

**Order of the
Inter-American Court of Human Rights
of July 3, 2007**

**Provisional Measures
Regarding the Bolivarian Republic of Venezuela**

Matter of Carlos Nieto Palma *et al*

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal") of 9 July 2004, which granted provisional measures in favor of Mr. Carlos Nieto Palma and his next of kin, Yvonne Palma Sánchez, Eva Teresa Nieto Palma and John Carmelo Laicono Nieto.

2. The Order of the Inter-American Court of September 22, 2006, which decided:

[...]

2. To reiterate that the State must maintain the measures it would have adopted and take forthwith such other measures as may be necessary to effectively protect the life, physical integrity and personal liberty of Carlos Nieto Palma, as well as the lives and physical integrity of Yvonne Palma Sánchez, Eva Teresa Nieto Palma and John Carmelo Laicono Nieto.

3. To order the beneficiaries of the provisional measures or the representative thereof to inform the Inter-American Court in detail and specifically within ten days of the date of service of the [...] Order about the need to maintain these provisional measures on behalf of Eva Teresa Nieto Palma and John Carmelo Laicono Nieto, pursuant to considering clause thirteen.

4. To order the State to allow the beneficiaries of these measures to take part in the planning and implementation thereof and, in general, to keep them informed on the progress of the implementation of the measures ordered by the Inter-American Court of Human Rights.

5. To reiterate to the State that it shall continue to report to the Inter-American Court of Human Rights every two months on the provisional measures it has adopted; to request the beneficiaries of such measures or their representative to submit their observations within a period of four weeks of the service of the reports of the State; and to request the Inter-American Commission on Human Rights to submit its observations on said reports of the State within a period of six weeks from the date they are received.

[...]

3. The briefs submitted by Mr. Carlos Nieto Palma on November 19, 2006 and March 21, 2007, in which he indicated, *inter alia*, that:

- a) with regard to the necessity to maintain the provisional measures for the benefit of Eva Nieto Palma and John Carmelo Laicono Nieto, he “considers it unnecessary [...] that [the] measures be maintained, since both have been residing for more than a year in the city of Charlotte, North Carolina, United States of America and only [travel] to Venezuela during holidays for a few days at a time [...]”;
- b) with regard to the protective measures, these have been completely unfulfilled through the sporadic visits by the Metropolitan Police of the sector of Hatillo;
- c) the threats and the persecution by the Public Prosecutor’s Office Number 34, in which the Office insisted that he attend line-ups and provide more testimony, have ceased.

4. The briefs from the State of Venezuela (hereinafter “the State” or “Venezuela”), and their annexes, received on 15 December 2006, 6 February 2007, and 22 March 2007, which stated, *inter alia*, that:

- a) On 19 October 2006, the Forty-eighth Trial Court of Control of the Criminal of the Caracas Metropolitan Area endorsed the request of the Public Prosecuto to dismiss the complaint filed by Mr. Carlos Nieto Palma regarding acts of intimidation committed against him, considering that “there is insufficient evidence to serve as the basis to attribute to any person the commission of any crime, since there is only the complaint filed by the aggrieved party”; and
- b) concerning the protective measures ordered in favor of Carlos Nieto Palma and his next of kin, compliance with same can be confirmed through the police records and control sheets. The State has carried out the actions necessary to determine the facts denounced by the beneficiary. Likewise, the necessary protection has been provided and as a result, incidents such as those denounced have not been repeated. Consequently, the State considered that the circumstances that prompted the adoption of provisional measures no longer exist.

5. The briefs of the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission” or “the Commission”) submitted on 1 February 2007, and 11 May 2007, which stated, *inter alia*, that:

- a) In regards to the situation of Eva Teresa Nieto Palma and John Carmelo Laicono, “given that the risk to the beneficiaries Eva Teresa Nieto Palma and Jonh Carmelo Laicono Nieto stemmed from their proximity to the beneficiary Carlos Nieto Palma so long as they were in Venezuelan territory, the Commission understands that said risk has ceased and accordingly, agrees that it is no longer necessary for them to receive such a benefit”;
- b) with regard to the duty to protect, the State has not submitted information that indicates the manner and frequency with which it is carrying out this duty;
- c) with regard to the duty to investigate the events that prompted the adoption of provisional measures, the Commission considered that “the investigation of the events is a necessary part of the eradication of risk”, given that, if the events are not clarified, the situation can be assumed to be one of impunity, which can serve as an incentive for repetition. “In every case, the importance of the investigation during provisional measure

proceedings is substantially linked to its role in ensuring the eradication of irreparable risk. As a result, the best way to protect the beneficiary is the implementation of a serious, efficient, and effective investigation which clarifies the facts denounced in order to determine those responsible"; and d) the State should provide specific information about the participation of the beneficiary and his representatives in the planning and implementation of the provisional measures.

CONSIDERING:

1. That the State ratified the American Convention on 9 August 1977 and, in accordance with Article 62 of said Convention, recognized the contentious jurisdiction of the Court on 24 June 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," with regard to cases not yet submitted to it, the Court may order such provisional measures as it deems pertinent, at the request of the Commission.

3. That in connection with this matter, Article 25(1) of the Rules of Procedure provides that:

[...]

2. With regard to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

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

4. That Article 1(1) of the Convention establishes the general obligation of State Parties to respect the rights and freedoms recognized in the Convention and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms. To comply with this obligation, the State Party is thus required, *erga omnes*, to protect all persons within its jurisdiction¹. This duty becomes even more evident when it pertains to those undergoing proceedings before the supervisory bodies of the American Convention².

¹ Cfr. *Matter of Ramirez Hinojosa et al.* Provisional measures. Order of the Inter-American Court of Human Rights of May 17, 2007, fourth considering clause; *Case of the 19 Tradesmen*. Provisional Measures. Order of the Inter-American Court of Human Rights of May 12, 2007, fifth considering clause, and the *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*. Provisional measures. Order of the Inter-American Human Rights Court of February 2, 2007, fifth considering clause.

² Cfr. *Matter of Ramirez Hinojosa et al.* Provisional measures. *supra* Note 1, fourth considering clause; *Case of the 19 Tradesmen*. Provisional Measures, *supra* Note 1, fifth considering clause, and *Matter of Adrian Melendez Quijano et al.* Provisional measures. Order of the Inter-American Court of Human Rights of May 12, 2007, fourth considering clause.

5. That in International Human Rights Law, provisional measures are not only precautionary in nature, given that they preserve a legal situation, but are also fundamentally protective in nature inasmuch as they protect human rights, because they seek to avoid irreparable damage to persons. So long as the basic requirements of extreme gravity and urgency are met, as well as the prevention of irreparable damages to persons, provisional measures become a judicial guarantee that is truly preventive in nature.³

6. That in International Human Rights Law, urgent and provisional measures also serve the purpose of protecting basic human rights by preventing irreparable damage to persons.

7. That provisional measures are ordered only in emergency situations, in response to the need for protection, and, once ordered, should remain in effect so long as the Court considers that the basic requirements of extreme gravity and urgency and the avoidance of irreparable damage to the rights of persons protected by them continue to exist.

8. That in accordance with the Order of the Inter-American Court of September 22, 2006 (*supra* Having Seen clause 2) the State should, *inter alia*: maintain the measures that it would have adopted and to take forthwith such other measures necessary to effectively protect the life, physical integrity, and personal liberty of Carlos Nieto Palma, as well as the lives and physical integrity of Yvonne Palma Sánchez, Eva Teresa Nieto Palma and John Carmelo Laicono Nieto; allow the beneficiaries to participate in the planning and implementation of the protection measures, and keep them informed regarding the progress made to comply with the measures ordered by the Court, and to submit to the Court the requested reports.

9. That in the Order of the Court of September 22, 2006, the beneficiaries of the provisional measures or their representative were requested to provide specific and detailed information on the need to maintain the provisional measures in favor of Eva Teresa Nieto Palma and John Carmelo Laicono Nieto (*supra* Having Seen clause 2).

10. That Mr. Carlos Nieto Palma has reported, *inter alia*, that he considers it unnecessary to maintain the protection measures in favor of Eva Teresa Nieto Palma and John Carmelo Laicono Nieto inasmuch as both have been residing for more than a year in the city of Charlotte, North Carolina, United States of America, and that they only travel to Venezuela during holidays for a few days at a time (*supra* Having Seen clause 3).

11. That the Inter-American Commission observed that, given that the risk to the beneficiaries Eva Teresa Nieto Palma and John Carmelo Laicono Nieto, which stemmed from their proximity to the beneficiary Carlos Nieto Palma so long as they were in Venezuelan territory, and understood that said risk has ceased and therefore agreed that it was no longer necessary for them to continue enjoying this benefit (*supra* Having Seen clause 5).

³ Cfr. *Matter of Ramirez Hinojosa et al.* Provisional measures. *supra* Note 1, fifth considering clause; *Case of the 19 Tradesmen.* Provisional Measures, *supra* Note 1, sixth considering clause, and *Matter of Adrian Melendez Quijano et al.* Provisional measures. *supra* Note 2, fifth considering clause.

12. That according to the information submitted by the Inter-American Commission and Mr. Carlos Nieto Palma (*supra* Having Seen clauses 3 and 5), this Court considers that the situation of risk, extreme gravity, and urgency that gave rise to the order of provisional measures to protect the lives and physical integrity of Eva Teresa Nieto Palma and John Carmelo Laicono no longer exist, and therefore considers that the provisional measures ordered in favor of the aforementioned persons should be lifted.

13. That given the information provided by Mr. Carlos Nieto Palma and by the Commission (*supra* Having Seen clauses 3 and 5), this Court considers it advisable to maintain the provisional measures ordered in favor of Mr. Carlos Nieto Palma and his mother Yvonne Palma Sánchez.

14. That the Court considers it necessary for the State to maintain the measures that it would have adopted and to take forthwith such measures that are necessary to effectively protect the life, physical integrity, and personal liberty of Carlos Nieto Palma, as well as the life and physical integrity of Yvonne Palma Sánchez.

15. That, in accordance with the Order of the Inter-American Court of September 22, 2006 (*supra* Having Seen clause 2), the State shall maintain the beneficiaries informed of the progress made with regard to the measures ordered by the Court, and shall submit the required reports to the Tribunal.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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

DECIDES:

1. To lift the provisional measures ordered by the Inter-American Court of Human Rights in its Order of September 22, 2006 in favor of Eva Teresa Nieto Palma and John Carmelo Laicono Nieto.

2. To reiterate that the State must maintain the measures it would have adopted and take forthwith such measures necessary to effectively protect the life, physical integrity, and personal liberty of Carlos Nieto Palma, as well as the life and physical integrity of Yvonne Palma Sánchez.

3. To request the State to allow the beneficiaries of these measures to take part in the planning and implementation thereof and, in general, to keep them informed about the progress made to comply with the measures ordered by the Inter-American Court of Human Rights.

4. To reiterate that the State continue informing the Inter-American Court of Human Rights every two months regarding the provisional measures it has adopted as of the notification of the present resolution, to request the beneficiaries of such measures or their representative and the Inter-American Human Rights Commission

to submit their observations within four and six weeks, respectively, from the service of the reports of the State.

5. To request the Secretariat of the Court to serve notice of this Order to the Inter-American Commission on Human Rights, to the beneficiaries of these measures or their representative, and to the State.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary