

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF SEPTEMBER 22, 2006***

PROVISIONAL MEASURES REGARDING PERU

MATTER OF THE GÓMEZ-PAQUIYURI BROTHERS

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of May 7, 2004, whereby it decided, *inter alia*:

1. To request the State to ado[pt] forthwith such measures as may be necessary to protect the life and physical integrity of the members of the Gómez-Paquiyaury family who gave testimony before the Court, namely, Ricardo Samuel Gómez-Quispe, Marcelina Paquiyaury-Illanes de Gómez, Lucy Rosa Gómez-Paquiyaury, Miguel Ángel Gómez-Paquiyaury, and Jacinta Peralta-Allcarima, as well as those who are in Peru, to wit: Ricardo Emilio, Carlos Pedro, and Marcelina Haydée Gómez-Paquiyaury; and the minor Nora Emely Gómez-Peralta.

2. To request the State to ado[pt] forthwith such measures as may be necessary to protect the life and physical integrity of Ángel del Rosario Vásquez-Chumo and his next of kin.

3. To request the State to allo[w] the beneficiaries of [the] provisional measures to take part in the planning and implementation thereof and, in general, to kee[p] them informed about the progress regarding the compliance with the measures ordered by the Inter-American Court of Human Rights.

2. The communication submitted by the State of Peru (hereinafter "the State" or "Peru" on May 12, 2004, whereby it requested a clarification regarding the Order of the Court of May 7, 2004 (*supra* Having Seen clause No. 1).

3. The note of the Secretariat of the Court (hereinafter "the Secretariat") CDH-S/543 of May 20, 2004, whereby, on instructions from the President of the Court, it informed the State that:

a) "it is the duty of the States to adopt such security measures as may be necessary to protect the persons who are under the jurisdiction thereof [...];" and

b) "the State may communicate the protection measures it shall afford to guarantee the physical integrity of the beneficiaries thereof so that their

* Judge Oliver Jackman did not take part in the deliberation and passing of this Order as he informed that, for reasons beyond his control, he would not be able to attend the Seventy-second Regular Session of the Court. Judge Diego García-Sayán, a Peruvian national, declined to hear the instant case pursuant to Articles 19(2) of the Statute of the Court and 19 of its Rules of Procedure.

representative agrees to them, thus allowing the beneficiaries to take part in the planning and implementation of the [...] provisional measures [...]."

4. The communications submitted by the State on June 10, 2004; August 11, 2004; August 27, 2004; October 14, 2004; December 8, 2004; February 18, 2005; April 21, 2005; June 14, 2005; August 16, 2005; October 20, 2005; December 13, 2005; February 6, 2006; and February 15, 2006; whereby it informed, *inter alia*, that:

a) regarding the duty to adopt such measures as may be necessary to protect the life and physical integrity of the members of the Gómez-Paquiyaury family, Ricardo Samuel Gómez-Quispe, Marcelina Paquiyaury-Illanes de Gómez, Lucy Rosa Gómez-Paquiyaury, Miguel Ángel Gómez-Paquiyaury, Ricardo Emilio Gómez-Paquiyaury, Carlos Pedro Gómez-Paquiyaury, Marcelina Haydée Gómez-Paquiyaury, Jacinta Peralta-Allicarima, and Nora Emely Gómez-Peralta, it understands that "what has been required [...] are omissions rather than actions[, such as] the non-interference of the State with the rights of the family[, which] is guaranteed by a democratic State and a government [...] which complies with the provisions set by the Court." It added that it is not the will of the State to worsen the pain and suffering endured by the family and pointed out that the State "has guaranteed, does guarantee, and will guarantee" the enjoyment and free exercise of the rights of the above-mentioned persons;

b) regarding the specific situation of Ricardo Emilio Gómez-Paquiyaury, who was detained in "Castro Castro" prison, he was found innocent of the charges brought against him and was released on August 5, 2004. Additionally, a report was requested to the *Instituto Penitenciario* (Penitentiary Institute) on the event which occurred during a visit made by his brother, Miguel Gómez-Paquiyaury, to "Castro Castro" prison, during which penitentiary agents withheld some copies of the Judgment rendered by the Court in the instant case; and

c) regarding the duty to adopt such measures as may be necessary to protect the life and physical integrity of Ángel del Rosario Vásquez-Chumo and his next of kin, since August 10, 2004, as agreed with Mr. Vásquez-Chumo, protection has been afforded round-the-clock at his domicile, where twenty-nine of his relatives live. Furthermore, on July 15, 2005 Ronald Michael Loja-Vásquez, nephew of Mr. Vásquez-Chumo, after having a car accident against a vehicle belonging to a commander of the National Police, was allegedly attacked by a police non-commissioned officer, who "punched and kicked him, on his body" and threatened to injure him later on. An official letter was issued to Hospital San José so that medical care was given to Mr. Loja-Vásquez, who was advised to file a complaint before the Office of the Public Prosecutor reporting the foregoing events. The National Police was conducting an investigation into this event.

5. The communications submitted by the beneficiaries and the representatives thereof on May 28, 2004; June 21, 2004; October 15, 2004; January 3, 2005; March 7, 2005; April 10, 2005; April 26, 2005; May 30, 2005; July 2, 2005; July 8, 2005; September 6, 2005; September 20, 2005; November 18, 2005; November 28, 2005; and May 16, 2006; whereby they argued, *inter alia*, that:

a) regarding the duty to adopt such measures as may be necessary to protect the life and physical integrity of the members of the Gómez-Paquiyaury

family, of Jacinta Peralta-Allcarima, and of the minor Nora Emely Gómez-Peralta,

- i) the State has the negative duty “not to interfere with the rights of the family to their integrity, to life, and to peace in their home” and to refrain from committing any act which interferes with the safety and integrity of the beneficiaries and which might be deemed to be in retaliation for their status as victims in the proceedings started before the Court. Due to the foregoing, they declined to request the protection of police guardianship, as “the request of provisional measures seeks, on the contrary, to keep the normal life of the members of the Gómez-Paquiyaury family unaltered;”
 - ii) the “Expreso” newspaper on August 14 and 15, 2004 published false information according to which the members of the above-mentioned family were linked with the organization *Sendero Luminoso* (Shining Path), stating that said information had been provided by the State agent acting in the instant case, which goes against their safety and constitutes “a violation of the right to the protection of one’s honor and the dignity of the family;”
 - iii) the State has failed to conduct a careful investigation into the event occurred on January 16, 2005, when Miguel Ángel Gómez-Paquiyaury visited his brother Ricardo Gómez-Paquiyaury at the “Castro Castro” prison in order to take him a copy of the Judgment rendered by the Court, which was withheld by the penitentiary security agents. It was only a month later and after their firm insistence that the State returned said documents;
 - iv) the life and physical integrity of the members of the above family is not fully guaranteed, as the State has not borne the costs of the medical check-ups and tests, treatment, and cure of the serious health problems suffered by Ricardo Emilio Gómez-Paquiyaury, caused by the ill-treatment meted out thereto during the eleven years he was in prison, after which he was acquitted on June 27, 2005 and released from jail;
 - v) Ricardo Gómez-Quispe had an accident on August 7, 2005 and was not given adequate medical care by ESSALUD, an institution which depends on the State;
 - vi) despite the fact that the State has not informed how it has complied with the measures ordered regarding Jacinta Peralta-Allcarima and the minor Nora Emely Gómez-Peralta, no act of interference with the rights to their lives, physical integrity, and safety has been reported; and
 - vii) they object to the content of the last reports submitted by the State, which do not include information regarding its compliance with the provisional measures ordered in behalf of the family.
- b) regarding the duty to adopt such measures as may be necessary to protect the life and physical integrity of Ángel del Rosario Vásquez-Chumo and

his next of kin, the State has ignored their request so that it inform about the health condition of Ronald Michael Loja, a relative of Mr. Vásquez-Chumo who suffered a physical aggression by State agents despite being one of the beneficiaries of these precautionary measures.

6. The communications submitted by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on July 2, 2004; July 22, 2004; September 24, 2004; November 17, 2004; January 24, 2005; May 18, 2005; June 24, 2005; July 22, 2005; October 25, 2005; December 9, 2005; and March 24, 2006; whereby it stated, *inter alia*, that:

a) regarding the duty to adopt such measures as may be necessary to protect the life and physical integrity of the members of the Gómez-Paquiyaury family, of Jacinta Peralta-Allcarima, and of the minor Nora Emely Gómez-Peralta, in its last reports the State made no reference thereto. Furthermore,

i) the State did not inform about the request for medical care made by the beneficiaries on behalf of Ricardo Emilio Gómez-Paquiyaury, who had been ill-treated in prison, whereby his health condition would be allegedly delicate;

ii) regarding the alleged aggressions suffered by Miguel Gómez-Paquiyaury during a visit to the "Castro Castro" prison, it did not consider such act in itself to endanger the life or physical integrity of the family. Notwithstanding, taking into consideration that the Court adopted these measures after verifying a situation of alleged persecution and harassment, it deemed that the State must submit information regarding the aforesaid event; and

iii) regarding the protection measures ordered in behalf of Jacinta Peralta-Allcarima and the minor Emely Gómez-Peralta, it considered that "there was n[o] controversy over the content and method of implementation of the protection measures in behalf of the above-mentioned beneficiaries."

b) regarding the duty to adopt such measures as may be necessary to protect the life and physical integrity of Ángel del Rosario Vásquez-Chumo and his next of kin, "the information forwarded by the State evidences the adoption of measures in compliance with the provisions of the Court." Notwithstanding, no brief has been submitted by the representatives of Mr. Vásquez-Chumo and his next of kin which addresses the implementation of the measures informed to have been adopted by the State. Furthermore, it deemed it important that the State continue informing about the investigation regarding the aggression suffered by Ronald Michael Loja, a relative of Mr. Vásquez-Chumo.

7. The communication submitted by the State on June 20, 2006, whereby in view of the recent appointment of its new agent in the instant case, it requested an extension of thirty days to submit the twelfth report on the compliance with the provisional measures, which was due on May 30, 2006; and the note of the Secretariat CDH-11.016/691 of June 21, 2006, addressed to the State, whereby it informed that such extension had been granted up to July 21, 2006.

8. The notes of the Secretariat CDH-11.016/417 of November 23, 2004; CDH-11.016/432 of January 25, 2005; CDH-11.016/439 of February 17, 2005; CDH-11.016/568 of October 21, 2005; CDH-11.016/620 of February 7, 2006; CDH-11.016/631 of February 23, 2006; and CDH-11.016/647 of March 22, 2006; whereby the request for the observations regarding the compliance with the measures ordered in behalf of Ángel del Rosario Vásquez-Chumo was reiterated to the representative thereof.

CONSIDERING:

1. That Peru has been a State Member to the Inter-American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since July 28, 1978 and recognized the contentious jurisdiction of the Court on January 21, 1981.

2. That Article 63(2) of the American Convention provides that, "in cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons," the Court may order such provisional measures as it deems pertinent in matters it has under consideration.

3. That pursuant to Article 25 of the Court's Rules of Procedure (hereinafter "the Rules"),

1. At 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."

[...]

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

4. That Article 1(1) of the Convention enshrines the duty of the States Parties to ensure to all persons subject to their jurisdiction the free and full exercise of the rights and freedoms protected by such treaty.

5. That, specifically, as the Court has already stated, "it is the duty of the State to adopt security measures to protect all persons subject to its jurisdiction, a duty which is even more obvious in relation to the parties to proceedings started before the oversight bodies of the American Convention."¹

6. That under Human Rights International Law provisional measures are not only precautionary in that they preserve a legal status, but essentially protective for they protect Human Rights, as they seek to prevent irreparable damage to persons. These measures are applied as long as the prerequisites of extreme gravity and urgency and

¹ Cf. *Case of 19 Tradesmen*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 7; *Matter of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006, Considering clause No. 4; and *Matter of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 2, 2006, Considering clause No. 4.

the prevention of irreparable damage to persons are met. Thus, provisional measures become a true preventive jurisdictional guarantee.²

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7. That the Court, in its Order of May 7, 2004 (*supra* Having Seen clause No. 1) requested the State, *inter alia*, to adopt such measures as may be necessary to protect the life and physical integrity of the members of the Gómez-Paquiyaury family who gave testimony before the Court, namely, Ricardo Samuel Gómez-Quispe, Marcelina Paquiyaury-Illanes de Gómez, Lucy Rosa Gómez-Paquiyaury, Miguel Ángel Gómez-Paquiyaury, and Jacinta Peralta-Allccarima, and those who are in Peru, to wit: Ricardo Emilio, Carlos Pedro, and Marcelina Haydée Gómez-Paquiyaury; and the minor Nora Emely Gómez-Peralta, as well as Ángel del Rosario Vásquez-Chumo and his next of kin.

8. That the members of the Gómez-Paquiyaury family declined to request the State the protection of police guardianship as they considered that the implementation of provisional measures required a commitment by the State to complying with the negative duty "not to interfere with the rights of the family to their integrity, to life, and to peace in their home" (*supra* Having Seen clause No. 5(a)(i)).

9. That the Court does not deem it relevant to render judgment on the proceedings for libel started by the Gómez-Paquiyaury family against the "Expreso" private newspaper, as in accordance with the object of these provisional measures, it is not incumbent upon the Court to take a decision on the foregoing.

10. That the State informed that a report was requested to the *Instituto Penitenciario* (Penitentiary Institute) on the event occurred during the visit made by Miguel Ángel Gómez-Paquiyaury on January 16, 2005 to his brother Ricardo Gómez-Paquiyaury at the "Castro Castro" prison, during which the security agents of said prison withheld the copies of the Judgment rendered by the Court which Miguel Ángel Gómez-Paquiyaury was taking to his brother. Notwithstanding, the State has not submitted any additional information about the report requested to the *Instituto Penitenciario* (Penitentiary Institute), which is essential to assess the effective compliance with the protection measures ordered by the Court.

11. That although the State has not borne the costs of medical treatment for the alleged physical and psychological harm suffered by Ricardo Emilio Gómez-Paquiyaury during the eleven years he was in prison (*supra* Having Seen clauses No. 5(a)(iv) and 6(a)(i)), pursuant to the object of these provisional measures, it is not incumbent upon the Court to render judgment on the foregoing.

12. That though Ricardo Gómez-Quispe alleged that he did not receive adequate medical care by the Peruvian institution ESSALUD after the accident he had on August 7, 2005 (*supra* Having Seen clause No. 5(a)(v)), pursuant to the object of these provisional measures it is not incumbent upon the Court to render judgment on the foregoing.

² Cf. *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 28, 2006, Considering clause No. 5; *Matter of Millacura Llaipén et al.* Provisional Measures. Order of the Inter-American court of Human Rights of July 6, 2006, Considering clause No. 5; and *Matter of Mery Naranjo et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of July 5, 2006, Considering clause No. 5.

13. That regarding the beneficiaries Jacinta Peralta-Allcarima and the minor Nora Emely Gómez-Peralta, no act of interference by the State with the rights to life and physical integrity thereof has been reported.

14. That from the information submitted by the State it might be inferred that protection is afforded to Ángel del Rosario Vásquez-Chumo and his next of kin at their domicile (*supra* Having Seen clauses No. 4(c), 5(b), and 6(b)). Notwithstanding, the Court has not received the observations of the above-mentioned beneficiaries or the representative thereof, though they were repeatedly requested thereto (*supra* Having Seen clause No. 8).

15. That the due submission of the observations of the beneficiaries and the representatives thereof is essential to assess the compliance with the measures ordered in the instant case.

16. That the State informed that the National Police was conducting an investigation into the aggression suffered on July 15, 2005 by Ronald Michael Loja, a relative of Ángel del Rosario Vásquez-Chumo and a beneficiary of the protection measures, who was allegedly beaten and threatened by a Police non-commissioned officer (*supra* Having Seen clauses No. 4(c), 5(b), and 6(b)). Notwithstanding, the State has not submitted any additional information about the foregoing investigation, which is essential to assess the effective compliance with the protection measures ordered by the Court.

17. That the term for the State to submit its twelfth report on the compliance with the provisional measures was due on May 30, 2006 and that, at the request of the State, an extension of such term was granted up to July 21, 2006, no report having been received up to date by the Secretariat (*supra* Having Seen clause No. 7).

18. That the Court considers that the provisional measures adopted in behalf of the members of the Gómez-Paquiyauri family, Ricardo Samuel Gómez-Quispe, Marcelina Paquiyauri-Illanes de Gómez, Lucy Rosa Gómez-Paquiyauri, Miguel Ángel Gómez-Paquiyauri, Ricardo Emilio Gómez-Paquiyauri, Carlos Pedro Gómez-Paquiyauri, Marcelina Haydée Gómez-Paquiyauri, Nora Emely Gómez-Peralta and Jacinta Peralta-Allcarima, as well as in behalf of Ángel del Rosario Vásquez-Chumo and his next of kin, must be maintained.

19. That it is essential that the provisional measures are maintained in full force and effect until the Court orders their discontinuance and serves notice thereof upon the State.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

Pursuant to Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of its Rules of Procedure,

DECIDES:

1. To request the State to maintain the provisional measures and adopt such other measures as may be necessary to preserve the life and physical integrity of the members of the Gómez-Paquiyaury family, Ricardo Samuel Gómez-Quispe, Marcelina Paquiyaury-Illanes de Gómez, Lucy Rosa Gómez-Paquiyaury, Miguel Ángel Gómez-Paquiyaury, Ricardo Emilio Gómez-Paquiyaury, Carlos Pedro Gómez-Paquiyaury, Marcelina Haydée Gómez-Paquiyaury, Nora Emely Gómez-Peralta, and Jacinta Peralta-Allccarima; as well as Ángel del Rosario Vásquez-Chumo and his next of kin.
2. To reiterate the request made to the State so that the beneficiaries of the provisional measures be allowed to take part in the planning and implementation thereof and, in general, to keep them informed about the progress regarding the compliance with the measures ordered by the Inter-American Court of Human Rights.
3. To request the State to submit its twelfth report on the compliance with the measures adopted no later than October 31, 2006.
4. To request the State to continue informing the Inter-American Court of Human Rights on the compliance with the measures adopted every two months as from the date of service of the submission of its twelfth report ; to request the beneficiaries of such measures or the representatives thereof to submit their observations on the report of the State required in the foregoing operative paragraph, as well as on the two-monthly reports of the State, within the term of four weeks as of the date they are received; and to request the Inter-American Commission on Human Rights to submit its observations on said reports of the State within the term of six weeks of the date they have been received.
5. To request the Secretariat to serve notice of this Order to the Inter-American Commission on Human Rights, to the representative of the beneficiaries of these measures, and to the State.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary