

**Order of the
Inter-American Court of Human Rights
of January 22, 2009
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, in which it decided, *inter alia*:

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

2. [t]o call upon the State to adopt forthwith all necessary measures to protect the life and safety 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 these provisional measures to take part in the planning and implementation of the measures of protection and, in general, to keep them informed its progress in implementing the provisional measures decided 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 and adopt such 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, Nora Emely Gómez-Peralta, and Jacinta Peralta-Allcarima, as well as Ángel del Rosario Vásquez-Chumo and his next of kin[; and]

2. [t]o reiterate the request made to the State that the beneficiaries of the provisional measures be allowed to take part in the planning and implementation thereof and, in general, be

• For reasons of *force majeure*, President Cecilia Medina Quiroga did not participate in the deliberation and signing of this Order. Likewise, Judge Diego García-Sayán, of Peruvian nationality, has recused himself from the present case in conformity with Article 19(2) of the Statute and Article 19 of the Rules of Procedure of the Court, and did not participate in the deliberation of the present Order.

kept informed about the progress regarding compliance with the measures ordered by the Inter-American Court of Human Rights.

[...]

3. The Order of the Inter-American Court of May 3, 2008, in which it decided, *inter alia*:

1. [t]o lift the provisional measures ordered by the Inter-American Court of Human Rights in its Orders of May 7, 2004 and September 22, 2006, with respect to 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, Jacinta Peralta-Allcarima, and Nora Emely Gómez-Peralta[;]

2. [t]o 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 said measures[;]

3. [t]o request Ángel del Rosario Vásquez-Chumo and the members of his family that live with him, or their representative, to submit by November 3, 2008, their observations 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[; and]

4. [t]o request the State to submit a report to the Inter-American Court of Human Rights by November 3, 2008, presenting its 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 observations on said report as well as on the observations 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.

[...]

4. The communications submitted by the Republic of Peru (hereinafter "the State" or "Peru") on April 30 and August 14, 2008, in which it presented information on the implementation of the provisional measures ordered by the Tribunal in the present case.

5. The communications submitted by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of June 24 and October 1, 2008 and January 13, 2009, in which it presented its observations on the State's reports (*supra* Having Seen clause No. 4).

6. The note of the Secretariat of the Court (hereinafter "the Secretariat") of October 3, 2008, in which it indicated that, in accordance with Operative Paragraph Four of the Order of the Court of May 3, 2008, the next report to be sent by the State to the Secretariat should contain the State's arguments and evidence in support of maintaining the measures ordered in favor of Ángel del Rosario Vásquez Chumo and his family in force. Additionally, November 3, 2008, was set as the deadline for the submission of said report.

7. The communication of the State of November 11, 2008, in which it submitted its “opinion regarding the continuation of the [p]rovisional [m]easures mandated in [the Court’s] Orders of May 7, 2004, September 22, 2006, [and May 3, 2008]” in favor of Ángel del Rosario Vásquez Chumo and his family, and stated that “lifting [the measures] would be convenient [...], as no evidence has been found on the existence of threats against their physical integrity or material goods.”

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 Article 63(2) of the American Convention provides that “[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,” the Court may adopt such provisional measures as it deems pertinent in matters it has under consideration.

3. That, on the subject, Article 25 of the Court’s Rules of Procedure establishes 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.

[...]

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 due to its competence, under the framework of provisional measures, the Court should consider only those arguments that relate strictly and directly to the requisites of extreme gravity and urgency and the necessity of avoiding irreparable damage to persons. It is in this manner that, in deciding whether to maintain the provisional measures in force, the Tribunal should analyze whether the situation of extreme gravity and urgency that led to their adoption persists, or whether new circumstances, also extremely grave and urgent, warrant keeping them in force. All other issues may be brought to the Court’s attention solely through the procedure for contentious cases.¹

¹ Cf. *Matter of James et al.* Provisional measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 29, 1998, Considering clause six; *Matter of Children Deprived of Liberty in the “Complexo do Tatuapé” of FEBEM.* Provisional measures regarding Brazil. Order of the Inter-American Court of Human Rights of November 25, 2008, Considering clause four; and *Matter of the persons imprisoned in the “Dr.*

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5. That in its Order of May 7, 2004, the Inter-American Court concluded that the situation of Vásquez Chumo as a direct witness in the Case of *Gómez-Paquiyaury* “has resulted in his allegedly being subject to threats and other intimidating acts, and has also caused him to fear that these acts may continue against himself and his family,” and, similarly, that “from his statements, it can be inferred that he, or the members of his family, may be subject to reprisals as a result of his statements before this Court.” For that reason, the Court “call[ed] upon the State to adopt forthwith all necessary measures to protect the life and personal integrity of Ángel del Rosario Vásquez Chumo and the members of his family” (*supra* Having Seen clause No. 1). Due to the persistence of the described situation, the Court reiterated in its Order of September 22, 2006 (*supra* Having Seen clause No. 2) its instruction that the State adopt measures of protection in favor of said beneficiaries. Finally, in its Order of May 3, 2008, the Court “request[ed] 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 [that] Order, after which the Court [would] evaluate whether or not to maintain [said measures]” (*supra* Having Seen Clause No. 3).

6. That the State presented its “opinion regarding the continuance of the [p]rovisional [m]easures mandated in [the Court’s] Orders of May 7, 2004, September 22, 2006, [and May 3, 2008]” in favor of Ángel del Rosario Vásquez Chumo and his family, and stated that “lifting [the measures] would be convenient [...], as no evidence has been found on the existence of threats against their physical integrity or material goods.”

7. That, in that respect, the State reported that the Directorate Against Corruption of the National Police of Peru (*Dirección contra la Corrupción de la Policía Nacional del Perú*), through its Special Division of Verification, Investigation, and Protection of the National Police of Peru - DIVECEP (*División Especial de Comprobación, Investigación y Protección de la Policía Nacional del Perú-DIVECIP*), indicated that “from February 2007 to October 2008, no events have been documented that would warrant the continuation of the [p]rovisional [m]easures, that is, that would justify maintaining the measures to protect [Vásquez Chumo] and the members of his family.” It also indicated that the beneficiaries of the measures had adopted “inappropriate conduct [...] against the police officers that provided them the [...] service [of protection],” and reiterated that Vásquez Chumo has renounced police protection while he carries out his work as a taxi driver. Additionally, the State emphasized that Peru is a “[d]emocratic State in which all human rights are respected and, at the same time, their observance is safeguarded,” and that the State “has not received communications that would evidence threats against the physical integrity or material goods of [Vásquez Chumo] or members of his family, or warrant the continuance of measures of protection” or “a particular police intervention.”

8. That, likewise, the State underscored “that mentioned by the Inter-American Commission in its observations to the State’s [e]ighteenth [r]eport, emphasizing that it had not received any briefs from the beneficiary and his family or their representatives.”

9. That the State indicated, lastly, that though in its report of February 29, 2008, it had contended that the protection of Vásquez Chumo and the members of his family should continue until a final judgment was issued against César Augusto Santoyo Castro, who remains fugitive and was co-accused in the criminal proceedings against Vásquez Chumo for the deaths of the Gómez-Paquiyaury brothers, “this situation may be of a permanent nature that would be far removed from the provisional nature of the measures ordered by the Court.”

10. That on November 3, 2008, the deadline for Ángel del Rosario Vásquez Chumo and the members of his family or their representative to present the observations requested in the Order of the Court of May 3, 2008, passed without these having been received by the Court’s Secretariat (*supra* Having Seen clause No. 3). Said observations were to refer to the continuance and existence of the requisites of extreme gravity and urgency and the possibility of irreparable damage that would justify maintaining in force the provisional measures ordered by the Tribunal in favor of Vásquez Chumo and the members of his family. The Court observes that the last communication by Vásquez Chumo or his representative regarding this matter was submitted to it on July 22, 2004.

11. That the Commission indicated that “it does not have any information other than that presented by the [...] State and, therefore, considers it pertinent to underscore that compliance with orders of the Court must include a response on the part of the State that translates into effective compliance with the obligations that derive from the adoption of provisional measures and provides an accounting of its compliance through a periodic report that refers expressly to the situation of the beneficiary and his family members.” Because it has “not received briefs in relation to Vásquez Chumo and his family or their representatives, and in accord with the information regarding the normal progression of the measures of protection,” the Commission indicated that it “did not have observations [on the matter.]”

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12. That the Court values the effort on the part of the State in adopting the measures necessary to protect the life and personal integrity of Ángel del Rosario Vásquez Chumo and his family members (*supra* Considering clause No. 5). Likewise, it recognizes that the State has complied with its obligation to inform the Tribunal on the actions carried out in order to implement the present measures.

13. That the Court observes that the State has requested it to lift the provisional measures in favor of Ángel del Rosario Vásquez Chumo and his family members, “since no evidence has been found on the existence of threats against their physical integrity or [...] material goods” (*supra* Having Seen Clause No. 6). Additionally, the Court notes that this

conclusion has not been questioned by Vásquez Chumo and his family members, their representatives, or the Inter-American Commission.

14. That provisional measures are of an exceptional nature, are ordered as a function of the necessities of protection, and, once ordered, should remain in force so long as the Court considers that the basic requirements of extreme gravity and urgency and the prevention of irreparable harm to the rights of those protected by the measures subsist.² In that regard, the Court notes that it is the responsibility of the beneficiaries of provisional measures, or, as the case may be, of their representatives, to present observations or information on the State's compliance in carrying out those measures. In the present case, after the expiration of the six months indicated in the Order of May 3, 2008, the Tribunal finds that no information has been submitted to it that would demonstrate the subsistence of the situation of extreme gravity and urgency and of prevention of irreparable harm that existed at the time provisional measures were ordered in favor of Ángel del Rosario Vásquez Chumo and his family members.

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, September 22, 2006, and May 3, 2008, with respect to Ángel del Rosario Vásquez Chumo and the members of his family, in the case of the Gómez-Paquiyaqui Brothers.

2. To require the Secretariat of the Court to serve notice of this Order upon the State of Peru, the Inter-American Commission on Human Rights, and the representatives of the beneficiaries.

3. To close the file of this case.

² 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 three; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*, *supra* note 1, Considering clause sixteen; and *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo*, *supra* note 1, Considering clause seventeen.

Prepared in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on this day of January 22, 2009.

Sergio García Ramírez
President

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

so ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary