considering 20, and *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of May 26, 2010, Considering 13.

9. According to the information provided with regard to the *habeas corpus* action submitted by the relatives of Mr. Guerrero Larez on November 16, 2009, there is no indication at this time that his status and whereabouts have been determined. Given this lack of information, it can be assumed that he still faces a grave risk that his rights to life and personal integrity will be violated.

10. In keeping with the Order of the Court (*supra* Having Seen 1), the State had been required to immediately adopt the measures necessary to determine the status and whereabouts of Mr. Guerrero Larez and to protect his life and personal integrity. Likewise, bimonthly reports on this should have been submitted. Since these provisional measures were ordered, however, the Venezuelan State has submitted only two bimonthly reports, and in the course of the last year it has not submitted any information despite the requirements set forth (*supra* Having Seen 6).

11. As concerning the implementation of the provisional measures ordered, it is necessary to recall that legally bound States must carry out all procedures necessary for the effective protection of the measures' beneficiaries in keeping with the instructions of the Court. This obligation includes the duty to report to the Tribunal with regard to the implementation of provisional measures according to the deadline and periodicity indicated by the Tribunal.⁵

12. In this case, the State has not complied with its duty to report in a proper and timely fashion. The Court has established that a State's failure to comply with its duty to report fully on the provisional measures adopted toward complying with the Court's orders is especially grave given the juridical nature of these measures, as they seek to prevent irreparable damage to persons facing extremely grave and urgent situations.⁶ It is extremely urgent that the State submit a full report given that it has not turned in the six bimonthly reports that it was supposed to have presented between May 2010 and May 2011. For this reason, the Court urges the State to report in the most urgent and conscientious way possible on the status and whereabouts of Mr. Guerrero Larez, along with the measures taken in his favor and toward attending the need for protection in this matter.

13. The Tribunal finds it pertinent to recall that given a request for provisional measures, the Court can only consider those arguments that are directly related to extreme gravity, urgency and the need to avoid irreparable damages to persons. Any additional fact or argument can only be examined and resolved during the deliberations on the merits in the adversarial case.⁷ Thus, the adoption of provisional measures does not imply an eventual

⁵ Cf. *Asunto Lilibana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of December 2, 2003, Considering 12. *Matter of Eloisa Barrios et al.*, Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 21, 2011, Considering 23, and *Matter of Natera Balboa*, Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights dated February 1, 2010, Considering 15.

⁶ Cf. *Matter of the Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 7, 2004, Considering 16; *Case of the Mapiripán Massacre*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of May 3, 2008, Considering 10, and *Matter of the Jiguamiandó and Curbaradó Communities*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights dated February 7, 2006, Considering 16.

⁷ Cf. *Case of James et al.* Provisional Measures regarding Trinidad and Tobago. Judgment of the Inter-American Court of Human Rights of August 29, 1998, Considering 6; *Matter of the Unidad de Internación Socioeducativa*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of February 25, 2011, Considering 9, and *Matter of the Colombian Commission of Jurists*. Request for Provisional Measures regarding Colombia Order of the Inter-American Court of Human Rights of November 25, 2010, Considering 7.

decision on the merits of the current dispute between the petitioners and the State should the case end up before the Court,⁸ nor does it prejudge State responsibility for the facts denounced.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by way of the authority conferred by Article 63(2) of the American Convention on Human Rights and articles 26 and 30 of the Rules of Procedure of the Tribunal,⁹

DECIDES TO:

1. Reiterate that the State must adopt, immediately, the measures necessary to determine the situation and whereabouts of Francisco Dionel Guerrero Larez and to protect his life and personal integrity.
2. Reiterate that the State has the obligation to provide specific and detailed information to the Inter-American Court about the implementation of the measures ordered.
3. Order the State to report to the Inter-American Court no later than July 30, 2011, with regard to the provisions of the first operative paragraph of this Order. Subsequent to the submission of that report, the State shall continue to report to the Inter-American Court every two months on the measures taken for the beneficiary of the provisional measures ordered in this matter. In addition, the representatives of the beneficiaries and the Inter-American Commission on Human Rights shall submit their comments within a period of four and six weeks, respectively, counting from the date on which they are notified of said State reports.
4. Request that the Secretariat of the Court notify the State, the Inter-American Commission on Human Rights and the beneficiary's representatives of this Order.

⁸ Cf. *Case of James et al.* *supra* footnote 7, Considering 6; *Matter of the Unidad de Internación Socioeducativa*, *supra* footnote 7, Considering 9, and *Matter of the Colombian Commission of Jurists*, *supra* footnote 7, Considering 7.

⁹ Rules of Procedure approved by the Court in the LXXXV Regular Session held from November 16-28, 2009.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary