

**Order of the
Inter-American Court of Human Rights
of September 21, 2009
Provisional Measures regarding Haiti
Matter of A.J. et al.**

HAVING SEEN:

1. The brief dated August 14, 2009 submitted by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter ""the American Convention" or "the Convention"), to Article 26 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure") and Article 74 of the Regulations of the Commission, to the Court, seeking that the Republic of Haiti (hereinafter "the State" or "Haiti"), protect the lives and the personal integrity of A. J., of her mother, J. L. and of Sterlin Joudain, Michelet Laguerre, Pierre Luc Sael, and André Junior Laurore, these four latter persons being members of the organization *Action Citoyenne pour le Respect des Droits Humains* [Citizen Action for the Respect of Human Rights] (hereinafter "ACREDH").

2. The alleged facts on which the request for provisional measures filed by the Commission is grounded are, to wit:

- a) On April 17, 2009 the Inter-American Commission granted precautionary measures (MC 5/09) in favor of the aforementioned persons, based on the information about their having been subjected to various acts of harassment and persecution by police officials after having reported the rape by one of such officials, A. J. allegedly suffered. The Commission requested the State to adopt the measures necessary to protect the life and personal integrity of the beneficiaries, to arrange with them the implementation thereof and to report on the action taken in order to investigate the facts that gave rise to the adoption of the precautionary measures, within a time limit of twenty days. However, the State did not respond to such request. On June 30, 2009 the Commission once more required precautionary measures to be adopted and the State did not answer this new brief any more than it had the previous one. During the period when the precautionary measures were in effect, the beneficiaries allegedly continued to receive threats against their life and personal integrity (*infra* Having Seen Clause Number 2. d);
- b) as background information, the Commission pointed out that B. J., father to A. J., was apparently arrested in unspecified circumstances of time, place and manner as the outcome of a dispute with a neighbor over the boundaries of his property. His daughter A. J., who was seventeen years old at the time, visited him

on several occasions while he was detained at the *Petit Goâve* Police Precinct, where a police official known as "Jasmin", would have tried to intimidate her into accepting sexual intercourse with him in exchange for her father being set free. When she refused, on October 4, 2008, A. J. would have been raped, allegedly by such police agent. A. J.'s next of kin requested support from *ACREDH*, an organization which proceeded to report the facts before a Justice of the Peace. B. J. was set free on December 27, 2008;

c) after the rape was reported, A. J., her next of kin and *ACREDH* staff would have been subjected to many threats and acts of harassment by the official known as "Jasmin" and by a Police Precinct Chief whose last name was Monsiaque, for which reason the Justice of the Peace at *Petit Goâve* was requested to intervene. However, such request was unsuccessful. Specifically, the beneficiaries complained before the Commission that: on January 20, 2009 a police agent would have showed up on *ACREDH* premises and would have insulted two members of the organization; ii) on February 26, 2009 two armed police agents, who identified themselves as "friends to agent Jasmin", would have threatened *ACREDH* members; iii) on the following day, phrases such as "*Aba ACREDH*", meaning "we must get rid of *ACREDH*" would have appeared on the walls in the city; iv) on March 20, 2009 an armed group would have invaded the place of residence of A. J.'s next of kin, from where a number of personal documents were taken away, among which the scant evidence of what had happened to A. J.; v) after such incident, the family would have decided to leave the house and move to another town, in order to preserve their lives and their personal integrity, and vi) towards the end on March, 2009, five armed men would have kidnapped B. J., whose lifeless body was found some days later, on March 28, 2009, with bullet impacts and bruises, and

d) After the precautionary measures had been granted, A. J., her next of kin and *ACREDH* would have continued to be subjected to threats and acts of harassment. Specifically, the beneficiaries complained before the Inter-American Commission that: i) on June 19, 2009, J. L. was in *Petit Goâve* on business and would have been threatened by a group of individuals for which reason she would have decided to leave the city once more; ii) the following night the J. family house was arsons, a fact that was reported at the record offices of the *Petit Goâve* Justice of the Peace, something which resulted in officials from such office going to the place and verifying that, in fact, the house had been burned; iii) at such point, J. L. would have expressed that for several months her next of kin had been subjected to various forms of persecution, which had resulted in her husband being abducted and in her residence being arsons. She added that she had left the city with her next of kin, but that she had occasionally returned there for business and social reasons; she emphasized that her family were being tracked down in order to take their lives; iv) on June 22, 2009, *ACREDH* members would have received anonymous phone calls in which they were threatened with arsons the facilities of the organization, and v) on July 15, 2009 tires would have been burned in front of the offices of the above mentioned organization.

3. The arguments advanced by the Commission in order to ground its request for provisional measures were the following, to wit:

a) As the outcome of the facts stated hereinabove, A. J. and her mother J. L. have had to modify their way of life, and even to leave the place where they carried on their family and business personal life, in order to reduce the risk of suffering irreparable damage to their lives and personal integrity. On their part, *ACREDH*

members have been hindered in their work as human rights defenders, on account of the fear caused by the threats against them:

b) the situation of extreme gravity and urgency is evidenced by: i) the complaints about the threats which have been going on for more than a year against A. J. and her next of kin; ii) the actual fulfillment of such threats through extremely serious acts, such as the rape committed against A. J. and the murder of her father B. J.; iii) the report about several intimidation mechanisms set up against members of the organization that has given support to the family; iv) the lack of response by the State to the precautionary measures granted by the Commission and to its later insistence; v) the continuing threats against all the beneficiaries and the arsoning of the dwelling place of A. J.'s family, in spite of the fact that the precautionary measures had been granted; vi) the failure by the domestic authorities to afford some type of protection, some risk reducing mechanism or to investigate the facts reported; vii) the moving out of the family as a result of the defenseless position from which they currently face a latent risk for their lives and personal integrity, and viii) the unprotected conditions in which ACREDH members continue to work. Furthermore, the nature of what is threatened, the very rights to life and to personal integrity, as well as the ability of some of the beneficiaries to keep working in the defense of human rights, are an extreme instance of the irreparable consequences this request for provisional measures tries to avoid, and

c) Haiti has not given any answer, neither to the first request for precautionary measures nor to the second one. That amounts to a sign of the lack of action by the State to protect the life and the personal integrity of the beneficiaries. Such assumption is confirmed by the continued threats and attacks against the beneficiaries, in spite of the precautionary measures in force, something which places them in a situation of extreme vulnerability, defenselessness and helplessness, while their lives and personal integrity remain in risk of imminent damage.

4. The request by the Inter-American Commission for the Court, under Article 63(2) of the American Convention, to require the State to adopt the following measures:

- a) to adopt forthwith all the measures necessary to guarantee the life and the personal integrity of the beneficiaries.
- b) to adopt without delay the necessary measures so that A. J. and her mother, J. L., may return safely to the *Petit Goâve* area, if they so desire;
- c) to adopt without delay the measures necessary for Sterlin Joudain, Michelet Laguerre, Pierre Luc Sael and André Junior Laurore to be able to continue their work of promoting and defending human rights in Haiti;
- d) to agree with the beneficiaries on the mechanisms best suited to implement the protection measures, in such a manner as to make sure they be both effective and pertinent;
- e) to carry out an investigation into the facts which gave rise to the request for provisional measures, as a preventive mechanism aimed at avoiding new threats or possible attacks against the life and the integrity of the beneficiaries, and

f) to report on the action taken in order to comply with all the foregoing measures.

5. The brief dated August 17, 2009 whereby the Secretariat of the Court (hereinafter "the Secretariat"), following instructions by the President of the Court, informed the Inter-American Commission that, pursuant to Article 21(2) of the Rules of Procedure, the working language in the instant matter would be French, for which reason it requested the pertaining translation as soon as possible, so that it could go ahead with the procedures in order. Likewise, in view of the fact that in the Spanish version of the request for provisional measures it was pointed out that in "the briefs forwarded to the State of Haiti within the framework of the precautionary measures proceedings, no mention was made as to who had petitioned for them initially", the Commission was requested to clarify whether, in its opinion, the Tribunal should continue to keep such information confidential and, if such were the case, whether the Commission should rephrase such information in the initial request.

6. The brief dated August 21, 2009 and its appendix, whereby the Inter-American Commission forwarded the translation into French of the request for provisional measures and informed the Tribunal that "paragraph 5 of the request [original in Spanish], had been rephrased to say that the [Commission] requests the Court not to reveal the identity of the petitioner."

7. The Order by the President of the Court dated August 24, 2009 (hereinafter "the Order by the President" or "the Order for urgent measures"), whereby she decided:

1. To call upon the State to adopt, forthwith, such measures as may be necessary in order to protect the life and the integrity of A. J., J. L., Sterlin Joudain, Michelet Laguerre, Pierre Luc Sael and André Junior Laurore, taking into consideration the seriousness of the situation and the particular circumstances of risk.

2. To call upon the State to take any such steps as are appropriate so that the protection measures ordered in the instant Order be planned and implemented with the participation of the beneficiaries thereof or their representatives, so that such measures are carried out diligently and effectively, and generally to keep them informed of the progress in the implementation thereof.

3. To call upon the State to report to the Inter-American Court of Human Rights, no later than September 11, 2009, on the measures it shall have adopted in compliance with the instant Order.

4. To request the beneficiaries of these measures or their representatives to file with the Inter-American Court of Human Rights, within five days as from the date the report by the State be served upon them, the comments thereupon they may deem pertinent.

5. To request the Inter-American Commission for Human Rights to file with the Inter-American Court of Human Rights, within ten days, as from the date the report by the State be served upon it, the observations thereupon it may deem pertinent.

6. To order that the instant matter be submitted to the consideration of the full Court during the LXXXIV Regular Session to be held from September 21 through to October 3, 2009, at the seat of the Court in the City of San Jose, Costa Rica.

[...]

8. The brief dated August 25, 2009, whereby the Secretariat, following instructions by the President of the Court, served the Order of urgent measures upon the State, upon the Inter-American Commission and upon the beneficiaries, and requested these two latter ones to give their opinion about the need for keeping the identity of two beneficiaries of the protection measures undisclosed

9. The brief dated September 03, 2009, whereby the Inter-American Commission considered that "their identity must be kept confidential in the terms the President decided in her Order dated August 24, 2009."

10. On September 11, 2009 the State did not forward the report on the protection measures adopted, as it had been called upon to do in the third operative paragraph of the Order by the President of the Court (*supra* Having Seen Clause Number 7).

11. The brief dated September 16, 2009, whereby the Secretariat, following instructions by the President of the Court, reminded the State that the time limit it had to forward its report had run out without its having been received (*supra* Having Seen Clause Number 10) and requested it be forwarded as soon as possible. On the other hand, since the State has not forwarded its report, also following instructions by the President, a delay was granted up to September 18, 2009 for the Inter-American Commission and the beneficiaries, if they so deemed fit, to forward additional information.

12. The brief dated September 18, 2009, whereby the Inter-American Commission forwarded additional information, further to the brief by the Secretariat dated September 18, 2009.

CONSIDERING:

1. That Haiti has been a State Party to the American Convention since September 27, 1977, and, pursuant to Article 62 of the Convention, accepted the contentious jurisdiction of the Court on March 20, 1998.

2. Article 63(2) of the American Convention sets forth that, "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With regard to a case not yet submitted to the Court, it may act at the request of the Commission."

3. That, in the terms of Article 26 of the Rules of Procedure of the Court:

1. At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.

2. In a case not yet submitted to the Court, it may act at the request of the Commission.

[...]

4. That Article 1(1) of the Convention sets forth the general obligation of the States Party to respect the rights and freedoms embodied in that Convention and to ensure the free and full exercise of those rights and freedoms to all persons subject to their jurisdiction, which is due not only as regards the powers of the State, but also as regards the acts of private third parties.¹

¹ Cf. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considering Clause Number Three; *Matter of Fernández Ortega et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights dated April 30, 2009,

5. That, under international human rights law, the purpose of provisional measures is not merely precautionary, in the sense that they preserve a juridical situation, but they are essentially protective because they protect human rights inasmuch as they seek to avoid irreparable damage to persons. The measures are applicable as long as the basic standards of extreme gravity and urgency, and of avoiding irreparable damage to persons, are met. In such manner, provisional measures become a true judicial court remedy of a preventive nature².

6. That the provision established in Article 63.2(2) of the Convention renders the adoption by the State of the provisional measures this Tribunal may order mandatory for, under the basic principle of the law on the international responsibility of States, upheld by international case law, States are required to fulfill their international treaty obligations in good faith (*pacta sunt servanda*)³.

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* *

7. That the instant request for provisional measures is not related to a case pending before the Court, but it originated instead in a request for precautionary measures submitted to the Inter-American Commission along with an individual petition on January 12, 2009. According to what the Commission has reported, such petition is at the initial study stage under number 28-09.

8. That from the information provided by the Commission, it appears that the mentioned persons would have suffered various acts of harassment, trespassing on their private home and the subtraction of personal documents from there, including evidence of what had happened to A. J. As a result of this last circumstance, the family decided to leave their house and move to another town. Likewise, this Court perceives the special seriousness of what the Commission communicated about the alleged deprivation of personal liberty and of life to the detriment of B. J., father to A. J., allegedly by a group of armed men (*supra* Having Seen Clause Number 2. c). Moreover, after the Inter-American Commission adopted precautionary measures, there would have been personal and telephone threats and arson at the J. family house, among other acts (*supra* Having Seen Clause Number 2. d), creating a situation of extreme gravity and urgency and of possible irreparable damage to the rights to life and to personal integrity of the persons mentioned in the request by the Commission. All such facts would be motivated by the complaint such persons had made on account of the rape A.J. would have suffered, allegedly by a policeman.

Considering Clause Number Four; and *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights dated July 6, 2009, Considering Clause Number Twenty-Four.

² Cf. *Case of Herrera Ulloa*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights dated September 07, 2001 , Considering Clause Number Four; *Matter of Fernández Ortega et al.*, *supra* note 1, Considering Clause Number Five; and *Case of Gomes Lund et al.*, (*Guerrilha do Araguaia*). Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights dated July 15, 2009, Considering Clause Number Four.

³ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights dated June 14, 1998, Considering Clause Number Six; *Case of 19 Merchants v. Colombia*. Monitoring Compliance with Judgment and Provisional Measures. Order of the Inter-American Court of Human Rights dated July 08, 2009, Considering Clause Number Four; and *Matter of Fernández Ortega et al.*, *supra* note 1, Considering Clause Number Six.

9. That the Court perceives and weighs, for the purpose of adopting the instant Order, that the State has not responded to the precautionary measures ordered by the Inter-American Commission in its brief dated April 17, 2009, nor to those it ordered once more on June 30, 2009 (*supra* Having Seen Clause Number 2. a). The lack of response by the State has extended up to the present time, for neither did it forward the information requested by the President of the Court in her Order dated August 24, 2009. Such conduct by the State allows assuming that such measures have not had their intended effect and that the risk situation which gave rise to them persists. The Inter-American Court highlights that it is imperative for the State to answer and furnish information when the bodies in the Inter-American System require it, so that the regional protection mechanism may work in an effective manner.

10. That the standard of *prima facie* assessment in a case and of applying presumptions when faced with the need for protection have led the Court to order provisional measures on various occasions.⁴

11. That the persons mentioned by the Inter-American Commission in its request for provisional measures and in the Order by the President would be, *prima facie*, in a situation of extreme gravity and urgency, for their lives and personal integrity would be threatened and in serious risk. Consequently, the Inter-American Court deems it necessary to protect such persons, by means of provisional measures under the provisions in the American Convention.

12. That, as the Tribunal has pointed out before, the State has the specific duty to protect the persons working for non-governmental organizations, as well as other groups or individuals working in the defense of human rights, since the work they carry out is a positive contribution complementing the efforts by the State in its capacity as the guarantor of the rights of the persons under its jurisdiction⁵.

13. That the State is bound to take all pertaining action so that the protection measures provided in the instant Order be planned with the beneficiaries thereof or their representatives taking part in such process, for the purpose of affording them the aforementioned measures in a diligent and effective way.

14. That the Tribunal deems fit to remind that, when provisional measures are the matter, it befalls the Court to consider only and strictly those arguments directly related to the extreme gravity and urgency, and the need to avoid irreparable damage to persons. All other fact or argument may only be considered and determined by the Court when it is considering a disputed case on the merits⁶.

⁴ Cf. *inter alia*, *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures regarding Venezuela. Order by the President of the Inter-American Court of Human Rights dated January 13, 2006 , Considering Clause Number Sixteen; *Matter of Fernández Ortega et al.*, *supra* note 1, Considering Clause Number Fourteen; and *Case of Mack Chang et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights dated January 26, 2009, Considering Clause Number Thirty-Two.

⁵ *Matter of Fernández Ortega et al.*; *supra* note 1, Considering Clause Number Sixteen.

⁶ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights dated August 29, 1998, Considering Clause Number Six; *Matter of Fernández Ortega et al.*, *supra* note 1, Considering Clause Number Eighteen; and *Matter of Carlos Nieto Palma et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights dated January 26, 2009, Considering Clause Number Twenty-Two.

15. That the adoption of provisional measures does not imply a possible decision on the merits of the existing dispute between the petitioners and the State if the case, finally, were submitted to the Court,⁷ nor does it prejudge on the responsibility of the State for the facts reported.

* * *

16. That after the urgent measures had been adopted by the President, the Inter-American Commission further informed that "new incidents have taken place that seem to be related to the situation of risk in which the beneficiaries are." It added that "last week a person connected to the ACREDH organization was beaten by a group of armed persons, apparently linked to the police. Likewise, it was mentioned that two of the beneficiaries had had to move to the city of Port-au-Prince along with their next of kin, due to the continuing threats being expressed in various ways, among which, through anonymous phone calls to the organization." The Commission concluded by pointing out that the information furnished by the beneficiaries "shows that the risk situation would be extending to other persons related to the ACREDH organization in an indirect manner. Taking into consideration the continuing threats the representatives mention and under the *prima facie* standard, the Commission consider[ed] that it was in order to request the Inter-American Court that, at the moment it decides whether to ratify the urgent measures ordered by the President of the Court, it expand the provisional measures to include as well the next of kin of the four beneficiaries belonging to the ACREDH organization [...]."

17. That, as regards the request to expand the provisional measures submitted by the Inter-American Commission in its brief dated September 18, 2009, regarding the next of kin of the four members of the ACREDH organization hereinbefore mentioned, the Court decides to provisionally include such persons as beneficiaries of the measures ordered by means of the instant Order, in the terms stated hereunder.

18. That the Court recalls that when ordering protection measures the Tribunal or its President does not require, in principle, proof of the facts which would *prima facie* appear to meet the standards in Article 63 of the Convention. On the contrary, maintaining the protection measures requires that the Court assess whether the situation of extreme gravity and urgency to avoid irreparable damage to persons that gave rise to such protection measures still persists, on the basis of proven information.⁸

19. That on the basis of the foregoing, the Court deems it fit to order that within the time limit set in the sixth operative paragraph of the instant Order, the beneficiaries or their representatives and the Inter-American Commission, forward detailed information and elements backing the individual situation, the existence, the nature and the origin or the source of the risk affecting the next of kin mentioned in the request by the Inter-American Commission to expand the measures.

⁷ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order by the President of the Inter-American Court of Human Rights dated July 13, 1998 , Considering Clause Number Six; *Matter of Fernández Ortega et al.*, *supra* note 1, Considering Clause Number Nineteen; and *Matter of Tyrone DaCosta Cadogan*. Provisional Measures regarding Barbados. Order of the Inter-American Court of Human Rights dated December 2, 2008, Considering Clause Eleven.

⁸ Cf. *Matter of Pérez Tores et al.* ("Cotton Field"). Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights dated July 6, 2009, Considering Clause Number Twenty.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the powers conferred upon it under Article 63(2) of the American Convention on Human Rights and Articles 26 and 30 of the Rules of Procedure of the Court,⁹

DECIDES:

1. To ratify in all its terms the Order by the President of the Inter-American Court of Human Rights dated August 24, 2009 and, therefore, to call upon the State to adopt, forthwith, such measures as may be necessary in order to protect the life and the integrity of A. J., J. L., Sterlin Joudain, Michelet Laguerre, Pierre Luc Sael and André Junior Laurore, taking into consideration the seriousness of the situation and the particular circumstances of risk.
2. To call upon the State to adopt, forthwith, such measures as may be necessary in order to protect the life and the integrity of the next of kin of the beneficiaries Sterlin Joudain, Michelet Laguerre, Pierre Luc Sael and André Junior Laurore.
3. To call upon the State to take any such steps as are appropriate so that the protection measures ordered in the instant Order be planned and implemented with the participation of the beneficiaries thereof or their representatives, so that such measures be carried out diligently and effectively, and generally to keep them informed of the progress in the implementation thereof.
4. To call upon the State to report to the Inter-American Court of Human Rights, no later than October 14, 2009, on the measures it shall have adopted in compliance with the instant Order.
5. Likewise, to call upon the State for it to report to the Inter-American Court of Human Rights, every two months, as from October 14, 2009, on the measures it shall have adopted in compliance with the instant Order.

⁹ Rules of Procedure approved by the Court in its XLIX Regular Period of Sessions, celebrated from November 16 to 25, 2000, and partially reformed during its LXXXII Regular Period of Sessions, celebrated from January 19 to 31, 2009, pursuant to Articles 71 and 72 thereof.

6. To request the beneficiaries of the instant measures or their representatives and the Inter-American Commission to submit to the Inter-American Court of Human Rights, no later than October 28, 2009, the comments they may deem fit to the report mentioned in the fourth operative paragraph, as well as to furnish detailed information and elements backing the individual situation, the existence, the nature and the origin or the source of the risk affecting the next of kin mentioned in the request by the Inter-American Commission to expand the measures.

7. To request the beneficiaries of these measures or their representatives and the Inter-American Commission for Human Rights to file their observations within a time limit of four and six weeks, respectively, as from the date the reports by the State mentioned in the fifth operative paragraph be served upon them.

8. To request the Secretariat of the Court to serve notice of the instant Order upon the Inter-American Commission for Human Rights, upon the representatives of the beneficiaries and upon the State.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on September 21, 2009.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel 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