

**Order of the
Inter-American Court of Human Rights
of February 1, 2010**

**Request for Provisional Measures presented by
the Inter-American Commission of Human Rights
regarding Venezuela**

Matter of Natera Balboa

Having Seen:

1. The brief of the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of November 28, 2009 and its attachments, through which it filed before the Inter-American Commission of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") a request for provisional measures pursuant with Articles 63(2) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and 26 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") in order for the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") protect the life and personal integrity of Eduardo José Natera Balboa (hereinafter "Mr. Natera Balboa").

2. The alleged facts that act as grounds for the request for provisional measures filed by the Commission, specifically:

a) Mr. Natera Balboa was detained at the "El Dorado" Oriental Region Penitentiary Center, State of Bolivar, and his whereabouts remain unknown since November 8, 2009, date on which several members of the National Guard violently led him toward a black car of the brand Ford;

b) as of said date, the mother and next of kin of Mr. Natera Balboa have tried, unsuccessfully, to contact him, without achieving that the National Guard or any other officials give them precise information on what occurred or information on his situation and whereabouts. Among the following are the processes carried out by the next of kin and the representatives of Mr. Natera Balboa: i) on November 9,

2009, Mr. Natera's mother turned to the Public Prosecutors' Office with Jurisdiction in Fundamental Rights located in the city of Bolivar, State of Bolivar, in order to state that her son was imprisoned in the "Oriental penitentiary center" and that he has been missing since November 8, 2009; ii) on November 9, 2009, the Venezuelan Observatory of Prisons made "requests of investigation and information with a sense of urgency" before the Attorney General of the Republic and the National Office of Penitentiary Services; iii) on November 10, 2009, a request of "investigation before the Attorney General of the Republic and all the competent security bodies" for the disappearance of Mr. Natera was published in the regional media *Correo del Caroní*, and iv) on November 16, 2009, Mr. Natera's mother filed a habeas corpus petition before the Court on Duty in Control Functions of the Second Circuit of the Criminal Legal Jurisdiction of the Bolivar State – Territorial Extension of Puerto Ordaz;¹

c) on November 9, 2009, an official from the First Court for the Execution of Criminal Judgments of the Second Circuit of the Legal Jurisdiction of the State of Bolívar came before the mentioned penitentiary center to notify Mr. Natera "of a decision issued by the Court of Appeals of the Bolívar State," without being able to verify his presence, a situation to which the Director and the General Secretariat of the penitentiary establishment was so informed;²

d) on November 20, 2009, in accordance with the mentioned background and with that stated in Article XIV of the Inter-American Convention on Forced Disappearance of Persons, the Commission sent an urgent request for information to the State so it would inform, within a 48-hour period, on the whereabouts of Mr. Eduardo Natera; his physical state; indicate the reasons why contact and visits with his next of kin had not been possible, and any other information regarding his whereabouts and situation.³ On that same day, the State requested a "sensible extension" to present the information requested. Through a communication of November 23, 2009, the Commission granted the State a 24-hour extension, and

e) on November 23, 2009, the State informed on some of the domestic investigations regarding Mr. Natera's situation. Specifically, the State mentioned that the 68° Section of the Public Prosecutors' Office at a National Level with Full Competence started a criminal investigation regarding the alleged escape or physical disappearance of Mr. Eduardo José Natera; that Mr. Natera was seen in an automobile that matches the characteristics mentioned (*supra* Having Seen paragraph 2(a)) and that seems to correspond as belonging to a captain of the National Guard that worked at that penitentiary center; that the Public Prosecutors' Office assigned to the case called upon the Third Court of First Instance in Control Functions of the Criminal Legal Circuit of the Bolívar State to issue an arrest warrant for the mentioned captain and another 16 officials, for the alleged commission of the crimes of Evasion Aided by a Public Official, Inappropriate Corruption and Conspiracy

¹ *Cfr.* Brief of the filing of the habeas corpus before the Court on Duty in Control Functions of the Second Circuit of the Criminal Legal Jurisdiction of the Bolívar State – Territorial extension of Puerto Ordaz of November 16, 2009, attachment 2 to the brief of provisional measures of November 28, 2009.

² *Cfr.* Brief of the filing of the habeas corpus before the Court on Duty in Control Functions of the Second Circuit of the Criminal Legal Jurisdiction of the Bolivar State – Territorial extension of Puerto Ordaz of November 16, 2009, attachment 2 to the brief of provisional measures of November 28, 2009.

³ *Cfr.* Letter of the Inter-American Commission of Human Rights requesting information of November 20, 2009, attachment 3 to the request of provisional measures of November 28, 2009.

to Commit a Crime; that on November 15, 16, and 17, 2009 an Arraignment Hearing was held for five of the mentioned officials; that another 12 officials “were arraigned” without specifying the date; that the Public Prosecutors’ Office requested a measure of preventive detention for all the officials involved; that the corresponding judicial authority ordered the imprisonment of the officials attached to the Bolivarian National Guard and to the Ministry of the People’s Power for Relations of the Interior and Justice, and that on November 18, 2009 the Public Prosecutors Officer requested the transfer of a citizen so he could offer a testimonial statement since “he is aware of the circumstances of manner, time, and place in which the facts occurred.” The State did not present any documentation to support the processes described.⁴

3. The Commission’s arguments to substantiate its request for provisional measures, namely that:

a) the situation of extreme gravity and urgency is proven by the following circumstances: i) Mr. Natera Balboa was under the State’s custody the last time anyone heard of him, that is, on November 8, 2009. Three weeks have gone by without any news nor official response, despite a series of efforts made by the family and some organizations. Given the State’s special position of guarantor regarding detainees, when a person under State custody allegedly disappears, without any acknowledgment or elucidation whatsoever by the State, it is reasonable to infer that he is in a situation of grave risk; ii) from the information available several testimonies indicate that Mr. Natera Balboa was removed from the penitentiary center in a violent way by a group of state officials led by a captain of the National Guard, entity in charge of the external custody of prisons in Venezuela; iii) both the ordinary criminal investigation started by the State and the habeas corpus petition filed by the next of kin have failed to produce the immediate results required in situations such as this one, and iv) the next of kin of Mr. Natera Balboa and their representatives have turned to several state institutions related to the penitentiary centers in order to obtain information on Mr. Natera Balboa without being offered any response whatsoever;

b) the State’s efforts, in cases such as this one, cannot be limited to starting an ordinary criminal investigation nor can they be based on the presumption that the person in question has escaped or fled, but instead they must take into account that it could be a forced disappearance and that the affected party could be in a situation of extreme risk, especially when there is indicia that favor that possibility, and

c) the nature of the rights threatened, the right to life and to humane treatment, constitute “the extreme of irreparability of the consequences this request of provisional measures seeks to avoid.”

4. The request of the Inter-American Commission that the Court, based on Article 63(2) of the American Convention, Article 26 of the Rules of Procedure, and Article 74 of the Rules of Procedure of the Commission, request that the State comply with the following measures:

⁴ *Cfr.* Brief of response of the State of Venezuela of November 23, 2009, attachment 4 to the request of provisional measures of November 28, 2009.

a) adopt the measures necessary to establish the whereabouts of Mr. Eduardo José Natera and immediately inform the Inter-American Court and his next of kin;

b) once his whereabouts are determined, adopt the measures necessary to protect the life and personal integrity of Mr. Eduardo José Natera, after carrying out an evaluation of the reasons that led to his disappearance while being under state custody and of the situation of risk he is in within the penitentiary center. These measures shall be agreed on with the possible beneficiary and his representatives;

c) carry out an investigation of the facts that act as grounds for the request of provisional measures as a mechanism of prevention in order to avoid any situation of risk to the life and personal integrity of Mr. Eduardo José Natera, and

d) inform of the measures adopted by virtue of the aforementioned reasons.

5. The Order of the President of the Inter-American Court of Human Rights on December 1, 2009, in which she decided, *inter alia*:

1. Require that the State immediately adopt the measures necessary to determine the situation and whereabouts of Eduardo José Natera Balboa and to protect his life and personal integrity.

2. Require that the State inform the Inter-American Court, by no later than December 8, 2009, on that stated in the first operative paragraph of the [...] Order.

3. Require, also, that the State inform the Inter-American Court, every two months as of December 8, 2009, on the measures adopted pursuant with this decision.

4. Request that the representatives of the beneficiary and the Inter-American Commission present to the Inter-American Court, by no later than December 16, 2009, the observations considered appropriate to the report mentioned in the second operative paragraph of the [...] Order.

5. Request that the representatives of the beneficiary and the Inter-American Commission present their observations, within a four and six-week term, respectively, computed as of the notification of the State's reports indicated in the third operative paragraph.

6. Order that the present matter be heard by the Full Tribunal at the LXXXVI Regular Session, to be held from January 25 to February 6, 2010 at the Tribunal's seat in the city of San José, Costa Rica.

[...]

6. The notes of the Secretariat of December 17 and 22, 2009, through which it informed that the term granted to the State so it could present the Report requested in the second operative paragraph of the mentioned Order of the President, had expired on December 8, 2009, without it having been received at the Secretariat of the Court. Therefore, following the instructions of the President of the Court the State was requested to forward that report as soon as possible.

Considering that:

1. Venezuela is a State Party to the American Convention since August 9, 1977, and, according to Article 62 of the Convention, it acknowledged the Court's contentious jurisdiction on June 24, 1981.

2. Article 63(2) of the American Convention states 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 respect to a case not yet submitted to the Court, it may act at the request of the Commission."

3. In the terms of Article 26 of the Rules of Procedure of the Court:⁵

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

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

6. If the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other Judges, shall call upon the State concerned to adopt such urgent measures as may be necessary to ensure the effectiveness of any provisional measures that may be ordered by the Court during its next period of sessions.

[...]

4. The provision established in Article 63(2) of the Convention grants an obligatory nature to the adoption, by the State, of the provisional measures ordered to it by this Tribunal, since the basic legal principle of the State's responsibility, supported by international jurisprudence, has stated that the States shall comply with their conventional obligations in good faith (*pacta sunt servanda*).⁶

5. The present request for provisional measures does not refer to a case being heard by the Court, but instead it originated on a request for provisional measures filed before the Inter-American Commission. Even though said communication was recorded under number MP 7-09, this Tribunal does not have information regarding if the facts brought before it are part of a contentious proceeding before the Inter-American System or if a petition regarding the merits of this request has been filed before the Inter-American Commission.

⁵ Rules of Procedure adopted by the Court during its XLIX Regular Session, held from November 16 through 25, 2000 and partially reformed during the LXXXII Regular Session, held from January 19 through 31, 2009, pursuant with Articles 71 and 72 of the same.

⁶ *Cfr. Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, Considering clause six; *Matter of Guerrero Larez*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering clause five, and *Case of 19 Tradesmen v. Colombia*. Monitoring of Compliance with Judgment and Provisional Measures. Order of the Inter-American Court of Human Rights of July 8, 2009, Considering clause four.

6. On previous opportunities, the Court interpreted that the phrase “matters that have not yet been submitted before it,” included in Article 63(2) *in fine* of the American Convention, assumes that there is at least a possibility that the matter that substantiates the request for provisional measures may be submitted to the knowledge of the Tribunal in its contentious jurisdiction. That in order for said minimum possibility to exist, the proceeding established in Articles 44 and 46 through 48 of the American Convention has to have been started.⁷

7. In International Human Rights Law provisional measures not only have a precautionary nature, in the sense that they preserve a juridical situation, but fundamentally a protective one, since they protect human rights in the measure that they seek to avoid irreparable damages to persons. The order to adopt measures is applicable as long as the basic requirements of extreme gravity and urgency and the prevention of irreparable damages to persons are present. Thus, provisional measures become a true jurisdictional guarantee of a preventive nature.⁸

8. The Court has considered it necessary to clarify that, in view of the protective nature of provisional measures (*supra* Considering clause 7), it is possible to exceptionally order them even when there is not a contentious case as such within the Inter-American System, in situations that, *prima facie*, may result in a grave and urgent infringement of human rights. For this, an assessment of the problem presented, the effectiveness of the state's actions regarding the situation described, and the degree of lack of protection that will fall upon the people over which the measures are requested if they are not adopted shall be assessed. In order to achieve this objective it is necessary that the Inter-American Commission present sufficient reason to cover the mentioned criteria and that the State fail to prove in a clear and sufficient manner the effectiveness of specific measures it has adopted within the domestic realm.⁹

9. From the information provided by the Commission, it can be concluded that Mr. Natera Balboa, who was imprisoned, serving a prison sentence at the “El Dorado” Oriental Region Penitentiary Center, Bolivar State, had been missing since November 8, 2009 (*supra* Having Seen paragraph 2(a)), date on which his mother had telephone contact with him for the last time. Likewise, several testimonies indicate that on that same date, at approximately 10:30 a.m., Mr. Natera was at the prison installations walking near the gate, when several members of the National Guard, led by a captain, beat him and violently took him toward a black Ford car. On the other hand, the Court has not been informed that said person voluntarily left the penitentiary center.

⁷ Cfr. *Matter of García Uribe et al.* Request for Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 2, 2006, Considering clauses three and four; *Matter of Guerrero Larez*, *supra* note 6, Considering clause seven, and *Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center*. Request for provisional measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering clause five.

⁸ Cfr. *Case of the “La Nación” Newspaper*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering clause number four; *Matter of Guerrero Larez*, *supra* note 6, Considering clause four, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 15, 2009, Considering clause four.

⁹ Cfr. *Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center*, *supra* note 7, Considering clause nine, and *Matter of Guerrero Larez*, *supra* note 6, Considering clause eight.

10. Article 63(2) of the Convention demands that for the Court to be able to order provisional measures three conditions must be present: i) "extreme gravity"; ii) "urgency," and iii) that it try to "avoid irreparable damages to the persons." These three conditions are coexistent and shall be present in all situations in which the intervention of the Tribunal is requested.¹⁰ In the present matter, the extreme magnitude and intensity of the situation of risk due to the alleged disappearance of Mr. Natera Balboa while he was under state custody has been indicated. Likewise, the Court considers that an intervention in this case cannot be delayed in order to avoid the threat since a delay or a lack of response would in itself imply a danger. Finally, the irreparable nature of the situation of extremely grave and urgent risk, with regard to the rights to life and humane treatment that the Tribunal has the obligation to protect when the circumstances established in Article 63(2) of the American Convention are present, is evident.

11. Upon ordering that the State adopt urgent measures, the President observed, in its Order, that the next of kin and their representatives denounced the fact before different state authorities, such as: a) The Public Prosecutors' Office with Competence in Fundamental Rights of the city of Bolívar; b) The Attorney General of the Republic; c) The National Office of Penitentiary Services, and d) The Court on Duty in Control Functions of the Second Circuit of the Criminal Legal Jurisdiction of the Bolivar State. Regarding said processes, this Court has not been informed of results or specific progress that would allow it to determine with clarity what occurred or what Mr. Natera's whereabouts are.

12. Additionally, the President observed the response the State had offered to the request for urgent information forwarded by the Inter-American Commission on November 20, 2009, in the terms of Article XIV of the Inter-American Convention on Forced Disappearance of Persons (*supra* Having Seen paragraphs 2(d) and 2(e)). Even though the State informed of some investigations in progress at a domestic level regarding Mr. Natera's situation, there is no evidence that the initiated criminal investigation had any positive results regarding precise and specific information on Mr. Natera's fate or whereabouts.

13. In this sense, it is necessary to point out that every time there is reasonable grounds to suspect that a person has disappeared, prompt and immediate action by the prosecuting and judicial authorities ordering appropriate and necessary measures to determine the whereabouts of the victim or the place where he had been detained, is indispensable.¹¹ On the other hand, in situations of imprisonment such as those of the present case, the habeas corpus petition represents, within the indispensable judicial guarantees, the ideal means to both guarantee the person's liberty and to control the respect for life and protect the individual's personal integrity, in order to guarantee that the detainee be brought before the judicial body in charge of verifying the legality of the arrest, as well as to prevent his disappearance or the indetermination of his place of arrest and protect him against torture or other treatments or cruel, inhuman, or degrading punishments.¹² However, from the

¹⁰ Cfr. *Case of Carpio Nicolle*. Provisional measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering clause fourteen, and *Matter of Guerrero Larez*, *supra* note 6, Considering clause ten.

¹¹ Cfr. *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 134.

¹² Cfr. *Case of Neira Alegria et al. v. Peru. Merits*. Judgment of January 19, 1995. Series C No. 20, para. 82; *Case of Anzualdo Castro v. Peru*, *supra* note 10, para. 72; *Case of La Cantuta v. Peru. Merits, Reparations, and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 111, and *Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations, and Costs*. Judgment of March 1, 2005. Series C No. 120, para. 79. See also *Habeas*

information provided, it could not be inferred that the State has responded to the habeas corpus petition filed by the next of kin of Mr. Natera on November 16, 2009. Before the lack of information on the whereabouts of Mr. Natera Balboa, it can be presumed that he is still in grave risk of having his rights to life and humane treatment violated.

14. Pursuant with the Order of the President of the Court (*supra* Having Seen paragraph 5), the State had to immediately adopt the measures necessary to determine the situation and whereabouts of Eduardo José Natera Balboa and to protect his life and personal integrity. Likewise, it had to present a report in this regard within the requested time period, specifically by December 8, 2009, which up to this date has not been received at the Secretariat of the Tribunal.

15. In what refers to the implementation of the provisional measures ordered, the compelled States shall carry out all the diligences necessary for the effective protection of the beneficiaries of the same, pursuant with the Court's instructions. This obligation includes the duty to inform the Tribunal regarding the implementation of the provisional measures in the terms and with the regularity indicated by it.¹³

16. In the present case the State has failed to comply with its duty to inform in a duly and timely manner. Therefore, the Court ratifies the order of its President and requires that the State inform in the most urgent and diligent manner of the situation and whereabouts of Mr. Natera Balboa and the measures issued in his favor, in attention to the protection needs of the present matter.

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 27 and 31 of the Rules of Procedure of the Tribunal,

Resolves to:

1. Ratify the Order of the President of the Court of December 1, 2009 and, therefore, the State shall immediately adopt the measures necessary to determine the situation and whereabouts of Eduardo José Natera Balboa and to protect his life and persona integrity.

2. Reiterate that the State has the obligation to inform the Inter-American Court in a specific and detailed manner of the implementation of the measures ordered.

Corpus in Emergency Situations (Arts. 27(2), 25(1), and 7(6) of the American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 35.

¹³ *Cfr. Case of Marta Colomina and Liliana Velásquez*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause eight.

3. Require that the State inform the Inter-American Court, no later than February 28, 2010 regarding that stated in the first operative paragraph of the present Order.
4. Request that the representatives of the beneficiary and the Inter-American Commission present to the Inter-American Court, within a one-week period, the observations considered appropriate to the report mentioned in the third operative paragraph of the present Order.
5. Indicate that the State shall inform the Inter-American Court, every two months, as of February 28, 2010, of the measures adopted pursuant with this decision.
6. Request that the representatives of the beneficiary and the Inter-American Commission present their observations, within a four and six-week period, respectively, computed as of the notification of the State reports indicated in the fifth operative paragraph.
7. Request that the Secretariat notify the present Order to the State, the Inter-American Commission of Human Rights, and the representatives of the beneficiary.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Registrar

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Registrar