

**Order of the
Inter-American Court of Human Rights
of May 3, 2008
Provisional Measures
with regard to Peru
Case of the Gómez-Paquiyaui Brothers***

HAVING SEEN:

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

1. [t]o call upon the State to adopt forthwith all necessary measures to protect the life and physical integrity of the members of the Gómez-Paquiyaui family who testified before the Court: Ricardo Samuel Gómez-Quispe, Marcelina Paquiyaui-Illanes de Gómez, Lucy Rosa Gómez-Paquiyaui, Miguel Ángel Gómez-Paquiyaui and Jacinta Peralta-Allccarima, and those who are in Peru, namely: Ricardo Emilio, Carlos Pedro and Marcelina Haydée Gómez-Paquiyaui, and minor Nora Emely Gómez-Peralta[;]

2. [t]o call upon the State to adopt forthwith all necessary measures to protect the life and physical integrity of Ángel del Rosario Vásquez-Chumo and the members of his family[, and]

3. [t]o call upon the State to allow the beneficiaries of [the] provisional measures to take part in the planning and implementation of the protective measures and, in general, to keep them informed of the progress made in relation to the provisional measures ordered by the Inter-American Court of Human Rights.

2. The Order of the Inter-American Court of September 22, 2006, in which it decided, *inter alia*:

1. [t]o 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-Paquiyaui family: Ricardo Samuel Gómez-Quispe, Marcelina Paquiyaui-Illanes de Gómez, Lucy Rosa Gómez-Paquiyaui, Miguel Ángel Gómez-Paquiyaui, Ricardo Emilio Gómez-Paquiyaui, Carlos Pedro Gómez-Paquiyaui, Marcelina Haydée Gómez-Paquiyaui, Jacinta Peralta-Allccarima, and Nora Emely Gómez-Peralta; as well as Ángel del Rosario Vásquez-Chumo and the members of his family[, and]

2. [t]o reiterate the request made to the State so that the beneficiaries of the provisional measures are allowed to take part in the planning and implementation thereof and, in general, kept informed of the progress regarding compliance with the measures ordered by the Inter-American Court of Human Rights. [...]

3. The communications submitted by the Republic of Peru (hereinafter “the State” or “Peru”) on July 31 and December 14, 2007 and January 11, 2008, whereby the State provided information regarding the implementation of the provisional measures ordered by the Court in the instant case.

* Judge Diego García-Sayán, a Peruvian national, excused himself from hearing this case, pursuant to Article 19(2) of the Statute and Article 19 of the Rules of Procedure of the Court; therefore, he did not participate in the deliberations and signing of this Order.

4. The communications filed by the representatives of the beneficiaries who are members of the Gómez-Paquiyaury family on September 3 and October 29, 2007, and January 25 and April 9, 2008, whereby the representatives submitted their comments on the State's reports (*supra* Having Seen clause No. 3).
5. The communications filed by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on November 21, 2007 and April 16, 2008, whereby the Commission submitted its comments on the State's reports (*supra* Having Seen clause No. 3) and on the comments of the representatives of the Gómez-Paquiyaury family (*supra* Having Seen clause No. 4).
6. The note of the Secretariat of the Court (hereinafter "the Secretariat") of October 30, 2007, whereby, following the President's instructions, the State, the Inter-American Commission and the representatives of the beneficiaries were required to submit their comments by November 12, 2007 regarding the existence and continuation of the situation of extreme gravity and urgency and potential risk of irreparable damage that would warrant maintaining these provisional measures in force.
7. The communication submitted by the State on February 29, 2008, whereby it stated that Peru had no intention to "add to the pain suffered" by the Gómez-Paquiyaury family and that protection of Vásquez-Chumo and the members of his family should continue until final judgment is rendered against César Augusto Santoyo-Castro, who was a co-accused with Vásquez-Chumo in the criminal case concerning the death of the Gómez-Paquiyaury brothers.
8. The communication submitted on November 12, 2007 by the representatives of the beneficiaries who are members of the Gómez-Paquiyaury family, requesting that the provisional measures ordered in favor of the family be maintained for at least six months from the date of said communication. The representatives considered that at the time there was a "tense atmosphere" in Peru in relation to the Judgment rendered by this Court in the *Case of the Miguel Castro-Castro Prison*, and that given that there is a connection between the case and some members of the Gómez-Paquiyaury family, it would be convenient to maintain the measures ordered in their favor to avoid "giving the wrong impression that they have lost the protection afforded by the Inter-American Court."
9. The communication submitted by the Inter-American Commission on January 31, 2008, in which the Commission stated that the request made by the representatives of the Gómez-Paquiyaury family was "reasonable in light of the circumstances of the case".
10. The notes of the Secretariat of January 18, February 4, and April 10, 2008, whereby the parties were informed that the time limit for Jacinta Peralta-Allcarima and Elizabeth Teresa Segura Marquina to submit their comments concerning the existence and continuance of the situation of extreme gravity and urgency and potential risk of irreparable damage that would warrant maintaining the provisional measures ordered by the Court in favor of Jacinta Peralta-Allcarima and Nora Emely Gómez-Peralta, as well as of Ángel del Rosario Vásquez-Chumo and the members of his family had expired on November 12, 2007 (*supra* Having Seen clause No. 6) and that no comments had been received by the Secretariat. Therefore, following the instructions of the President of the Court, Jacinta Peralta Allcarima y Elizabeth Teresa Segura Marquina were requested to comply with such request without delay. At the time of issuance of this Order, the required information has not been received.

CONSIDERING:

1. That Peru has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since July 28, 1978 and that it accepted the jurisdiction of the Court on January 21, 1981.

2. That, at the time of the adoption of the provisional measures in the instant case on May 7, 2004 (*supra* Having Seen clause No. 1), the Court considered that the facts presented revealed *prima facie* a situation posing a serious and imminent threat to the life and physical integrity of the following 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-Allcarima and Nora Emely Gómez-Peralta, as well as of Ángel del Rosario Vásquez-Chumo and the members of his family.

3. That, on October 30, 2007, this Court requested the State, the Inter-American Commission, and the representatives of the beneficiaries to submit their comments regarding the existence and continuation of the situation of extreme gravity and urgency and potential risk of irreparable damage that would warrant maintaining these provisional measures in force (*supra* Having Seen clause No. 6).

4. That the beneficiaries that are members of the Gómez-Paquiyaury family requested that the State not provide them with special police protection and not interfere with the exercise of the rights of the family (*supra* Having Seen clause No. 4).

5. That the representatives of the Gómez-Paquiyaury family and the Inter-American Commission pointed out that the State had provided no information regarding the investigation into what happened to Miguel Ángel Gómez-Paquiyaury on January 15, 2005, when he went to the Miguel Castro Castro Prison to visit Ricardo Gómez-Paquiyaury, where prison staff allegedly harassed him by withholding copies of the Judgment delivered by this Court in the Case of the Gómez-Paquiyaury brothers (*supra* Having Seen clauses No. 4 and 5).

6. That, notwithstanding the alleged lack of investigation mentioned in the preceding paragraph, the information furnished by the parties reveals that in the four years that have elapsed from the adoption of these provisional measures, the Gómez-Paquiyaury family has not been the subject of threats or situations that may pose a danger to their lives or physical integrity.

7. That the Court has previously pointed out that the alleged lack of investigation on the part of a State does not constitute, *per se*, circumstances of extreme gravity and urgency that would warrant maintaining the provisional measures.¹

8. That, irrespective of the adoption of the provisional measures ordered by the Court in the instant case, the State has an ongoing and permanent duty to comply with the general

¹ Cf. *Case of the Constitutional Court*. Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of March 14, 2001, Considering clause No. 4; *Matter of Pilar Noriega*. Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering clause No. 14; and *Matter of Gallardo-Rodríguez*. Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of July 11, 2007, Considering clause No. 11.

obligations under Article 1(1) of the Convention to respect the right and freedoms enshrined therein and to ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms.

9. That the representatives of the Gómez-Paquiyaury family as well as the Inter-American Commission requested in November 2007 that the provisional measures ordered in favor of the family be maintained for an additional period of at least six months. The representatives considered that, at the time, there was a "tense atmosphere" in Peru in relation to the Judgment rendered by this Court in the *Case of the Miguel Castro-Castro Prison*, and given that there is a connection between the case and some members of the Gómez-Paquiyaury family, it would be convenient to maintain the measures ordered in their favor to avoid "giving the wrong impression that they have lost the protection afforded by the Inter-American Court" (*supra* Having Seen clauses No. 8 and 9).

10. That, after the period of six months requested by the representatives and the Commission (*supra* Considering clause No. 10) had elapsed, the Court received no information showing that the beneficiaries who are members of the Gómez-Paquiyaury family were in a situation of extreme gravity and urgency or that there was a threat to their lives or physical integrity as a result of the Judgment delivered by this Court in the Case of the Miguel Castro-Castro Prison.

11. That provisional measures are exceptional in nature and are therefore ordered having regard to the need for protection and, once ordered, they must be maintained provided that the Court finds that the basic requirements of extreme gravity and urgency and the need to prevent irreparable damage to the rights of the persons protected by them are still met.² In the instant case, the Court does not believe that the circumstances of extreme gravity and urgency and the need to prevent irreparable damage that existed at the time the provisional measures were ordered in favor of the Gómez-Paquiyaury family still exist.

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12. That the representatives of Jacinta Peralta-Allicarima and Nora Emely Gómez-Peralta as well as of Ángel del Rosario Vásquez-Chumo and the members of his family, respectively, have failed to submit the information requested by means of the note of the Secretariat of October 30, 2007, which request was reiterated by means of the notes of the Secretariat of January 18, February 4, and April 10, 2008 (*supra* Having Seen clauses No. 6 and 10), namely, their comments on the existence and continuation of the situation of extreme gravity and urgency and potential risk of irreparable damage that would warrant maintaining the provisional measures ordered by the Court in favor of these persons.

13. That, as regards the beneficiaries Jacinta Peralta-Allicarima and minor Nora Emely Gómez-Peralta, despite not having received their comments (*supra* Having Seen clause No. 10 and Considering clause No. 12), in the four years during which the provisional measures have been in force, no incident has been reported in which the State has interfered with

² Cf. *Case of the Constitutional Court*, *supra* footnote 1, Considering clause No. 3, *Case of Caballero-Delgado and Santana*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering clause No. 7, and *Case of Alvarez et al.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering clause No. 13.

their rights to life and humane treatment. Therefore, the Court considers it reasonable to presume that the situation of said beneficiaries no longer falls within the provisions of Article 63(2) of the Convention.

14. That, as regards the implementation of the measures in favor of Ángel del Rosario Vásquez-Chumo and his family, the only information available is that provided by the State, which reported that police protection service was provided regularly in their homes; that there were no relevant incidents affecting their safety to be reported; and that Mr. Vásquez-Chumo had refused protection while performing his job as a taxi driver (*supra* Having Seen clause No. 3).

15. That the State considered that the provisional measures ordered in favor of Mr. Vásquez-Chumo and the members of his family should be maintained "until final judgment is rendered" against César Augusto Santoyo-Castro, who was a co-accused with Vásquez-Chumo in the criminal case concerning the wrongful death of the Gómez-Paquiyaury brothers and who Vásquez-Chumo identified as the mastermind of said crimes (*supra* Having Seen clause No. 7).

16. That the State did not provide any additional arguments or evidence in support of maintaining the measures ordered in favor of Mr. Vásquez-Chumo and his family until César Augusto Santoyo-Castro is convicted.

17. That it is essential for the State to provide said information so that the Court can determine whether to maintain or lift these measures. However, taking into consideration the request of the State (*supra* Having Seen clause No. 7 and Considering clause No. 15), the Court considers it appropriate to maintain the provisional measures ordered in favor of Vásquez-Chumo and his family for an additional period of at least six months.

18. That the last communication submitted by the representative of Vásquez-Chumo and the members of his family was received by the Secretariat of the Court on July 22, 2004. In this regard, the Court believes that it is essential that Vásquez-Chumo and his family submit their comments on the existence and continuation of the situation of extreme gravity and urgency and potential risk of irreparable damage that would warrant maintaining the provisional measures ordered by the Court in their favor.

19. That the Court will consider whether or not to maintain the provisional measures ordered in favor of Mr. Vásquez-Chumo and his family once it has received the required information (*supra* Considering clauses No. 17 and 18) and the comments of the parties on this issue.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority vested in it by Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of the Court's Rules of Procedure,

DECIDES:

1. To lift the provisional measures ordered by the Inter-American Court of Human Rights in its Orders of May 7, 2004 and September 22, 2006, in respect of 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-Allcarima and Nora Emely Gómez-Peralta.
2. To request the State to maintain the necessary measures to protect the life and physical integrity of Ángel del Rosario Vásquez-Chumo and the members of his family that live with him for an additional period of at least six months following notice of this Order, after which the Court will evaluate whether or not to maintain the same.
3. To request Ángel del Rosario Vásquez-Chumo and the members of his family that live with him, or their representative, to submit their comments by November 3, 2008 regarding the existence and continuation of the situation of extreme gravity and urgency and potential risk of irreparable damage that would warrant maintaining these provisional measures in force.
4. To request the State to submit a report to the Inter-American Court of Human Rights by November 3, 2008, presenting the arguments and evidence in support of maintaining the measures ordered in favor of Vásquez-Chumo and his family, and to request the Inter-American Commission on Human Rights to submit its comments on said report as well as on the comments submitted by Ángel del Rosario Vásquez-Chumo and his family, as required in the preceding operative paragraph, within two weeks following receipt of said documents.
5. To request the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the beneficiaries of these measures and their representatives.

Cecilia Medina-Quiroga
President

Sergio García-Ramírez

Manuel E. Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary