

**Order of the
Inter-American Court of Human Rights
of July 9, 2009
Provisional Measures regarding Venezuela
Matter of Liliana Ortega *et al.***

HAVING SEEN:

1. The Order issued by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on November 27, 2002, in which it decided, *inter alia*:

1. To order the State to adopt, without delay, all necessary measures to protect the life and personal integrity of Liliana Ortega, Yris Medina Cova, Hilda Páez (Gilda Páez), Maritza Romero, Aura Liscano (Lizcano), Alicia de González, and Carmen Alicia Mendoza, all of whom are members of the non-governmental organization *Comité de Familiares de Víctimas de los Sucesos de Febrero-Marzo de 1989* (COFAVIC).

2. To order the State to allow the applicants to participate in the planning and implementation of the protection measures and, in general, to inform them of progress regarding the measures ordered by the Inter-American Court of Human Rights.

3. To order the State to investigate the facts stated in the complaint that gave rise to the instant measures in order to discover and punish those responsible.

2. The Orders of the Court of February 21 and December 2, 2003, and May 4, 2004, in which it declared, *inter alia*, that the State "had not implemented the provisional measures effectively" and reiterated the said measures in favor of the beneficiaries.

3. The Order issued by the Court on March 1, 2005, in which it decided:

1. To rescind the provisional measures ordered by the Inter-American Court of Human Rights in favor of Yris Medina Cova and Carmen Alicia Mendoza by its Order of November 27, 2002, and reiterated in its Orders of February 21 and December 2, 2003, and May 4, 2004.

2. To require the State to maintain or adopt the necessary measures to protect the life and personal integrity of Liliana Ortega, Hilda Páez [Gilda Páez], Maritza Romero, Aura Liscano [Lizcano] and Alicia de González.

3. To reiterate to the State that it must allow the petitioners to take part in the planning and implementation of the measures of protection and, in general, keep them informed of progress in the measures ordered by the Inter-American Court of Human Rights.

4. To reiterate to the State that it must investigate the facts that gave rise to the adoption of these provisional measures in order to identify those responsible and impose on them the corresponding sanctions.

5. To reiterate to the State that it has the obligation to implement the provisional measures ordered by the Court and to present the required reports with the frequency indicated by the Court.

6. To reiterate to the State and to the Inter-American Commission on Human Rights that they should take the necessary steps to create an appropriate mechanism to coordinate and supervise the provisional measures ordered by the Inter-American Court of Human Rights.

4. The Order issued by the Court on June 14, 2005, in which it reiterated the provisional measures in favor of the beneficiaries.

5. The communications of September 1, 2005; May 8, September 4, November 23 and December 15, 2006; March 27 and June 25, 2007, and January 30 and June 18, 2009, in which the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") reported on the implementation of the provisional measures ordered in favor of the beneficiaries.

6. The communications presented by the representatives of the beneficiaries (hereinafter "the representatives") on August 17 and 22, and October 3 and 20, 2005; June 9, October 10 and November 29, 2006; January 23, and May 11 and 31, 2007, February 5 and December 17, 2008, and January 16, March 11 and June 25, 2009, in which they forwarded their observations on the said reports of the State.

7. The communications presented by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on October 18, 2005; June 23 and October 18, 2006; January 9, February 7 and May 25, 2007, and January 8, February 23, March 16 and July 2, 2009, in which they forwarded their observations on the said reports of the State and on the observations of the representatives.

8. The note of the Secretariat of the Court (hereinafter "the Secretariat") of July 20, 2007, in which, on the instruction of the President of the Court (hereinafter "the President"), it asked the Commission to inform the Court about the procedural status of this matter being processed before it.

9. The communication of August 31, 2007, in which the Commission, in response to the Court's request, advised that "no petition directly associated with the said provisional measures was being processed before the Commission."

10. The note of the Secretariat of December 18, 2008, in which it asked the Inter-American Commission and the representatives to present their arguments concerning whether the extreme gravity and the urgency of avoiding irreparable damage that had given rise to the adoption of the provisional measures in this matter persisted.

CONSIDERING

1. That Venezuela has been a State Party to the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") since August 9, 1977, and, pursuant to Article 62 thereof, accepted the jurisdiction of the Court on June 24, 1981.

2. That the provisions of Article 63(2) of the Convention confer an obligatory nature on the adoption by the State of the provisional measures that the Court orders it to take because, according to the basic principle of the law on the international responsibility of the State supported by international case law, States must comply with their international treaty obligations in good faith (*pacta sunt servanda*).¹

¹ Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Court of June 14, 1998, sixth considering paragraph; *Matter of Colotenango*. Provisional measures with regard to Guatemala. Order of the Court of July 12, 2007, fifth considering paragraph; *Case of Caballero Delgado and Santana v. Colombia*, Provisional measures with regard to Colombia. Order of the Court of February 6, 2008, fifteenth considering paragraph.

3. That the Court has indicated that provisional measures have two functions: one preventive and the other protective.² The preventive function of provisional measures relates to the framework of international litigation. In this regard, the object and purpose of these measures is to preserve any rights that may be at risk until the dispute has been settled. Their aim is to ensure the integrity and effectiveness of the decision on merits and, thus, to avoid any harm to the rights in dispute that could impair or annul the *effet utile* of the final decision. Thus, provisional measures allow the State in question to comply with the final decision and, if applicable, proceed to make the reparations ordered.³ Regarding the protective function of provisional measures, the Court has indicated that provisional measures become a real jurisdictional guarantee of a preventive nature, because they protect human rights inasmuch as they seek to avoid irreparable damage to persons.⁴

4. That no case is being processed before the Inter-American Commission concerning this matter (*supra* Having Seen paragraph 2). Consequently, the only appropriate analysis is limited to the protective dimension of the provisional measures; this is the criterion according to which the Court must verify the existence of the highest risk to life and personal integrity. Given that no litigation exists on this matter, the Court must ensure that the provisional measures are not denatured by being used to achieve a purpose that should be achieved through litigation.

1. Regarding the measures of protection implemented

5. That, regarding the implementation of the measures of protection ordered by the Court, in its latest communication the State indicated that the Twenty-ninth Court of First Instance with Monitoring Functions of the Criminal Judicial Circuit of the Metropolitan Area of Caracas had appointed an official attached to the Metropolitan Police to "carry out the protection of the COFAVIC offices, in accordance with the Police Surveillance and Protection mechanism."

6. That the representatives indicated that, in 2008, "the police protection had been interrupted on three occasions" and that "the unreliability in complying with it persists"; that the protection offered to the COFAVIC offices "is limited to the hours of 9.30 a.m. to 4.00 p.m. from Monday to Friday with no protection at weekends," and that "the motorized units are extremely dilapidated"; consequently, COFAVIC has regularly assumed the expenses resulting from their breakdown."

7. That the Commission indicated that "maintenance of the equipment of the State's security units should not impose a financial burden on those benefiting from the State's protection, because this corresponds exclusively to the State."

8. That the Court has verified that, even though problems exist, a protection measure for the COFAVIC offices is currently being implemented.

² Cf. *Matter of Fernández Ortega et al.* Provisional measures with regard to Mexico. Order of the Court of April 30, 2009, fifth considering paragraph; *Case of Herrera Ulloa.* Provisional measures with regard to Costa Rica. Order of the Court of September 7, 2001, fourth considering paragraph, and *Case of López Álvarez et al.* Provisional measures with regard to Honduras. Order of the Court of January 26, 2009, third considering paragraph.

³ Cf. *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center.* Provisional measures with regard to Venezuela. Order of the Court of February 8, 2008, seventh considering paragraph.

⁴ Cf. *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, *supra* note 3, eighth considering paragraph.

2. *Regarding the participation of the beneficiaries in the implementation of the provisional measures*

9. That regarding the participation of the beneficiaries in the implementation of the measures, in its latest communication, the State affirmed that “it had not received any complaint or observation from the beneficiaries regarding the police protection they receive.”

10. That the representatives advised that “since October 2005 [...] the protection provided has been offered according to the security plan presented by the beneficiaries, and the Metropolitan Police Motorized Department has collaborated fully in its implementation.”

11. That the State has the obligation to take all pertinent measures to ensure that the measures of protection ordered are planned and implemented with the participation of the beneficiaries of such measures or their representatives, so that the measures are implemented diligently and effectively.⁵ The Court appreciates the fact that in the implementation of some of the measures of protection, several proposals made by the representatives have been taken into account.

3. *Regarding the obligation to investigate the facts that gave rise to the adoption of the provisional measures*

12. That, regarding the obligation to investigate the facts that gave rise to the adoption of the provisional measures, the State informed the Court that:

- (a) On September 29, 2008, the Thirty-third Court of First Instance with Monitoring Functions of the Criminal Judicial Circuit of the Metropolitan Area of Caracas held an oral hearing in which it decided “to declare admissible the refusal to admit the complaints” corresponding to the following facts: the e-mail threats and the acts of harassment presumably perpetrated against Liliana Ortega; the alleged anonymous telephone calls and acts of harassment and intimidation suffered by the members of COFAVIC in the Church of San Francisco in Caracas; the public declarations against this organization by the former Director of the Intelligence and Prevention Services (DISIP) and of a member of Congress, as well as that of an unidentified individual who was carrying a firearm inside the COFAVIC offices;
- (b) On October 6, 2008, the legal representative of COFAVIC filed an appeal against this decision that was declared “admissible by the Court of Appeal of the Metropolitan Area of Caracas,” which proceeded “to declare the nullity of the refusal to admit the complaints”;
- (c) Regarding the complaint concerning the interruption of the electricity services, and the complaint concerning some declarations against Liliana Ortega, “it had requested a stay of proceedings” because “the jurisdictional body determined that the said events did not harm any of the interests protected by the

⁵ Cf. *Case of García Prieto et al.* Provisional measures with regard to El Salvador. Order of the Court of January 27, 2007, twelfth considering paragraph.

domestic legal system" and "they cannot be subsumed in any of the provisions of the Criminal Substantive Law," and

- (d) Regarding, the hearing of the case on what happened to several representatives of COFAVIC when they attended a public meeting with the next of kin of execution victims and were "presumably surrounded by officials attached to the Police Forces" while they were in a vehicle "that had been reported to be suspicious," this was rejected by the Caracas judge, because the events occurred outside his jurisdiction. Orders were given "that the respective case file should be forwarded to the Document Registration and Distribution Office of the Criminal Judicial Circuit of the State of Falcón."

13. That, regarding the investigation into the facts, the representatives indicated, *inter alia*, that "[t]he investigation into the said threats could not be limited to merely determining their existence; there was an obligation to find out whether they had been made by officials or by individuals without any authority, acting with the support or the simple tolerance of the State." Despite this, the investigation was "merely designed to look into the existence of the offense but not to identify the authors," and this led to the request that the complaint should not be admitted. "The excessive and unjustified delay in the implementation of the whole criminal proceeding, the failure to gather the opportune and exhaustive evidence that was fundamental to elucidate the facts and identify the authors, the inaction of the prosecutors for long periods, as well as the notorious neglect and carelessness of the investigation constitutes an example of serious impunity."

14. That, regarding the obligation to investigate in the context of the provisional measures, the representatives indicated that "the Court appears to have modified its well-established case law on this matter, without having recognized or explained clearly the reasoning behind this modification." To explain this conclusion, the representatives referred to sections of the Order issued on November 25, 2008, in the *Matter of Leonel Rivero et al. v. Mexico*, in which the Court indicated that "the statement of the representatives that the criminal investigations should continue, or the alleged lack of information about them, do not constitute circumstances that merit maintaining the actual provisional measures" and that "the analysis of the effectiveness of the investigations and procedures relating to the facts that gave rise to these provisional measures would correspond to the examination of the merits of the case being processed by the Inter-American Commission."

15. That, according to the representatives, "these considerations reflect a clear reversal of the case law more protective of human rights issued by the Court in the past, as can be inferred from an examination of previous Orders issued by the Court on the same issue." They added that "the Court's past case law reveals that it has repeatedly asked the States to investigate the facts that gave rise to the danger and to do everything necessary to adopt the provisional measure"; that this request addressed at the State in order to assess whether the danger subsists does not imply prejudgment of "the compatibility of the investigations with the obligations arising from the American Convention." They observed that the analysis of the effectiveness of the investigation made in the context of provisional measures is designed to determine "whether, as a result of the investigation, it can be concluded that the danger that gave rise to the measures no longer exists," compared to the analysis that must be made during a litigation which "covers principally how the investigation has been conducted and not exclusively its results." They also affirmed that "progress in the investigation into the facts that gave rise to the measures [...] is the factor that most clearly allows the Court to assess the danger and conclude that it has decreased sufficiently to allow it to rescind the measures." Lastly, they stated that "[b]y freeing the States from the obligation to provide information on the investigation into the facts that

give rise to provisional measures, the Court undermines its own capacity to take informed decisions on the continuation of such measures.”

16. That the Inter-American Commission considered that “from the available information, none of the investigations has gone beyond the preliminary stage, and the only one that made any progress culminated in a declaration of a stay of proceedings”; it also indicated that “the State has not complied with this aspect of the provisional measures and it hoped that, in its next reports, it would provide details of the measures it was taking to elucidate the facts, identify those responsible and, if applicable, impose the corresponding sanctions.”

17. 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. Consequently, irrespective of the existence of specific provisional measures, the State is specifically obliged to ensure the rights of people who are at risk and must promote the investigations needed to clarify the facts and to implement the consequences established by the pertinent laws.⁶ With regard to this investigation, the State in question must make every effort to determine all the facts concerning the threat and the form it took; to determine whether there has been a pattern of threats against the beneficiary or the group or entity to which the beneficiary belongs; to determine the purpose or object of the threat; to determine the individual or individuals behind the threat and, if applicable, to punish them. Nevertheless, the Court has indicated that an alleged lack of investigation by a State does not necessarily constitute a circumstance of extreme gravity and urgency that merits maintaining the provisional measures. In addition, at times the obligation to investigate may extend over a considerable period of time during which the threat or danger does not necessarily remain extreme and urgent. Lastly, the Court has indicated that the analysis of the effectiveness of the investigations and procedures relating to the facts that gave rise to the provisional measures corresponds to the examination of the merits of the case.⁷ In brief, although failure to comply with the obligation to investigate is reproachable, it is not in itself a sufficient reason to maintain the provisional measures. The beneficiaries and the Commission must submit arguments and prove that this absence of investigation contributes to or is the cause of the situation of extreme gravity and urgency to avoid irreparable damage to the specific beneficiary.

18. That, in this matter, the situation of extreme gravity experienced by the beneficiaries gave rise to the order to open investigations. Once these commenced, any problems relating to the negligence or ineffectiveness of the investigations must be addressed by litigation, as the representative have acknowledged. As the Court will examine below, the representatives could be correct when they indicate that, owing to the absence or ineffectiveness of an investigation, it is not possible to know for sure whether the danger for an individual persists. However, given the absence of new threats for a reasonable period of time, the fact that an investigation has not produced specific results could be insufficient to conclude that the danger, even assuming it exists, is extremely grave and urgent. In recognition of this, the representatives refer to a series of acts of harassment, and it is

⁶ Cf. *Case of Velásquez Rodríguez*. Provisional measures with regard to Honduras. Order of the Court of January 15, 1988, third considering paragraph; *Matter of the “El Nacional” and “Así es la Noticia” Newspapers*. Provisional measures with regard to Venezuela. Order of the Court of November 25, 2008, thirty-ninth considering paragraph, and *Case of López Álvarez et al*, *supra* note 2, twenty-eighth and twenty-ninth considering paragraphs.

⁷ Cf. *Matter of Leonel Rivero et al*. Provisional measures with regard to Mexico. Order of the Court of November 25, 2008, eighteenth considering paragraph; *Matter of Pilar Noriega et al*. Provisional measures with regard to Mexico. Order of the Court of February 6, 2008, fourteenth considering paragraph.

these that must be analyzed in the case in point in order to determine whether the said extreme urgency exists according to the criteria to be examined below.

4. *Regarding the persistence of extreme gravity and urgency to avoid irreparable damage*

19. That, regarding the persistence of extreme gravity and urgency to avoid irreparable damage to the life and personal integrity of the beneficiaries, the representatives presented diverse arguments relating to: (1) the context in which human rights defenders carry out their work; (2) "accusations made directly by senior public officials and State institutions," and (3) "acts of criminalization carried out with the full acquiescence of the State."

4.1. *Alleged "exacerbation of the context of violence in which human rights defenders in Venezuela carry out their work"*

20. That the representatives indicated that: "[c]urrently, in Venezuela there has been an evident exacerbation of the deterioration in the labor rights of human rights defenders" owing to "threats and acts of criminalization after they have publicly stated their position on the human rights situation." The representatives alleged that "over the last four years there has been a growing and deliberate practice of identifying human rights defenders as 'enemies of the revolutionary process,' 'traitors to their homeland,' 'imperialists,' 'golpistas,' (individuals attempting a coup d'état) or 'conspirators' by groups that openly enjoy the State's acquiescence. These acts of harassment and violence are widely publicized and often clearly sponsored by State funding."

21. That, when describing the relationship of this alleged context with this specific case, the representatives alleged that "there is a campaign of acts of criminalization against [COFAVIC] which intensifies each time this non-governmental organization plays a relevant role before the inter-American system or when it acquires public visibility denouncing cases of human rights violations. As a result of this intimidation, [the organization] has been obliged to drastically reduce its public appearances and the movements of its members."

22. That, in order to determine whether the situation of extreme gravity and urgency to avoid irreparable damage exists or persists, the Court can assess all the political, historical, cultural or other factors or circumstances that affect the beneficiary or that make him vulnerable at a specific moment in time and that expose him to violations of his rights. This situation can increase or decrease over time depending on innumerable variable but, as indicated previously, only extreme and urgent situations call for protection through provisional measures.

23. That, first, there may be a series of factors or circumstances that reveal significant violence against a group of individuals in particular, which place these individuals in a situation of extreme gravity and urgency of experiencing irreparable damage. This extreme situation – for example, a series of major attacks on the group to which the beneficiary belongs that reasonably allow it to be inferred that he will also be attacked – can justify granting provisional measures, even in the absence of a recent direct threat to the said beneficiary. The assessment of the existence of this series of factors is distinct from that carried out during litigation, where attribution of international responsibility to the State for carrying out or tolerating this practice is debated. The provisional measures procedure only focuses on verifying a situation of danger at a specific moment and does not constitute a prejudgment of the case or the fundamental problem.

24. That, second, a different situation from the one described above may exist, which does not, in itself, represent extreme gravity and the urgency of avoiding irreparable damage to a determined group. In this case, the said situation will merely help the Court assess the specific threat to the beneficiary and will not justify, of itself, granting or maintaining the provisional measures.⁸

25. That, in this case, the Court considers that the evidence provided does not allow it to conclude that the supposed harassment of the human rights defenders in Venezuela takes place in a situation such as the one described in considering paragraph 23. Consequently, the alleged Venezuelan context does not justify, *per se*, maintaining the provisional measures.

26. That, nevertheless, the effect of intimidation and voluntary restraint in the exercise of their work that may occur in a context of harassment against defenders is an aspect that should be assessed together with the merits of the case. In the context of litigation, it would be admissible to determine the presumed international responsibility of the State for the alleged effects of this intimidation and voluntary restraint. Also, by means of the measures of satisfaction and guarantees of non-repetition derived from the said attribution of international responsibility, measures could be adopted that might help overcome the alleged serious consequences of a context of harassment of human rights defenders.

4.2. Alleged "accusations made directly by senior public officials and State institutions" against the beneficiaries

27. That the representatives referred to a pattern of harassment perpetrated directly against the beneficiaries and the organization to which they belong, attributable to the declarations of State officials who constantly discredited them and questioned their work. To justify their allegations, the representatives cited a series of declarations made by different public officials over recent years.

28. That the Commission considered that "while the danger exists to the work performed by COFAVIC as an organization that defends human rights, a danger to all its members should be presumed, unless evidence arises that specifically disproves this in each individual case." It added that "the [said facts] have constituted indirect forms of pressure against the organization." In this regard, the Commission emphasized that some "members of COFAVIC have been obliged to reduce their public profile," others "have had to move to the interior of the country and change their habits in order to avoid public exposure and the consequent danger to their safety." Moreover, they have had "to restrict the access of those who wish to consult their documentation center to users known to the organization, whereas previously anyone could consult it." Regarding some of the declarations against COFAVIC made by senior State officials, the Commission indicated that "the work of the human rights defenders is also restricted by the declarations made by high-level public officials who discredit their work and generate or exacerbate an adverse context for the defense of human rights."

29. That, the Court finds that the alleged declarations do not involve possible statements with sufficient importance to justify, *per se*, maintaining the provisional measures. In this regard, the negative effects that this type of declaration could have in terms, for example,

⁸ Cf. *Matter of Carlos Nieto et al.* Provisional measures with regard to Venezuela. Order of the Court of January 26, 2009, nineteenth considering paragraph, and *Matter of Luis Uzcátegui.* Provisional measures with regard to Venezuela. Order of the Court of January 27, 2009, twenty-third considering paragraph.

of the alleged voluntary restraint in the exercise of the work of human rights defense is an aspect that should be examined in the context of the merits of a contentious case.

4.3. *Alleged "acts of criminalization carried out with the full acquiescence of the State" and other alleged acts of harassment against the beneficiaries*

30. That the representatives alluded to other acts of criminalization and harassment such as:

(a) On July 5, 2005, the weekly publication "*Los papeles de Mandinga*" published an article, which *inter alia* referred to Liliana Ortega as "witness material" and said that she was in "the human rights business" and that she had been "living in luxury for almost 15 years by exploiting the anguish of the Sacudón victims."

(b) On September 21, 2005, at 2.00 p.m., a young man visited the COFAVIC offices asking about the "vision, mission, area of work, structure of the organization, [...] whether COFAVIC assigned vehicles to its staff, the number of offices and the distribution of the internal cubicles." They indicated that "the Metropolitan Police agents who are on duty in the COFAVIC offices regularly return from their lunch hour at 2.30 p.m.";

(c) On September 28, 2005, at approximately 9.30 p.m., "when Liliana Ortega was driving home in her car [...] she was allegedly followed by a van [...] without lights";

(d) In the edition of May 9 to 15, 2006, the weekly publication "*Los Papeles de Mandinga*" indicated that "these groups of parasites, pimps, make a living by extracting money from the people with things like sexual diversity; they are just hypocrites. They have lied deliberately and repeatedly as is customary in charlatans such as Liliana Ortega and her accomplices";

(e) In its edition of July 18 to 24, 2006, the weekly publication "*Los Papeles de Mandinga*" indicated that "groups of criminals such as Liliana Ortega of COFAVIC [a woman owned by Andrés Mata]", "demand" that the National Assembly heed them with regard to the law on the financing of non-governmental organizations. According to this bizarre criterion, [the] National Assembly should listen to thieves when it reforms the criminal code and to the Cali cartel when preparing an anti-drug law";

(f) On June 25, 2006, Liliana Ortega received an e-mail to her personal account stating: "we want to know if you are the daughter or a relative of Carlos Ortega⁹ [...] deny this and prove it."

(g) The weekly publication "*Los Papeles de Mandinga*" in its edition of August 1 to 7, 2006, indicated "that, for the nth time, riff-raff threaten to take Venezuela before international human rights courts. Liliana Ortega, Andrés Mata's henchwoman, is involved in this, a woman who leads the life of a parasite and has been living on the commercialization of the anguish of the Sacudón victims for almost 20 years.";

⁹ The representatives specified that "Carlos Ortega is a leader of the Workers' Confederation of Venezuela, sentenced to over 15 years' imprisonment for several offenses, including aiding and abetting the commission of a crime, and civil disobedience." Cf. communication of the representatives, presented on October 10, 2006 (file on provisional measures, Tome VI, folio 1880).

(h) The web page of Aporrea.org, an op-ed site that “has enjoyed broad public support from the national Government” had published “systematically, for seven years, more than 50 articles with serious accusations against COFAVIC and Liliana Ortega.” The last of these appeared on June 23, 2009, in an article entitled “*Oposición recurre al mismo formato de golpe. Comparación 2002-2009*” [Opposition uses the same coup d’état format. Comparison 2002-2009], which, according to the representatives, criticized “the work of COFAVIC for using the international courts”;

(i) The attacks made in articles published on the abovementioned site were aimed at Liliana Ortega personally, indicating that “her NGO has provided her with great [financial] satisfaction”; that “she had made a pact with the devil,” and that “the human rights business had made her rich”;

(j) On February 25 and 26, 2009, an alleged leader of the Socialist Party of Venezuela, in his program “*La Hojilla*”, transmitted by the official channel *Venezolana de Televisión*, had “incriminated COFAVIC, accusing it of being part of a conspiracy that was trying to break up the civil-military union, merely to ask for justice in the El Caracazo case,” and

(k) On February 27, 2009, in a ceremony organized by the National Executive to commemorate El Caracazo transmitted on all the national television channels, a woman shouted out that “Liliana Ortega [COFAVIC] had taken away [her] rights and should be investigated.”

31. That, regarding the opinion articles that the representatives offered as evidence of harassment, the State affirmed that they had been published “in private social media,” such as “the daily paper *VEA*, the weekly paper *Los Papeles de la Mandinga*, the weekly paper *Verdades de Miguel*, and the daily paper *El Universal*,” and “the representatives [had] indicated that they were attacks by zealous followers of the Government’s policies.” In this regard, the State alleged that “it could not ask or oblige the media not to publish this type of article, because this would amount to prior censorship.” Furthermore, the State indicated that “Liliana Ortega had the right to demand a right of reply in the same media and, if she considered she had been harmed, she could resort to the courts and file the corresponding action so that any possible responsibility for the opinions she had complained about could be determined.”

4.4. Considerations of the Court

32. That, for the Court to be able to order provisional measures, Article 63(2) of the Convention requires the presence of three conditions: (i) “extreme gravity”; (ii) “urgency” and (iii) that the measures are needed to “avoid irreparable damage” to persons. These three conditions are coexistent and must be present in any situation in which the Court’s intervention is requested. Likewise, these three conditions must persist for the Court to maintain the protection it has ordered. If one of them is no longer valid, the Court must assess the pertinence of continuing the protection ordered.

33. That, when ordering the measures of protection, the Court or the person presiding it, does not, in principle, require evidence of the facts that, *prima facie*, appear to comply with the requirements of Article 63. To the contrary, maintaining the measures of protection requires the Court to assess whether the situation of extreme gravity and urgency to avoid

irreparable damage that gave rise to those measures persists,¹⁰ based on probative information.

34. That the present measures were ordered owing to the *prima facie* assessment of a threat to the rights to life and personal integrity of the beneficiaries established in the Order issued on November 27, 2002, taking into account, *inter alia*, the alleged threatening telephone calls and e-mails – that included several death threats – and other harassment against COFAVIC and Lilibian Ortega, which included throwing an object that caused an explosion and a fire near Mrs. Ortega's residence.

35. That the Court observes that since June 2005 – after the last Order on provisional measures issued by the Court – statements have been made that link the human rights organization to the political opposition and question the way in which they are funded, together with other statements that question the work of COFAVIC and Lilibian Ortega as human rights defenders. However, although they may involve different types of harassment, the newspaper articles and the said e-mail do not constitute extreme gravity and urgency to prevent irreparable damage, because they do not constitute a threat, either directly or indirectly, to life and personal integrity. Whereas, the Convention requires the gravity and the situation of danger to be "extreme"; in other words, to the highest or most intense degree. Hence it does not refer to just any danger or threat.

36. That, similarly and as mentioned above, the supposed intimidating effect on the exercise of the defense of human rights is an aspect that must be examined in the context of litigation and not in a procedure for provisional measures; especially when the said statements and newspaper articles do not prove the "urgency" of the protection; in other words, the urgent and immediate need to act to avoid or mitigate damage.

5. Regarding the request to rescind the measures submitted by the State

37. That the State requested that the provisional measures be rescinded, alleging that "currently they lack pertinence and necessity, in view of the inexistence of threats against the beneficiaries and the State's compliance with the order of the Court."

38. That the representatives reiterated the need to maintain the provisional measures and specified that, "they have been the only mechanism that has been able, in some way, to ensure the physical security and safety of the members of COFAVIC." In addition, they presented some observations criticizing the criteria used by the Inter-American Court to determine whether to maintain or rescind the provisional measures in any specific case. The representatives observed that, in its latest Orders, the Court had adopted as the "principal grounds for rescinding [provisional] measures, the passage of "a reasonable period of time" in which no new acts had occurred that could place the beneficiaries at risk. In this regard, they observed that the Court, "instead of verifying a change in the situation that gave rise to the measures, [...] 'considers it reasonable to presume' that the danger has been overcome based on temporal factors, without taking into account the possibility that it is precisely the provisional measures that have prevented the occurrence of new acts." Similarly, they considered that, although this factor – time – contributes to assessing the danger, it "should not be the only or the principal factor [...] for doing this." Based on the foregoing, they observed that, "the Court should examine a series of factors that allow it to

¹⁰ Cf. *Matter of Pueblo Indígena de Kankuamo*. Provisional measures with regard to Colombia. Order of the Court of April 3, 2009, seventh considering paragraph.

take a prudent decision which, even when doubts exist, privileges the protection of the individual in order to avoid the occurrence of irreparable damage." These factors would be:

- The level of elucidation and de-activation of the factors that gave rise to the danger.
- The situation of impunity that exists in the dispute that gave rise to the measures, as well as developments in the criminal proceedings that could have an impact on the beneficiaries.
- New or recent acts of violence, threat or harassment perpetrated against one or more of the beneficiaries, or against individuals in similar situations [...] also taking into account:
- Objective legal situations [for example, a valid death sentence that is being examined before the Commission or the Court], which persists unchanged.
- The absence of new acts of violence precisely as a result of the implementation of the provisional measures ordered by the Court, bearing in mind that when the threat comes from the State itself, the mere fact that the measures are in force may cause the perpetrators to abstain from committing threatening acts.
- Actions taken by the beneficiaries of the provisional measures themselves that reflect a justified fear of being re-victimized.
- The levels of violence or danger for the group to which the beneficiaries belong in a country or region at a specific moment, for example human rights defenders, witnesses, justice administration officials, trade unionists, detainees, etc.
- General considerations regarding the place or population to which the beneficiaries belong.
- [I]nformation from different State entities – including the courts, legislative committees, monitoring bodies, etc. – that reveal or affirm the existence of significant danger for a person, group, area, etc., even though the Court must make its own assessment of the danger faced by the applicants for and beneficiaries of provisional measures.

39. That the Commission indicated that, taking into account that "during 2007 and 2008, the public finger-pointing and other forms of harassment continued" and that the investigations "have not made any progress or achieved any substantive results," "the dangerous situation persists and, consequently, the provisional measures should remain in force." The Commission added that "until the files of the proceedings [of the investigation into the threats,] or at least detailed and complete information was available, it [was] reasonable and necessary to conclude that, since the causes and those responsible for the acts that gave rise to the current measures had not been determined, the beneficiaries continued to face potential danger."

40. That the Court recognizes that the absence of threats does not necessarily mean that there is no danger for an individual. However, given the passage of time without any threats, the Court must assess the reasons why the said threats are no longer made, so as to decide whether it is in order to maintain the provisional measures, without losing sight of the essentially provisional and temporary nature of these measures of protection.

41. That the Court has examined the factors proposed by the representatives for assessing whether it was in order to maintain the provisional measures. It has indicated (*supra* Considering paragraphs 22 to 25) that only certain types of context related to a pattern of extreme situations can justify maintaining them. It concluded that this had not occurred in the instant case. Moreover, it indicated (*supra* Considering paragraphs 17 and 18) that the ineffectiveness of the investigations did not justify, *per se*, maintaining the measures and that in general, arguments about irregularities in the investigations should be aired during the respective litigation. Even when it is alleged that the provisional measures have resulted in the beneficiaries no longer receiving threats, the "provisional" nature of the measures justifies that, since they have been in force for almost seven years, an exhaustive

assessment should be made about whether they should continue. In particular, the Court considers that the fight against the alleged context of harassment of human rights defenders is a matter for the contentious jurisdiction. Furthermore, it indicated (*supra* considering paragraphs 26 and 29) that it is in the context of litigation and not in a precautionary procedure that it is in order to examine the presumed measures of voluntary restraint adopted by the beneficiaries. The Commission is not processing a dispute in this matter, even though the provisional measures were adopted more than six years ago.

42. That, in view of the absence of information concerning extreme gravity and urgency to avoid irreparable damage to life and personal integrity, the Court proceeds to rescind the provisional measures adopted in this matter.

43. That the Court observes that, while these measures were in force, the State did not provide adequate information on the implementation of various aspects of the measures ordered by the Court. In this regard, the rescinding of the said provisional measures does not signify that the State has complied fully with the Orders issued by the Court in the context of the said measures.

44. That, as indicated above when examining the obligation to investigate the harassment and situation of danger of any individual, the Court reiterates that Article 1(1) of the Convention establishes the general obligations of States Parties to respect the rights and freedoms embodied therein and to ensure their free and full exercise to all persons who are subject to their jurisdiction. These obligations must be complied with fully, irrespective of the existence of the provisional measures ordered by the Court in this matter.¹¹

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 26 and 30 of its Rules of Procedure,¹²

DECIDES:

1. To rescind the provisional measures ordered by the Inter-American Court of Human Rights on November 27, 2002, February 21, 2003, December 2, 2003, May 4, 2004, March 1, 2005, and June 14, 2005, in favor of Liliana Ortega, Hilda Páez [Gilda Páez], Maritza Romero, Aura Liscano [Lizcano] and Alicia de González.

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

3. To close this case file.

¹¹ Cf. *Case of Velásquez Rodríguez*. Provisional measures with regard to Honduras. Order of the Court of January 15, 1988, third considering paragraph; *Matter of the Urso Branco Prison*. Provisional measures with regard to Brazil. Order of the Court of May 2, 2008, nineteenth considering paragraph, and *Matter of Carlos Nieto et al.*, *supra* note 8, third considering paragraph.

¹² Rules of Procedure of the Court partially amended during its eighty-second regular session held from January 19 to 31, 2009.

Cecilia Medina Quiroga
President

Diego García – Sayán

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