

**Order of the
Inter-American Court of Human Rights*
of January 29, 2008
Request for Provisional Measures
Submitted by the Representatives of a Group of Victims in the
Case of the Miguel Castro-Castro Prison**

HAVING SEEN:

1. The Judgment on merits, reparations and costs delivered by the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court", "the Court" or "the Tribunal") on November 25, 2006, in the case of the Miguel Castro-Castro Prison.¹

2. The brief of December 20, 2007, and its annexes, whereby the representatives of a group of victims in the case of the Miguel Castro-Castro Prison (hereinafter, "the representatives") requested "that provisional measures be adopted" requiring the Peruvian State (hereinafter, "the State" or "Peru") "to adopt such measures as may be necessary to protect the personal integrity and security, and the honor of those [they] represented. In said brief, the representatives claimed that "[t]he specific acts of violence and harassment described in [their] request, all of which were perpetrated against persons identified by this [...] Court as victims of the above mentioned case, have become more severe since the publication of the judgment delivered on November 25, 2006." They indicated that the facts made known to the Tribunal must be considered in the light of a "growing atmosphere of harassment against 'released' persons, that is, persons who were accused and detained under charges of terrorism" and who are now free. They remarked that in "the last few months, statements made by civil servants have combined with incriminating references to 'released terrorists' made, among others, by part of the media". The attack on the monument "*El ojo que llora*" (The crying eye) is an expression of this "hostile environment". In particular, they highlighted their concern over the statements made by the President of the Republic, Mr. Alan García-Pérez, in November 2007, who allegedly said he intended to publish a list of the names of the 1,800 persons accused and detained under charges of terrorism and treason, among whom were, allegedly, those detained at the Miguel Castro-Castro Prison. They affirmed that "ever since the presidential announcement was made, public condemnation and exclusion patterns have turned harsher, as will be expounded in the description of the facts serving as a basis for [their] request." They held that the publication of the names of survivors, in a list or otherwise, would constitute a measure "imminently endangering not only the process of social reintegration of [those people and their families] but also their physical and psychological integrity, and their security." They pointed out that the "actual facts [which have been]

* Judge Diego García-Sayán excused himself from being part of the Court in the instant case, which was accepted by the Tribunal. Therefore, Judge García-Sayán did not participate in the deliberations on this Order or affix his name thereto.

¹ I/A Court H.R., *Case of the Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160.

perpetrated within the general context [supposedly] existing at present in Peru, and which will worsen if the list announced by President García-Pérez is published, expose the situation of extreme gravity and urgency of the victims who survived the May 1992 massacre.”

3. The factual conditions on which the representatives founded their request for provisional measures are as follows:

a) *statements of the President of the Republic, Mr. Alan García-Pérez.* The representatives referred to the statements made by the President of the Peruvian Republic, wherein he allegedly announced his intent to publish a “list of 1,800 terrorists, so that everybody knows exactly who is living next door and what each of those released is doing”, and also claimed that “restrictions should be imposed on all these people because it is unacceptable for them to leave prisons to bring upheaval to the streets, to radicalize protests, to start creating terrorist or semi-terrorist nuclei again.” They also pointed out that the media affirmed that the President of the Republic allegedly made a request to “follow and film their next of kin and their attorneys to see what instructions they receive from inside the prisons.” They informed that the proposal to publish a list “has been criticized by several Peruvian jurists, who have emphasized its lack of legal viability [...]”. Among these legal scholars are the President of the Judicial Branch and the President of the National Criminal Chamber on Terrorism. The representatives held that such a measure would infringe sections 69 and 70 of the Peruvian Criminal Code, which refer to the automatic rehabilitation of persons who have served their sentence or complied with the security measure imposed on them, and to the prohibition on the communication of personal background information;

b) *spreading references to and images of the victims of the case through the media, describing them as “terrorists” or questioning their rehabilitation process.* Representatives pointed out that after the presidential announcement, a TV channel followed and filmed, without her consent, a person who had been declared a victim in the instant case, describing her as a former member of Sendero Luminoso and questioning her rehabilitation. This same program also showed unauthorized photographs and video shots of other victims of the instant case. Additionally, the representatives referred to a press article which mentioned that certain universities were allegedly spreading the “violence-oriented ideology of Sendero Luminoso (SL) and Marxism” and included the name of a person who had been declared a victim in the instant case;

c) *dismissals and other labor restrictions.* The representatives remarked that “the social consequences derived from disclosing the background information of persons accused and detained under charges of terrorism have taken concrete form in some cases”, mainly in family and labor contexts. They held that “four [...] victims [...] have been dismissed from their jobs or otherwise restricted in their professional practice following the disclosure of their detention under those same charges” and that, out of these people, at least three “[to] date, [...] have lost their jobs because of information obtained from different sources by their bosses and seniors, who based their decision to dismiss them [on] said information”. Likewise, they pointed out that in relation to another victim, on October 25, 2007, the *Colegio de Psicólogos del Perú* (Peruvian Psychologists’ Association) rejected said victim’s application to

join the association because the entity considered that the applicant did not meet the requirements set forth by its Code of Professional Ethics, which establishes “the duty of those who practise or intend to practise the profession to protect human rights, to contribute to the well-being of humanity [, among others]”;

d) violent acts. They highlighted that the above-mentioned acts and the presidential statements have occurred in “a context of violence and harassment which has existed ever since the Inter-American system bodies began to hear the merits of the case of the Miguel Castro-Castro Prison.” They pointed out that several acts of physical violence against victims and witnesses of the case were registered in 2005 and 2006. They held that on November 11, 2005, a person was “almost run over” by a vehicle; that on November 14, 2005, another person was forced to get on a vehicle, severely beaten, insulted and thrown out of the vehicle; and that, lastly, on April 24, 2006, a person was attacked when leaving their house by two people who were allegedly monitoring the residence;

e) other facts. They highlighted that after the Inter-American Court delivered its Judgment, pronouncements were made “against its letter and spirit” by the government representatives and private individuals, as well as discrediting statements about the victims of the case. Under these circumstances of “public hostility”, an attack on the monument “The crying eye” was reported on September 23, 2007, and it was informed that certain personalities of the Peruvian political life, among them a former presidential candidate, had allegedly pronounced themselves “openly in favor of the attack”;

f) they pointed out that the victims of the case of the Miguel Castro-Castro Prison “are in a situation which seriously endangers their [physical and psychological] integrity and their personal security; [which situation] has worsened since the presidential announcement regarding the publication of the list of ‘released’ persons.” The representatives expressed that the adoption of measures is urgent “not only in order to avoid future attacks or acts of harassment, but also to avoid the publication of the names and photographs of [those they represent] amidst a growing and threatening campaign of constant criticism that imperils their rights”;

g) based on these arguments, the representatives requested the Tribunal to order the State of Peru: i) “[t]o immediately adopt such measures as may be necessary to safeguard and protect the life, personal integrity and honor [of those they represent]”; ii) “to refrain from publishing, through any means whatsoever, their names and photographs”; iii) “to refrain from taking or promoting any actions which could endanger the personal integrity, security and honor of the persons included in this request”; and iv) “[t]o take all necessary measures to investigate, and, if appropriate, to punish the acts involving threats or intimidation which have been or could be targeted at [their] clients”; and

h) alternatively, should the Tribunal consider that the requirements established by the American Convention for the adoption of provisional measures are not met, the representatives argued that the publication of the

list "would openly contradict the decision adopted by [the Inter-American Court] on November 25, 2006, and would irremediably prevent effective compliance with the reparations ordered by the Court, the ultimate aim of which is to restore victims to the full exercise of their rights." In this alternative request, the representatives asked the Tribunal to: i) "[a]dopt such measures as it may deem necessary to prevent Peruvian authorities from publishing the names and photographs of [those they represent], in order not to hinder or frustrate compliance with the judgment entered on November 25, 2006"; ii) "[o]rder the State to refrain from taking any other action which may frustrate, in general terms, compliance with the above mentioned judgment"; and iii) "[r]equire the State to submit, as soon as possible, the information needed to determine and guarantee that no measures falling under any of the categories above will be taken."

4. The brief of January 14, 2008, and its annexes, whereby the State submitted its comments on the request for provisional measures. In its brief, the State held, among other arguments, that:

- a) *regarding the "alleged acts of aggression"*, these are "past facts", occurred in 2005 and 2006; that "the State learned about said facts [through the request for provisional measures], and, in the case of the first two alleged acts, it learned about them 25 months after they took place. The third alleged act of aggression happened more recently, but, similarly, it was communicated to the [...] Court 20 months after it took place." Likewise, "the attention of the State is drawn to the fact that these purportedly serious events, even if confirmed, were not reported until recently, which contradicts the situation of extreme gravity and urgency that would warrant the granting of Provisional Measures [...]" Finally, it expressed that the alleged attack on Mr. Antonio Melquíades Ponce-Hilario "is not described in full" and that the furnished information does not suffice to "ascribe the fact to a State agent." It points out that "[t]he same omissions" can be found in the description of the alleged act of aggression against Mr. Víctor Hugo Castillo-Mezzich. It noted that the facts were not denounced to competent State authorities and that they occurred before the Court delivered its Judgment. In the case of the acts against Mrs. Madelein Valle-Rivera, it held that, as the representatives admitted in their brief, a request for provisional measures regarding the same facts has already been submitted, which request was dismissed by the Inter-American Court;
- b) *regarding "the spreading of certain information through private means of communication"*, and, specifically, in relation to the unauthorized filming of certain persons declared victims by the Tribunal and the fact that they were mentioned by means of communication, the State remarked that "they prove that in the country there exists unrestrained freedom of expression, which also allows the recording and dissemination of opinions which are different from, contrary to and critical of those expressed by some top State officials regarding the publication of the names of persons who were prosecuted or convicted for the crime of terrorism and later released." It emphasized that "both the owners of the means of communication that broadcast the information and opinions and the journalists involved according to the request submitted to the Court [...] are not related to the State". It held that while some information and opinions may affect the sensitivity and even the honor

of certain people, requesting the Tribunal to order the adoption of measures directly or indirectly restricting the freedom of expression of private individuals in a State Party to the Convention would be uncondusive to the protection of the very victims' human rights;

- c) *regarding the "publication of the list of persons released after having been prosecuted or convicted for the crime of terrorism", the State pointed out that "it has taken no decision [regarding this matter] and that in the last few weeks no further statements have been made in this sense. Therefore, the context described has changed."*
- d) *regarding "[t]he alleged adverse labor or professional measures taken to the detriment of the four beneficiaries of the judgment of the Inter-American Court", the State remarked that the representatives' brief "does not provide enough information to assess whether there exists a causal relationship between the context and the facts described, which allegedly led to a very grave and urgent situation that could cause irreparable damage to persons. Without these basic elements, the State finds itself unable to make a pronouncement". Specifically, as regards the decision made by the Peruvian Psychologists' Association in one of the cases, the State expressed that "it is an act performed by an autonomous non-state entity", and that it is the association itself that defines the requirements and conditions for the admission of new members. It also remarked that the pronouncement of the Psychologists' Association was made before certain State officials declared the possibility of publishing a list of released persons;*
- e) *regarding the attack on the monument "The crying eye", it emphasized that the representatives, in their brief, "omitted the fact that this regrettable event took place more than two months before certain officials made the statements believed by the victims' representatives to have generated a situation of extreme gravity and urgency detrimental to their clients", and that "as regards the statements made by a former presidential candidate, that is, a private individual, they not only fail to reflect the official stance of the State but also come from a member of a political sector that opposes the Government [...]"; and*
- f) *based on these arguments, the State requested the Court not to order the adoption of provisional measures, inasmuch as it considers that "no situation of extreme gravity and urgency exists that makes it necessary to adopt protection measures [...] with a view to safeguarding the personal integrity, security, and the honor of the victims in the case of the Miguel Castro-Castro Prison."*

5. The brief of January 18, 2008, whereby the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission" or "the Commission") submitted its comments on the request for provisional measures. In said brief, the Commission held that "it [had taken] cognizance of the important information furnished by the representatives regarding this situation. Nonetheless, it considered that some of the referred matters could be discussed within the context of the oversight of compliance with the judgment delivered by the Inter-American Court on November 25, 2006, and that other matters do not necessarily bear direct relation to

the facts discussed and decided by the Tribunal.” Likewise, it noted that “[n]otwithstanding the foregoing, [the Commission] will remain vigilant of the development of this delicate situation at the domestic level.”

CONSIDERING:

1. That Peru has been a State Party to the American Convention on Human Rights since July 28, 1978, and that on January 21, 1981 it accepted the contentious jurisdiction of the Court pursuant to Article 62 of said Convention.

2. That Article 63(2) of the Convention sets forth 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 regard to a case not yet submitted to the Court, it may act at the request of the Commission.

3. That, in relation to this matter, Article 25(1) and 25(2) of the Rules of Procedure provides that:

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.

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

3. In contentious cases already submitted to the Court, the victims or alleged victims, their next of kin, or their duly accredited representatives, may present a request for provisional measures directly to the Court.

4. That in their request for provisional measures, the representatives referred to different factual conditions, such as: a) physical aggression against persons who were declared victims in the Judgment of the case of the Miguel Castro-Castro Prison; b) labor restrictions; c) critical or unfavorable expressions in the media regarding some of the victims and the Judgment entered in the case; d) the attack on the monument “The crying eye”, and e) statements about the possible publication by the State of a list containing the names of 1,800 persons accused or convicted for the crime of terrorism or treason, and the negative implications that such a measure would have on the social, family and work life of the victims of the instant case.

5. That in relation to the acts of physical aggression suffered by three persons who had been declared victims of the instant case, the Tribunal observes that from the information furnished by the representatives it appears that the facts took place on November 11 and 14, 2005, and April 24, 2006. The Court has no further information or elements showing that said persons suffered other attacks or were otherwise threatened after April 2006. The Tribunal believes that, regardless of their alleged gravity, these facts, whether considered separately or within an eventual context of hostility and aggression, are not recent. Therefore, the Inter-American Court cannot conclude that they meet the requirement of “urgency” provided for in

the American Convention and the Rules of Procedure of the Court, which is an indispensable condition to order the adoption of provisional measures. On the other hand, there is no evidence as to the persistence of a situation endangering the life or personal integrity of the victims and possibly causing them irreparable damage. Therefore, the adoption of the requested provisional measures is inadmissible. Likewise, the Tribunal recalls that a previous ruling in relation to one of these facts has already dismissed the request for provisional measures.²

6. That in relation to the alleged labor restrictions, the representatives held that “four [...] victims [...] have been dismissed from their jobs or otherwise restricted in their professional practice following the disclosure of their detention under those same charges” and that, out of these people, at least three “[to] date, [...] have lost their jobs because of information obtained from different sources by their bosses and seniors, who based their decision to dismiss them [on] said information.” In this regard, the Court observes that from the evidence filed it does not appear that said persons were dismissed recently. On the contrary, after reading the testimonies attached by the representatives, it can be inferred that, at the time of submission of the request for provisional measures, all these persons were working, though they certainly agree that the publication of the list of “released persons” would have detrimental effects on their social, family and work life. From the two testimonies referring to dismissals, it does not appear that they are recent facts; rather they are vaguely described as having taken place in the past. One of those testimonies reads: “I experienced this once [, being dismissed,] when I was fired because the owner found out that I had been in jail [...], I overcame it, but it was hard”, while the other testimony holds that “after I had been released on parole, a prosecutor and the [D]ircote (*Dirección contra el Terrorismo* – Anti-terrorism Board) came to my work, and [the owners of the place], out of fear, fired me.” On the other hand, in the case of the person whose application to register with the Peruvian Psychologists’ Association was denied, it also appears from the relevant testimony that this person is currently working and will purportedly have a meeting with the authorities of said institution to request the reconsideration of the decision taken by the Association. As in the other cases, the Tribunal observes that the Association’s rejection of the application occurred prior to the statements concerning the publication of the list of released persons. The Tribunal notes that neither the existence of a situation of extreme gravity and urgency nor the need to avoid irreparable damage can be inferred from these facts.

7. That in relation to the spreading of critical or unfavorable expressions through the media regarding some victims or the Judgment rendered in the instant case, the attack on the monument “The crying eye” or like facts, the Tribunal considers that while they could have detrimental effects on the victims, it has not been proved that they have led to the situation of extreme gravity and urgency necessary to adopt provisional measures. The Tribunal also observes that those who believe their private life or honor has been affected by some of those facts should be able to request protection through actions brought within the domestic legal system.

8. That in relation to the possible publication of a list of released persons, the Court notes what was mentioned by the representatives in the sense that high authorities of the Peruvian judiciary, such as the President of the Judicial Branch and the President of the National Criminal Chamber on Terrorism, allegedly confirmed its

² I/A Court H.R. *Matter of Juárez-Crussat et al. regarding Peru*. Request for Provisional Measures regarding Peru. Order of the President of the Inter-American Court of Human Rights of May 31, 2006.

"lack of legal viability" (*supra* Having Seen paragraph No. 3(a)). Likewise, the representatives indicated that said measure would violate the provisions of the applicable Peruvian Criminal Code concerning the rehabilitation of persons who have served their sentence and the prohibition on the disclosure of criminal background information. The State, in turn, informed that "it has taken no decision [regarding this matter] and that in the last few weeks no further statements have been made in this sense. Therefore, the context described has changed." (*supra* Having Seen paragraph No. 4(c)).

9. That the Tribunal deems it appropriate to recall that, in the instant case, the Court decided that it had been proven that "all inmates located in pavilions 1A and 4B of the Miguel Castro-Castro Prison at the time of the facts were treated by the press as 'terrorists' [...], despite the fact that the majority of them had not been convicted. Similarly, their next of kin were stigmatized as 'next of kin of terrorists.'"³ In its Judgment, the Court concluded that "[s]aid classification presented by State bodies implied an insult to the honor, dignity, and reputation of the surviving inmates who had not been convicted at the time of the facts, of their next of kin, and of the next of kin of the dead inmates that also had not been convicted, since they were perceived by society as 'terrorists' or the next of kin of 'terrorists', with all the negative consequences this implies."⁴

10. That in a request for provisional measures it is not possible to consider arguments pertaining to issues other than those which relate strictly to the extreme gravity and urgency, and the necessity to avoid irreparable damage to persons.⁵

11. That after analyzing the background information furnished by the representatives, the Court considers that the submitted request does not refer to a situation of extreme gravity and urgency warranting the adoption of provisional measures to avoid irreparable damage to persons pursuant to Article 63(2) of the American Convention on Human Rights.

12. That for the same grounds, the tribunal also dismisses the alternative request submitted by the representatives. The implications of the facts reported to the Tribunal will be considered, if appropriate, at the stage, still pending, of oversight of compliance with the Judgment delivered by the Court on November 25, 2006 in the case of the Miguel Castro-Castro Prison.

NOW THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

³ Cfr. I/A Court H.R., *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 1, para. 357.

⁴ Cfr. I/A Court H.R., *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 1, para. 359.

⁵ Cfr. I/A Court H.R. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 20, 1998, Considering paragraph No. 6; I/A Court H.R. *Matter of "Globovisión" Television Station*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of January 29, 2008, Considering paragraph No. 10; and I/A Court H.R. *Matter of Luisiana Rios et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 3, 2007, Considering paragraph No. 9.

DECIDES:

1. To dismiss the request for provisional measures, pursuant to the remarks included in the Considering clauses of this Order.
2. To request the Secretariat of the Court to give notice of this Order to the Inter-American Commission, the petitioners, the common intervener of the representatives of the victims and their next of kin, and the State.

Cecilia Medina-Quiroga
President

Sergio García-Ramírez

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary