

**Order of the
Inter-American Court of Human Rights
of August 5, 2008
Provisional Measures
with regard to 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” or “the Court”) of July 9 2004, granting provisional measures in favor of Carlos Nieto Palma and his next of kin, Ivonne Palma Sánchez, Eva Teresa Nieto Palma and John Carmelo Laicono Nieto.

2. The Order of the Inter-American Court of September 22, 2006, in which it reiterated to the State that it must maintain any measures it had adopted and order, forthwith, the measures necessary to provide effective protection to the life, integrity and liberty of Carlos Nieto Palma, and the life and integrity of Ivonne Palma Sánchez, Eva Teresa Nieto Palma and John Carmelo Laicono Nieto.

3. The Order of the Inter-American Court of July 3, 2007, in which, *inter alia*, it decided:

[...]

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

2. To reiterate to the State the requirement that it maintain any measures it had adopted and order, forthwith, those necessary to provide effective protection to the life, integrity and personal liberty of Carlos Nieto Palma, and the life and integrity of Yvonne Palma Sánchez.

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

4. To reiterate to the State that it must continue to report to the Inter-American Court of Human Rights on the provisional measures it has adopted every two months from notification of th[e] order and to require the beneficiaries of these measures or their representative and the Inter-American Commission on Human Rights to present their observations within four and six weeks, respectively, of notification of the State's reports.

[...]

4. The briefs of the Bolivarian Republic of Venezuela (hereinafter “Venezuela” or “the State”) submitted on October 8 and November 14, 2007; and April 29 and July 11, 2008.

5. The briefs submitted by Carlos Nieto Palma on October 18, 2007, and April 23, 2008.

6. The briefs submitted by the Inter-American Commission on March 18 and June 23, 2008.

7. The communications of the Secretariat of the Inter-American Court (hereinafter "the Secretariat") of March 11, May 2, June 25 and July 14, 2008, in which, on the instructions of the President of the Court (hereinafter "the President"), it reminded the representative of the beneficiaries of the provisional measures about the observations that should have been forwarded on February 21 and June 13, 2008, and which had not been submitted at the date of this Order.

8. The communication of the Secretariat of April 2, 2008, in which it reminded the State about the submission of the reports that should have been forwarded on December 8, 2007, and February 8, 2008, which had not been received and, at the date of this Order had not been submitted.

CONSIDERING:

1. That Venezuela ratified the American Convention on August 9, 1977, and, pursuant to Article 62 thereof, accepted the compulsory jurisdiction of the Court on June 24, 1981.

2. That Article 63(2) of the American Convention establishes that "in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court shall order such provisional measures as it deems pertinent in matters that have not yet been submitted to its consideration, at the request of the Commission.

3. That Article 1(1) of the Convention establishes the general obligation of the States Parties to respect the rights and freedoms recognized therein 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 to guarantee rights, the State Party has the obligation *erga omnes* to protect all persons subject to its jurisdiction.¹

4. That, under international human rights law, provisional measures are not merely preventive, in that they preserve a juridical situation, but rather they are essentially protective, since they protect human rights, inasmuch as they seek to avoid irreparable damage to persons. Provided that the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met, provisional measures become a real jurisdictional guarantee of a preventive nature.²

5. That, in the Order of the Court of July 3, 2007, the Court decided, *inter alia*, that the State must maintain and adopt the necessary measures to protect the life, integrity and personal liberty of Carlos Nieto Palma, and also the life and integrity of Ivonne Palma Sánchez (*supra* third having seen paragraph).

¹ Cf. *Case of Velásquez Rodríguez*. Provisional measures with regard to Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, third considering paragraph; *Case of the Gómez Paquiyauri Brothers*. Provisional measures with regard to Peru. Order of the Inter-American Court of Human Rights of May 3, 2008, eighth considering paragraph; and *Matter of the Urso Branco Prison*. Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of May 2, 2008, nineteenth considering paragraph.

² *Case of Herrera Ulloa*. Provisional measures with regard to Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, fourth considering paragraph; *Matter of the Urso Branco Prison*. Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of May 2, 2008, fourth considering paragraph; *Case of the Peace Community of San José de Apartadó*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of February 6, 2008, sixteenth considering paragraph; and *Case of Caballero Delgado and Santana*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of February 6, 2008, fifth considering paragraph.

6. That, in its report of October 8, 2007, the State indicated that the Court had "repeat[ed] its erroneous opinions concerning the Venezuelan State by deciding once again to maintain the provisional measures in favor of Carlos Nieto Palma. If there were no juridical reasons [to issue the Order of the Court] in 2006, there were even less in July 2007." It added that Carlos Nieto Palma had stated that "the threats against him had ceased." In addition, it indicated that the beneficiary insisted that "the Prosecutor's Office was harassing him, [whereas, to the contrary] [...] that Office is trying to comply with its obligations, which consist in clarifying the facts in order to identify those who are guilty and punish them" (*supra* fourth having seen paragraph).

7. That the State had indicated that the Commission contradicted itself when it "insisted that the investigation into the facts was a necessary element for the elimination of the danger," which the State agreed with; "but, when the Prosecutor's Office required the collaboration [of the beneficiary] in order to identify the supposed police agents, the latter considered that [the Prosecutor's Office] was harassing him" (*supra* fourth having seen paragraph).

8. That, as regards allowing the beneficiaries to take part in the planning and implementation of the measures and keeping them informed about their progress and implementation, the State reported that, under Venezuelan law, the Thirty-fourth National Prosecutor's Office with full jurisdiction attached to the Attorney General's Office (*Ministerio Público*) (hereinafter "Prosecutor's Office No. 34") summoned Carlos Nieto Palma to a meeting with the officials responsible for complying with the provisional measures. The meeting was held on March 14, 2008, when it was agreed: (a) that the officials responsible for complying with the measures would visit Carlos Nieto Palma's house at 7.00 p.m.; (b) to notify the chairman of the board of the condominium apartment building where Carlos Nieto Palma resides so that he would provide the necessary collaboration to the police authorities who would comply with the measures; (c) that a record of the communication between Mr. Nieto Palma and those responsible for complying with the measures would be drawn up, and (d) that, should Mr. Nieto Palma be absent at the time agreed for the visit, the official record would be signed by his mother, Ivonne Palma Sánchez, and, should she be absent, by the concierge of the condominium.

9. That, in relation to the information provided by Carlos Nieto Palma regarding the total non-compliance with the visits agreed upon as measures of protection, in its report of October 8, 2007, the State indicated that it was impossible to comply with the measures because of the beneficiary's lack of collaboration. In addition, it indicated that the Protection Act for Victims, Witnesses and other Procedural Subjects had been promulgated and published in Official Gazette No. 38,536 of October 4, 2006. Also, on July 11, 2008, the State reported that, as agreed on March 14, 2008, the protection measures consisted in visiting the beneficiary's residence, and the Metropolitan Police were still carrying out these visits. Regarding the threats that Mr. Nieto Palma had alleged on May 12, 2008, it indicated that the Commission had not provided details of how the visit by the Metropolitan Police officials on that date constituted an act of intimidation; moreover, it could not understand why the said visit might constitute an act of harassment. In this regard, the State indicated that it knew nothing about these facts, or about the communication in which the beneficiary reported them.

10. That the State also advised that: (a) on May 20, 2008, the Eighth Prosecutor's Office of the Judicial District of Caracas attached to the Attorney General's Office, headed by the lawyer, Orlando Villamizar, had ordered the opening of the investigation to clarify the facts "relating to the alleged fifty-two (52) visits carried out by Metropolitan Police officials; (b) on February 10, 2008, the Metropolitan Police Corps was transferred to the National

Executive, specifically the Ministry of Popular Power for Internal Relations and Justice, with strict respect for the law and in the context of the Integral Security Plan, and (c) regarding Mr. Nieto Palma's request that the State submit evidence of the occasions on which police agents have visited the beneficiary's residence when he was not present, it considered that it was being asked for "impossible evidence, by requesting it to provide proof of a fact that allegedly had not occurred; in other words, the absence of Carlos Nieto Palma when the visits were made."

11. That the beneficiary Carlos Nieto Palma indicated that on August 14, 2007, he had received a summons from Prosecutor's Office No. 34 to appear before the Nineteenth Criminal Court of First Instance with monitoring functions, of the Metropolitan Area of Caracas (hereinafter the "Nineteenth Court"), for an oral hearing to establish the coordination and verification mechanisms relating to the protection measures in his favor and in favor of his mother (*supra* eighth considering paragraph). However, since it was not possible to coordinate the agendas of Mr. Nieto Palma and the prosecutor responsible for the case, this hearing was held on October 24, 2007, before the said Nineteenth Court. Representatives of the Attorney General's Office, the Metropolitan Police, and the beneficiary's lawyers attended the hearing. As a result, the measures in his favor were ratified and the Attorney General's Office was urged to open a criminal inquiry for the alleged forging of the official records of visits (*infra* fourteenth considering paragraph). In addition, a meeting was arranged to determine the way in which surveillance would be provided by the Metropolitan Police (*supra* fifth having seen paragraph).

12. That Carlos Nieto Palma emphasized that, on the night of October 24, 2007, the date on which the hearing was held before the said Nineteenth Court (*infra* fourteenth considering paragraph), ten Metropolitan Police officials on motorcycles came to his house and surrounded the building in which he lives, so that he would sign the list of visits; he described this as "unusual" because, normally, only two officials came. Mr. Nieto Palma described this act as being a "[...] threatening action against him by these police agents [...]." He added that the Metropolitan Police have now been transferred from being attached to the Caracas Metropolitan City Council, to the Ministry of the Interior and Justice, "[...] to which the [Directorate of Intelligence and Prevention Services] is also attached, and it was the latter's officials who had harassed and threatened [him] [...]" (*supra* fifth having seen paragraph). He also indicated that the National Police Act had been promulgated recently, so that he did not know how the measures ordered by the Inter-American Court would be implemented.

13. That, in his observations of October 18, 2007, Carlos Nieto Palma reiterated that he was still in danger, because the Ministry of the Interior and Justice had publicly accused non-governmental organizations of causing the violence in the country's prisons, as well as of taking weapons into the prisons in order to destabilize the system. He added that the General Directorate of Prisoner Rehabilitation and Custody was attached to this Ministry, and that the Directorate was an "[...] agency that repeatedly accuses [us], the organizations who work within the penitentiary system, of being agents financed by the North American Government and that we are the organizers of the protests that take place in our prisons on a daily basis [...]." The beneficiary considered that such accusations were acts that threatened the human rights defenders, without indicating a threatening act or specific dangerous situation against him (*supra* fifth having seen paragraph).

14. That Carlos Nieto Palma indicated that the hearing scheduled for October 24, 2007, was held at Prosecutor's Office No. 34 on March 14, 2008, in the presence of the heads of the three working groups of the El Paraíso Sub-Commissariat of the Metropolitan Police, the prosecutor responsible [for the case], an auxiliary prosecutor and the beneficiary. The

information presented by the beneficiary coincided with that submitted by the State as regards the means, timetable and way in which the safety measures would be provided (*supra* tenth considering paragraph). In addition, Carlos Nieto Palma indicated that, prior to the hearing of October 24, 2007, he had visited the Nineteenth Court on October 18, 2007, to review the case file and had found several official records of interviews with him carried out by the Metropolitan Police in the course of their visits to provide him with security measures; these records “noted that they had interviewed [him], but the signature was different from [his] and the interview had not been carried out [...]”; he therefore concluded that these records were false and worthless (*supra* fifth having seen paragraph).

15. That the Commission underscored that the “[...] an assessment by the State in the context of the security of the beneficiaries should be conducted together [...]” with the beneficiaries and their representatives. It also indicated that, on October 24, 2007, and May 12, 2008, “police agents responsible for ensuring his security are alleged to have gone to the residence [of Mr. Nieto Palma] in order to harass him.” In addition, it evaluated the coordination measures between the parties, referring to the meeting held on March 14, 2008, between Carlos Nieto Palma and personnel of the El Hatillo Sub-Commissariat, in which several decisions were taken regarding implementation of the protection measures. Furthermore, the Commission noted that Mr. Nieto Palma had advised that, in some of the official records of visits forwarded by the State, his signature had been forged and that, even though he had reported this fact, the corresponding investigation had not been conducted. It added that the beneficiary rejected the State’s report that the protection visits by State agents were being carried out regularly. Lastly, it asked the Court to require the State to provide information on the status of the investigation into the forging of Carlos Nieto Palma’s signature in the official records monitoring the protection, the regularity with which the visits were made, and the beneficiary’s presence in his residence when they were made (*supra* sixth having seen paragraph).

16. That provisional measures are exceptional in nature; they are issued based on the needs for protection and, once ordered, must be maintained provided that the Court finds that the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to the rights of the persons protected by them subsist.³ The Court notes that the extreme gravity and the threats must be assessed based on the specific context of those circumstances that, owing to their inherent nature, pose imminent danger.

17. That this Court observes that, in his brief of January 27, 2006, Carlos Nieto Palma stated that the threats that gave rise to the adoption of the provisional measures had ceased, but continued to be latent, owing to his work as a human rights activist (*supra* thirteenth considering paragraph), as established in the ninth considering paragraph of the Order of the Court of September 22, 2006 (*supra* second having seen paragraph). Despite the foregoing, Mr. Nieto Palma subsequently indicated, *inter alia*, that, on October 24, 2007, he was threatened by the officials responsible for his safety (although he did not give clear details of what these threats consisted of), and that the visits agreed at the meeting of March 24, 2008, had not been conducted. Lastly, he asked the Court to maintain the provisional measures. In its observations of June 23, 2008, the Commission also stated, *inter alia*, that Mr. Nieto Palma had alleged renewed acts of harassment against him (*supra* twelfth considering paragraph) without describing them. Meanwhile, the State has

³ Cf. *Case of the Constitutional Court*. Provisional measures with regard to Peru. Order of the Inter-American Court of Human Rights of March 14, 2001, third considering paragraph; *Case of Álvarez et al.* Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of February 8, 2008, thirteenth considering paragraph, and *Case of Caballero Delgado and Santana*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of February 6, 2008, seventh considering paragraph.

indicated, *inter alia*, that there are no legal grounds for maintaining the provisional measures (*supra* sixth considering paragraph).

18. That, based on the above, the Court takes note of the State's request to lift the provisional measures and decides that, before ruling on this request, it considers it necessary to require the parties to forward detailed and specific information on the existence at the present time of the procedural requirements of extreme gravity and urgency and of possible irreparable damage to Carlos Nieto Palma and Ivonne Sánchez Palma, that would justify the need to maintain in force the provisional measures ordered by the Court in their favor, in keeping with their purpose.

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19. That the Court will assess the pertinence of maintaining in force the provisional measures ordered in favor of Carlos Nieto Palma and Ivonne Palma Sánchez when it has received the requested information and the corresponding observations of the parties (*supra* eighteenth considering paragraph).

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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

DECIDES:

1. To require the State to maintain the necessary measures to protect the life and personal integrity of Carlos Nieto Palma and Ivonne Palma Sánchez, for at least six months from notification of this Order, following which the Court will assess the pertinence of maintaining them in force.

2. To request Carlos Nieto Palma or his representatives to submit, by October 10, 2008, at the latest, their observations on the existence and continuation of the assumptions of extreme gravity and urgency and of possible irreparable damage that justify the need to maintain these provisional measures in force.

3. To require the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights its observations on the observations of Mr. Nieto Palma or his representatives that were requested in the preceding operative paragraph, within two weeks of receiving them. Also, to require the State to present a report to the Inter-American Court of Human Rights on the observations of Carlos Nieto Palma and Ivonne Palma Sánchez and of the Inter-American Commission on Human Rights, within two weeks of receiving them.

4. To require the Secretariat of the Court to notify this Order to the Inter-American Commission on Human Rights, the beneficiaries or their representatives, and the State.

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