

**Order of the
Inter-American Court of Human Rights*
of February 3, 2010
Provisional Measures
Regarding Peru
Matter of Ramírez-Hinostroza *et al.***

HAVING SEEN:

1. The Order issued by the President of the Inter-American Court of Human Rights (hereinafter, the "Inter-American Court", the "Court" or the "Tribunal") of July 22, 2005 as well as the Orders issued by the Inter-American Court on September 21, 2005, February 7, 2006, July 4, 2006 and May 17, 2007. By means of the last Order, the Tribunal decided, *inter alia*:

1. To order the State to maintain the measures it might have adopted and to adopt, forthwith, such measures as may be necessary to protect the life and personal integrity of Mr. Luis Alberto Ramírez-Hinostroza, his wife Susana Silvia Rivera-Prado, and his three daughters: Yolanda Susana Ramírez-Rivera, Karen Rose Ramírez-Rivera and Lucero Consuelo Ramírez-Rivera, granted by Order of September 21, 2005.

2. To extend the scope of the measures and to order the State to adopt, forthwith, such measures as may be necessary to protect the life and personal integrity of Messrs. Raúl Ángel Ramos De la Torre and Cesar Manuel Saldaña-Ramírez, Mr. Ramírez-Hinostroza's counsels.

2. The briefs of July 6 and October 17, 2007, May 2 and December 19, 2008 and February 9 and 17, March 31, May 20 and August 24, 2009, as well as other additional briefs, by means of which the Republic of Peru (hereinafter, the "State" or "Peru") informed on: a) the protective measures adopted in relation to the beneficiaries; b) the investigation into the facts that gave rise to the adoption of the provisional measures, and c) the investigations conducted against Mr. Ramírez Hinostroza and his detention in a penitentiary center. Moreover, it requested the rescission of the provisional measures.

3. The briefs of June 29, July 13 and December 21, 2007, August 14 and December 22 and 24, 2008 and March 20 and October 24, 2009, among others, by means of which the representatives of the beneficiaries of the provisional measures (hereinafter, the

* Judge Diego García-Sayán, a Peruvian national, disqualified himself from hearing the instant matter, in accordance with Articles 19 of the Court's Statute and 21 of the Rules of Procedure, approved in its LXXXV Ordinary Period of Sessions, held from November 16 to 28, 2009, which was accepted by the Court. Therefore, Judge García-Sayán handed over the Presidency, under the terms of Article 4(2) of the Rules of Procedure, to the Vice-President of the Tribunal, Judge Leonardo A. Franco, acting President in this matter.

"representatives") forwarded the observations to the State's reports and informed on the detention and subsequent release of Mr. Ramirez Hinostroza.

4. The briefs of August 6 and 31 and December 12, 2007, of October 13, 2008 and February 20, May 14, July 8, October 6 and November 5, 2009, whereby the Inter-American Commission on Human Rights (hereinafter, the "Inter-American Commission" or the "Commission") forwarded its observations to the information presented by the State and the observations of the representatives and indicated that the case related to Mr. Ramirez Hinostroza "is in the monitoring stage" before said body.

CONSIDERING THAT:

1. Peru ratified the American Convention on Human Rights (hereinafter, the "American Convention" or the "Convention") on July 28, 1978, and it has accepted the binding jurisdiction of the Court on January 21, 1981, in keeping with Article 62 of the Convention.

2. Article 63(2) of the American Convention establishes 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. Article 27 of the Rules of Procedure of the Court¹ provides that:

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

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

[...]

4. According to the International Human Rights Law, the provisional measures are not only precautionary in the sense that they preserve a legal situation, but they are also mainly protective since they protect human rights, insofar as they avoid irreparable damage to people. Provisional measures are adopted provided the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met. In this sense, provisional measures become a real jurisdictional guarantee of a preventive nature.²

¹ Rules of Procedure of the Court approved in its LXXXV Ordinary Period of Sessions, held from November 16 to 28, 2009.

² Cf. *Case of "La Nación" Newspaper*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001; considering clause four; *Matter of Monagas Judicial Confinement Center ("La Pica"); Yare I and Yare II Capital Region Penitentiary Center; Penitentiary Center of the Central Occidental Region (Uribana Prison) and El Rodeo I and El Rodeo II Capital Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2009, 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 four.

5. According to the provision established in Article 63(2) of the Convention, provisional measures ordered by this Tribunal are binding on the State in conformity to a basic principle of the law of international responsibility of the States, as supported by international case law, under which States are required to comply with international treaty obligations in good faith (*pacta sunt servanda*).³

6. It has been more than four years since the adoption of the provisional measures in favor of the original beneficiaries and more than two years since the issuance of the last Order. Since then, the Court has received new information and Peru has repeatedly requested the rescission of these measures. Based on the foregoing, the Tribunal deems appropriate to analyze the situation of the beneficiaries and the status of compliance with the provisional measures ordered in this matter.

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7. The provisional measures in the instant matter were ordered as a result of a series of threats issued against the life of Mr. Ramírez Hinostrroza due to his declaration as victim and witness of alleged tortures committed against him and against other people. On March 10, 2004, the Huancayo Fourth Criminal Court instituted a legal proceeding against the Peruvian retired Army General, Luis Pérez-Documet, "as Chief of the Military Political Command of Huancayo by the time of the events, for the crimes of abduction and causing bodily harm."⁴ Mr. Ramírez Hinostrroza ratified his testimony before said court and "as a result of that, on March 13, 2004, while he was entering his house at night, he was intercepted by four armed men", though he managed to escape while his pursuers were shooting at him. On May 3, 2004, while he was signing the record of the visual inspection conducted at the 'December 9' army barracks, "a military officer, who was not participating of said procedure, took a photograph of Mr. Ramírez Hinostrroza." On July 6, 2004 Mr. Ramirez Hinostrroza "received, at his home address, an envelope containing an anonymous note and three photographs" of his wife and daughters.

8. Before this situation, on August 2, 2004, the Commission adopted precautionary measures in favor of Luis Alberto Ramirez Hinostrroza and his family, which were later on expanded to protect his legal representatives. After the adoption of the precautionary measures, Mr. Ramirez Hinostrroza would have been a victim, among other facts, of threats against his life. The first incident occurred on August 30, 2004, when, close to his home, he was intercepted by a vehicle "from which two men started to fire shots at him", and he received a gunshot wound to the stomach. Later on, on June 1, 2005, shots were fired at him from a moving car as he was leaving the office of the Legal Defense Institute [Instituto de Defensa Legal], located in Lima. A third attack occurred on September 15, 2005, after the adoption of the provisional measures ordered by this Tribunal when, on his way home, "two strangers shot at Mr. Ramirez Hinostrroza from a motorcycle."

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³ Cf. *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 the Communities of Jiguamiandó and Curbaradó.* Provisional Measures Regarding Colombia. Order of the Inter-American Court of Human Rights of November 17, 2009; considering clause four and *Matter of Guerrero Larez, supra* note 2, considering clause five.

⁴ Cf. *Matter of Ramírez Hinostrroza et al.* Provisional Measures regarding the Republic of Peru. Order of the President of the Inter-American Court of Human Rights of July 22, 2005, Having Seen clause 2 c) and d).

9. Regarding the implementation of the provisional measures ordered by the Court, the State sustained that several human and logistics resources were made available to the beneficiaries, including "12 (twelve) police officers (to protect Mr. Luis Alberto Ramírez Hinostróza, his wife and daughters), 4 (four) police officers (to protect the defense counsels of Mr. Luis Alberto Ramírez Hinostróza), weapons and ammunition, 7 (seven) bulletproof vests and a police car." The Security Department of Public Officials and Personalities of the State's Security Division of the Peruvian National Police [Departamento de Seguridad de Funcionarios Públicos y Personalidades de la División de Seguridad del Estado] in Huancayo has provided protection and personal security services, in an immediate and permanent manner, for 24 hours a day, to Luis Alberto Ramírez Hinostróza and his family. Likewise, it has taken security and protective measures in favor of the counsels, Raúl Ángel Ramos De la Torre, who "temporarily did without the service" and César Manuel Saldaña Ramírez. Moreover, during his detention, Mr. Ramírez Hinostróza was placed in the pavilion of elderly people and people with health problems and "within said pavilion, the inmate [was] in a private room [...] separated from the prison population and with the corresponding security." Finally, Peru expressed "the discontent, anger and questioning of the hostile and unlawful conducts adopted by Mr. [...] Ramírez Hinostróza with the police officers in charge of his protection and personal security who, notwithstanding having complied with what was ordered by the competent authorities and the Court [...], are attacked by the beneficiary with no any reason at all."

10. The representatives pointed out that the statement made by the State in relation to the protection provided by the police authorities to Mr. Ramírez Hinostróza "is not true", as it springs from the Verification and Seizure Record, of September 23, 2008 of the Public Prosecutor's Office- Crime Prevention Division of Huancayo, and the Visit Record, of that same date, of the Public Defender Office of Junin- Huancayo, which evidences the presence of one police officer, where there should have been four. They further indicated that the information about the supply of bulletproof vests is "false and tendentious." They mentioned that Mr. Ramírez Hinostróza was accompanied by one member of the security forces in all the attacks carried out against him. Furthermore, they considered it was necessary to "remind the Peruvian State of the seriousness of the compliance with the police protection [according to the provisional measures] in order to avoid irreparable damage."

11. The Commission "valu[ed] the information forwarded by the State in relation to the security and protective measures provided to Mr. Luis Alberto Ramírez Hinostróza, his family and his defense counsels." It considered that it is necessary, "taking into account the recent subpoena [served on Mr. Ramírez Hinostróza] to render a statement about 'crimes against humanity' before the Second Criminal Chamber of Lima", for the State to present detailed information on the protective measures in favor of Mr. Ramírez Hinostróza, "explaining the mechanisms of implementation and frequency."

12. From the information forwarded by the parties, the Tribunal notes that there are wide discrepancies in the way these provisional measures are being implemented, as to the number of appointed police officers, protection material delivered to the beneficiaries and, specially, the conduct of Mr. Ramírez Hinostróza.

13. The Court values the measures adopted by the State to protect the life and integrity of the beneficiaries as to the provision of personal protection. From the information presented by the parties, it spring that the State has offered several police

officers to protect the beneficiaries, notwithstanding it has been placed at issue the fact that the number of police officers is not enough or that on certain occasions, with no reason at all, the protection so ordered was not provided.

14. In relation to the different versions related to the supply of bulletproof vests by the State for the personal security of Mr. Ramirez Hinostrroza, the representatives informed in the brief of December 21, 2007, that "no bulletproof vests [have been given] for their protection." However, previously, they had informed that the "bulletproof vest [of Mr. Ramirez Hinostrroza] was seized on January 15, 2007 by a Technical Sergeant 1st class" according to the Seizure Record made on that day.⁵

15. Moreover, the Court notes that the State has asserted that Mr. Ramirez Hinostrroza would have attacked, at least on two occasions, his guardians, among other conducts attributed to him, giving rise to several criminal investigations (*infra* Considering clause 36).

16. Without detriment to the difficulties in their implementation, the Tribunal notes that, during four years, the State has adopted measures to protect the life and physical integrity of the beneficiaries, especially by means of police protection and bulletproof vests.

17. Upon ordering the State to adopt the measures necessary to protect the life and physical integrity of the beneficiaries, the Court did not determine the particular manner to provide the protection so ordered. However, it ordered that said protective measures should be implemented in an effective way and, especially, by means of mechanisms for participation created between the beneficiaries or their representatives and the state authorities in charge of planning and implementing such measures. The Tribunal notes that, in the instant case, no mechanisms for participation or collaboration between the State and the beneficiaries' representatives have been created.

18. Lastly, the Court notes that during the enforcement of these measures, Peru has presented information on their implementation. Without detriment to the foregoing, said information has not been forwarded periodically, according to the term of two months established in the orders of the Tribunal in this matter.

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19. As to the facts that gave rise to the adoption of the provisional measures and the corresponding investigation (*supra* Considering clauses 7 and 8), the State pointed out that:

a) "[i]n relation to the criminal proceeding instituted before the Second Criminal Chamber of the Superior Court of Justice of Junin, Peru, in case-file N° 1639-2004 against Luis Augusto Pérez Documet, for the crime of Abduction [...] by means of [j]udgment dated August 2, 2007, said Chamber acquitted the accused of the charges brought against him. Furthermore, by means of Final Judgment of

⁵ Cf. Seizure Record of January 15, 2007 made by Technical Sergeant Alfredo Calderón. Record of Provisional Measures, Volume III; page 1282.

October 15, 2008, the First Transitory Chamber in Criminal Matters of the Supreme Court of Justice "upheld said judgment" and therefore, the proceeding "is ready to be closed."

b) In relation to the attack of March 13, 2004, there is proof of what occurred in the Police Station of San Jerónimo de Tunán, while the Office of Criminal Investigation and Support for Justice of the Peruvian National Police (PNP) - Huancayo informed that "there is no complaint related to [said] attack."

c) In relation to the attack of August 30, 2004, the Office of the Third Provincial Prosecutor in Criminal Matters of Huancayo issued Resolution N° 05-2007, of May 4, 2007, by means of which it decided to provisionally close the investigation N° 574-2005, regarding the complaint filed by Mr. Ramirez Hinostriza for the crime of attempted murder, based on the lack of evidence to bring a criminal action and ordered the Office for Support of Justice of the Public Prosecutor's Office of Huancayo to continue the investigations in order to fully identify the perpetrators;

d) In relation to the attack of June 1, 2005, by means of Resolution of the Seventh Criminal Trial Court of Lima of April 13, 2009, it was declared the discontinuance of the investigation conducted in the criminal proceeding of case file N° 659-2007 against Luis Alberto Pérez Documet for the crime of attempted murder to the detriment of Luis Alberto Ramirez Hinostriza, "definitely closing the court record" and

e) In relation to the attack of September 15, 2005, "[the] person in charge of the investigations has heard the incident, and undertook investigations and inquiries for the purpose of identifying, locating and capturing the suspected perpetrators of the illegal act under investigation [...] which produced a negative result to the present [October 16, 2008] and in case of producing a positive result, it shall be duly informed to the competent authority." According to the "Record of the Case", the case has been definitely filed since April 10, 2006.

20. The State requested the rescission of the provisional measures "taking into account what was previously informed as well as the fact that [the beneficiaries] did not [receive] new threats nor [were] subject to new attacks against them."

21. Regarding the investigation into the facts that gave rise to the provisional measures, the representatives stated that:

a) The Second Criminal Chamber of the Superior Court of Justice of Junín, by means of judgment of August 2, 2007, acquitted the accused Luis Augusto Perez Documet of the charge of abduction to the detriment of Mr. Ramirez Hinostriza, and by means of Final Judgment of October 15, 2008, the First Transitory Chamber in Criminal matters of the Supreme Court of Justice upheld said judgment. They further asserted that the Office of the Fourth Provincial Prosecutor in Criminal matters of Huancayo, as well as the Office of the Second Superior Prosecutor in Criminal matters, failed to consider the conclusions and recommendations of report N° 101-01 of October 11, 2001 of the Inter-American Commission, which established that the State was responsible of the human rights violations

committed against the beneficiary, among other people. They considered that there is enough evidence to prove "the arbitrary detention and use of cruel physical and psychological tortures to which Mr. Ramirez Hinostroza was subjected] which constitute crimes against humanity";

b) "There has been no progress" in investigation into the attack of March 13, 2004;

c) In relation to the attack of August 30, 2004, the proceeding "is still provisionally closed, as evidence of the negligence of the Public Prosecutor's Office to complete the investigation, notwithstanding the evidence that was duly furnished";

d) As to the fact of July 1, 2005, related to case file N° 659-2007, they considered "it was unfortunate that the Office of the Seventh Provincial Prosecutor in Criminal matters of Lima had declared that 'there are no grounds to file charges' [...] evidencing the fact that the Peruvian State tries, as usual [...] to protect the perpetrators of the human rights violations, letting the attacks committed against [Mr. Ramirez Hinostroza] go unpunished"; and

e) in relation to the attack of September 15, 2005, "as with the other investigative procedures[,] it has been filed without certainty of the interest the Peruvian State has in effectively finding the responsible."

22. The representatives considered that the lack of investigation on the facts against Mr. Ramirez Hinostroza "shows the lack of willingness [of the State to] identify the instigators and perpetrators of the attacks." Furthermore, they required the Court to maintain the provisional measures in favor of the beneficiary and his family, since "the threats and attacks made by the perpetrators of human rights violations have not stopped, as well as the judicial harassment on the part of the State, considering that the victim is witness [...] to tortures [committed against] other victims." Particularly, they pointed out that Mr. Ramirez Hinostroza is a witness before the Second Criminal Chamber of Lima in case file N° 733- 08, which was opened for the crime of forced disappearance to the detriment of Francisco Juan Fernández Gálvez and Alcides Copa Taype, which forms part "of the case [of the students of the] *Universidad Nacional del Centro* of Peru." In addition, regarding the protective measures for counsels Raúl Angel Ramos De la Torre and César Manuel Saldaña Ramirez, they requested to maintain such measures, "due to, up to the present [August 2008], they are controlled by phone tapping, therefore a constant threat hung over them."

23. As to the investigation into the facts that gave rise to the provisional measures, the Commission indicated that:

a) In relation to the information presented by the State, on August 2, 2007, the Second Criminal Chamber of the Superior Court of Justice of Junin acquitted Luis Augusto Pérez Documet. On October 15, 2008, the Transitory Criminal Chamber of the Supreme Court of Justice decided to deny the motion to annul said judgment and by means of official letter of the Second Criminal Chamber of the Superior Court of Junin of June 10, 2009, the case was filed;

b) In relation to the attack of March 13, 2004, "Peru does not provide updated information regarding the investigations conducted to determine the responsible for the attack"; though according to the last reference, "the fact was brought to the attention of the court on March 19, 2004" and the Police Station of San Jerónimo de Tunán has a record of the occurrence of said incident. In that respect, it requested the State to provide more detailed and specific information regarding the proceeding conducted and, specially, regarding the current status of the investigation;

c) In relation to the attack of August 30, 2004, the State informed, on previous occasions, on the provisional filing of the case corresponding to May 4, 2007, by means of Resolution N° 05-2007 of the Office of the Third Criminal Prosecutor of Huancayo, as well as new proceedings conducted to identify the responsible. However, it has not informed the specific results of such proceedings;

d) In relation to the attack of June 1, 2005, it valued that the State had presented updated information but it indicated that it is not possible to observe from such information "whether the investigation that ended in the acquittal [of Luis Alberto Perez Documet] was adequately carried out, considering the need to avoid the repetition of similar facts." It mentioned that it hopes the State "continues adopting all available measures to determine what happened and to impose the corresponding punishments as a mechanism to prevent new threats against the life and physical integrity of the beneficiaries." It clarified that, even though "the State ha[d] indicated that [this] proceeding refer[red] to seven incidents that occurred against the beneficiary between February 22, 1991 and June 1, 2005", from the documents forwarded by the State itself, it spring that this "case file was exclusively opened as a result of [the] attack suffered by Mr. Ramírez Hinostrroza on June 1, 2005", and

e) In relation to the attack of September 15, 2005, the State has informed likewise, on previous occasions, on the provisional filing of the respective proceeding on June 13, 2006 by the Office of the Second Provincial Prosecutor of La Molina- Cieneguilla and on new procedures to identify the responsible, but it has not informed on the specific results of such procedures.

24. The Commission repeated that the information furnished by the State does not allow doing an adequate follow-up of the provisional measures ordered and, to this end, it requested the Court to require the State to inform "on all the proceedings instituted on occasion [of] the numerous attacks and acts of harassment against the beneficiaries." Furthermore, it considered "that the risk situation in the life and physical integrity of the beneficiaries have not changed inasmuch as [...] they indicate that they continue being victims of constant threats, and for this reason the provisional measures should be maintained."

25. The Tribunal notes that a final judgment was entered in the main proceeding in which Mr. Ramírez Hinostrroza rendered his testimony on October 15, 2008, that is, more than one year ago (*supra* Considering clause 19.a). Therefore, the proceeding instituted as a result of the attacks that gave rise to these provisional measures is irrelevant.

26. In relation to the other proceedings instituted as a result of the attacks suffered by Mr. Ramirez Hinostrroza, the Court notes that three of them are closed, specifically those related to the facts that occurred on August 30, 2004; June 1, 2005 and September 15, 2005. Regarding the other proceeding, related to the incident of March 13, 2004, there is no updated information (*supra* Considering clauses 19, 21 and 23).

27. Regarding said investigations, it is appropriate to recall that Article 1(1) of the Convention embodies the general duty of States Parties to respect the rights and liberties recognized in said treaty and to ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms. In consequence, regardless of the existence of specific provisional measures, the State is specially obliged to guarantee the rights of the people in situation of risk and must expedite the investigation necessary to shed light on the facts, followed by the consequences established by the appropriate legislation. For such investigation, the State in question must make its best efforts to determine all the facts surrounded the threat and how they were expressed; to determine whether there exist a pattern of threats against the beneficiary or the group or entity to which he belong; to determine the purpose or end of the threat and to determine who are responsible for the threat and, if applicable, punish them.⁶ Now, the Tribunal has previously mentioned that the alleged lack of investigation from the State does not constitute, *per se*, circumstances of extreme gravity and urgency that calls for the continuance of provisional measures. In addition, the duty to investigate, sometimes, may extend in time, during which the threat or risk may not necessarily be extreme or urgent. Finally, this Court has stated that the analysis of effectiveness of the investigations and proceedings in relation to the facts that lead to the provisional measures correspond to the examination of the merits of the case. In sum, the failure to comply with the duty to investigate even though is reprehensible, it is not *per se* a valid reason to keep the provisional measures.⁷

28. In addition, in relation to the arguments of the representatives regarding the alleged irregularities in the conduct of the criminal proceeding in which Mr. Ramirez Hinostrroza rendered a testimony, and in the investigations on the facts that gave rise to these measures (*supra* Considering clause 21.a), the Tribunal recalls that, before a request for provisional measures, the Court needs to consider only those arguments which relate strictly to the extreme gravity and urgency and the necessity to avoid irreparable damage to persons. Such other issues can only be analyzed and decided by the Court during the consideration of the merits of a contentious case.⁸

⁶ Cf. Case of Carpio Nicolle *et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights, of July 6, 2009; Considering clause twenty-four. Matter of *Liliana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 8, 2009, considering clause seven; and Case of the *Integrantes del Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP)*, Case of *Plan of Sánchez Massacre*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 8, 2009, Considering Clause sixteen.

⁷ Cf. Case of Carpio Nicolle *et al.*, *supra* note 6, considering clause twenty four; and Matter of *Liliana Ortega et al.*, *supra* note 6, considering clause seventeen.

⁸ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 29, 1998; considering clause six; Matter of *Monagas Judicial Confinement Center ("La Pica")*; *Yare I and Yare II Capital Region Penitentiary Center*; *Penitentiary Center of the Central Occidental Region (Uribana Prison)* and *El Rodeo I and El rodeo II Capital Judicial Confinement Center*; *supra* note 2, considering clause five; and Matter of Guerrero Larez, *supra* note 2, considering clause sixteen.

29. Without detriment to the foregoing, the Tribunal also notes that the representatives have informed that Mr. Ramírez Hinostrroza was summoned to declare in another proceeding related to the alleged acts of torture to which he was a witness (*supra* Considering clause 22) and for that reason, the threats and acts of harassment against them would continue, "using illegal means to intimidate him, such as telephone calls and others", in order to prevent him from appearing to testify against the perpetrators of the crimes against humanity."

30. The Court does not have sufficient information regarding the alleged threats received that would be connected to this last proceeding in order to evaluate the persistence of the situation of extreme gravity and urgency and need to avoid irreparable damage to Mr. Ramírez Hinostrroza and his next-of-kin. In that respect, the Court recalls that if a State requests the rescission or modification of provisional measures ordered by the Tribunal, the State must present sufficient evidence and argument that would allow the Tribunal assessing that the risk or threat is no longer of extreme gravity and urgency to avoid irreparable damage. Moreover, the representatives of the beneficiaries who want the measures to continue shall present evidence of the reasons for it.⁹

31. In view of the foregoing and taking into account the temporary nature of the provisional measures and that such measures have been extended for more than four years, in order to assess the need to maintain them, it is essential for the representatives to forward, no later than March 17, 2010, updated and detailed information on: a) the progress made in the proceeding instituted before the Second Criminal Chamber of Lima, case file N° 733-08, in which Mr. Luis Alberto Ramírez Hinostrroza would be a witness, and the time limits established in the main procedural stages; b) the documentation proving the relation of Mr. Ramirez Hinostrroza in his capacity as witness to said proceeding and, c) the risk circumstances in the life and physical integrity of said beneficiary and his next-of-kin in relation to said proceeding. Specially, it is necessary for the representatives to forward detailed information and, if possible, to include evidence of the new acts of threats that Mr. Ramirez Hinostrroza would have suffered (*supra* Considering clause 22).

32. In relation to the beneficiaries Raúl Ángel Ramos De la Torre and César Manuel Saldaña Ramírez, counsels of Mr. Ramírez Hinostrroza, the Court recalls that they "pointed out that certain threatening events and situations had occurred that jeopardized [...] the commencement of the criminal proceedings conducted against Luis Pérez-Documet, retired general, for the crime of kidnapping against Luis Alberto Ramírez-Hinostrroza"¹⁰, and that it was precisely for such reason that the Tribunal considered, on said occasion, "[...] *prima facie* that said individuals were in a situation of extreme gravity and urgency." The Tribunal already noted that said proceeding is closed (*supra* Considering clause 25). Moreover, the Court has not received, in more than a year, information on the facts that would suggest that there is a still a situation that calls for the enforcement of provisional measures, or that the capacity as witness of Mr. Ramirez Hinostrroza in the new proceeding had resulted in a situation of extreme gravity and urgency in relation to his counsels.

⁹ Cf. Case of *Carpio Nicolle et al.*, *supra* note 6, considering clause eighteen; Case of *Helen Mack Chang et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of November 16, 2009, considering clause five; and Case of the *Integrantes del Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP)*, Case of Plan de Sánchez Massacre, *supra* note 6, considering clause five.

¹⁰ Cf. Matter of Ramírez Hinostrroza *et al.* Provisional Measures regarding the Republic of Peru. Order of the Inter-American Court of Human Rights of May 17, 2007; Considering Clause eleven.

33. The Court acknowledges that the lack of threats does not necessarily imply that there exist no risks for a person. However, if a certain amount of time elapses without any threats, the Tribunal has to analyze, if possible, the causes of said absence of threats to determine whether it is appropriate to maintain the provisional measures, taking into account that they should be of a provisional and temporary nature.¹¹ The Court notes that the representatives, since the last time they informed on the threats against them, have forwarded information to the Tribunal on the situation of Mr. Ramírez Hinostrroza and his next-of-kin on, at least, five occasions, but that on none of those times they have indicated the existence of particular risk situations against them. Therefore, the Court deems necessary for the representatives to forward, within the term previously established (*supra* Considering clause 31), updated and detailed information to the Court in order to evaluate whether the situation of extreme gravity and urgency that may cause irreparable damage against them still exists.

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34. The representatives have stressed “the systematization of the State in trying to discredit the behavior of Mr. Luis Alberto Ramirez Hinostrroza before the Peruvian and the international society”, by means of the filing of a series of criminal complaints against him, whose primary focus is “the description of the anti-social behavior of the [alleged] victim of torture [by means of] false accusations.” They further alleged that, “a conspiracy has been organized to confine [Mr.] Ramirez Hinostrroza [...] to a penitentiary center of this city, in order to execute him in an alleged brawl among inmates of the penitentiary facility or in another way.” They requested the Court to recommend to the State to “change the inhumane attitude of the National Police in charge of providing protection to the victim and the family in order to avoid [alleged] false accusations.”

35. Regarding the alleged “systematic police harassment” engaged by means of criminal complaints against Mr. Ramirez Hinostrroza, Peru pointed out that said statement “is fully faked, since the police personnel have not been engaged in any act of harassment [...].” What happens is that the [beneficiary], in order to avoid his personal security, of his own free will, is involved in a series of acts against the legal system and outside the law.”

36. In relation to the status of the main criminal proceedings instituted against Mr. Ramirez Hinostrroza, the State indicated:

a) In relation to case-file N° 2007-2671- 0- 1501-JR- PE- 01 of the First Criminal Trial Court of Huancayo, for the alleged crime of “attempted murder *et al.*” to the detriment of Fernando Wilfredo Flores León, that the Second Criminal Chamber of Junin, by means of Resolution N° 32 of August 25, 2008, according to the request made by the Superior Public Prosecutor’s Office, extended the preliminary stage 45 days. Furthermore, the First Criminal Trial Court of Huancayo, by means of Resolution N° 33 of September 22, 2008, “ordered to extend the term of the investigations to 45 days, and established October 30, [2008] as date for the discovery statement of the accused”;

¹¹ Cf. Case of Carpio Nicolle, *supra* note 6, considering clause nineteen; and Matter of *Lilliana Ortega et al.*, *supra* note 6, considering clause forty.

b) In relation to case file N° 2008-00169-0-1501-JR-PE-01 of the Fifth Criminal Trial Court of Huancayo, for the alleged crime of inflicting bodily harm to the detriment of Braulio Chayña Ruelas, that the case was under preliminary investigation, having been ordered, by means of Resolution of January 23, 2007, to broaden the scope of the preliminary investigations in order to carry out the corresponding procedures "due to the fact that the first investigation produced unsatisfactory results and, moreover, that the defendant has questioned the performance of the people in charge of the investigation";

c) In relation to case file N° 2007-00765-0-1501-JR-PE-07 of the Seventh Criminal Trial Court of Huancayo, that Mr. Ramirez Hinostroza was sentenced to ten years' imprisonment for the alleged crime of "extortion" to the detriment of Héctor Capcha Canchaya, by means of judgment of December 21, 2008. Peru asserted that during said criminal proceeding, "the guarantees of due process have been complied with and [that said proceeding was] conducted taking into account the domestic legal system" and "based on reasonable and valid procedural grounds." Afterwards, it informed that on February 17, 2009 the Criminal Chamber on duty of the Superior Court of Justice of Junin annulled the judgment that convicted Mr. Ramirez Hinostroza and ordered "his immediate release", and

d) That there exist other proceedings according to the following statements: N° 115-VIII-DIRTEPOL-RPJ-CT-SEINCRI, of September 29, 2005, for the Crime against the Public Administration, causing subsequent injuries to a police officer and damaging a police Vehicle; N° 76-06-VII-DIRTEPOL-RPNPJ-CSJ-A/SEINCRI, of September 1, 2006, for the Crime against Public Safety – Endangerment, Illegal Weapons Possession and N° 174-2006-VIII-DIRTEPOL-RPJ-CT-SEINCRI, of October 23, 2006, for the Crime against Property- Aggravated Robbery.

37. As to the proceedings instituted against Mr. Ramirez Hinostroza, the representatives informed:

a) In relation to case file N° 2007-2671-0-1501-JR-PE-01 of the First Criminal Trial Court of Huancayo, for the alleged crime of "attempted murder *et al.*" to the detriment of Fernando Wilfredo Flores León, that it is a false complaint and a "reaction [of the State] towards the complaint filed by the President of the Board of Directors of *Asociación de Familiares de Detenidos Desaparecidos, Ejecuciones Extrajudiciales y Torturados* regarding the [conduct] of the police officers in charge of the protection of Luis Alberto Ramirez Hinostroza and his family." They pointed out that the "the time limit of the case file has been extended up to the moment";

b) In relation to case file N° 2008-00169-0-1501-JR-PE-01 of the Fifth Criminal Trial Court of Huancayo, for the alleged crime of inflicting bodily harm to Braulio Chayña Ruelas, that by means of judgment of August 15, 2008 the Fifth Criminal Trial Court of Huancayo acquitted Mr. Ramirez Hinostroza of the crimes brought against him. However, as a result of the motions of appeal filed by the aggrieved party and the Public Prosecutor's Office, the members of the First Criminal Chamber of the Superior Court of Justice of Junin annulled said judgment. They further asserted that the first instance judgment had taken into account a series of irregularities and that, by the time of the alleged attack, Mr. Ramirez Hinostroza was resting at this house with his family;

c) In relation to the case file N° 2007-00765-0-1501-JR-PE-07 of the Seventh Criminal Trial Court of Huancayo, for the alleged crime of “extortion” to the detriment of Héctor Capcha Canchaya, that Mr. Ramirez Hinostroza was confined “to a penitentiary center of Huamancaca Chico [of Huancayo], without having the court hearing the case assessed several documents [presented]” or the statement rendered by a witness. They further alleged that, in this proceeding, the right to due process was violated to the detriment of Mr. Ramirez Hinostroza and that the judgment of the Superior Court of Junin, which overturned the condemnatory judgment against Mr. Ramirez Hinostroza, “proved that the judges of the [t]rial [c]ourt [...] have committed a series of irregularities [and behaved improperly], under the influence of the Police Commander, which have resulted in procedural defects.” Then, they further alleged that on September 15, 2009 the Seventh Trial Court Specialized in Criminal Matters of Huancayo entered Judgment N° 204-2009, by means of which it acquitted Luis Alberto Ramirez Hinostroza of the crime of extortion, and

d) In relation to the statement made as to case file N° 115-VIII-DIRTEPOL-RPJ-J-CT-SEINCRI of September 29, 2005, for the Crime against the Public Administration, causing injuries to a police officer and damaging a police vehicle, that an investigation has been carried out against Antonio Ramirez Hinostroza (brother of Luis Alberto). In relation to case file N° 76-06-VII-DIRTEPOL-RPNPJ-CSJ-A/SEINCRI of September 1, 2006, for the Crime against Public Safety-Endangerment, Illegal Weapons Possession, Mr. Ramirez Hinostroza had appeared to render a statement and complied with the mandates of the court, and they pointed out that “such facts were made up by the National Police of Peru.” Finally, regarding case file N° 174-2006-VIII- DIRTEPOL-RPJ-CT-SEINCRI, of October 23, 2006, for the Crime against Property- Aggravated Robbery, it is against José Noé Ramirez Hinostroza (brother of Luis Alberto).

38. The Commission took note of the fact that a domestic court decided to overturn the judgment that had sentenced Mr. Ramirez Hinostroza to ten years’ imprisonment and ordered his release.

39. The Court notes that criminal investigations have been conducted against Mr. Ramirez Hinostroza and that the representatives alleged that such investigations are not sufficiently substantiated and that they consist of reprisals against him (*supra* Considering clauses 34 and 37).

40. The Tribunal does not have further evidence regarding the alleged act of harassment committed against Mr. Ramirez Hinostroza and, moreover, it is not appropriate, in the procedure related to the implementation of these provisional measures, to conduct a consideration on the merits in order to decide whether the criminal investigations comply with the law or, on the contrary, are not in line with the provisions of the American Convention (*supra* Considering clause 28).

41. Without detriment to the foregoing, the Court notes that in one of these proceedings, related to an alleged extortion for the sum of thirty new soles (equivalent, approximately, to ten dollars of the United States of America), a trial court, based on the statement rendered by only one person, who had not witnessed the incident and without any statement rendered by the alleged aggrieved party or other witnesses, sentenced

Mr. Ramirez Hinostroza to ten years' imprisonment. Said conviction was overturned by the Criminal Chamber on duty of the Superior Court of Justice of Junin, by means of court order of February 17, 2009. In such decision, the Chamber determined that during the preliminary stage, several proceedings were not carried out, which "made impossible to rule on the merits" and therefore, it ordered the conduct of them. As a result of said judgment set-aside, a new judgment was entered on September 15, 2009, which acquitted Mr. Ramirez Hinostroza.

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42. Based on the foregoing considerations, the Court deems essential for the representatives to forward, within the term established in this Order, the specific and detailed information requested (*supra* Considering clauses 31 and 33) in relation to the situation of the beneficiaries of the provisional measures. Upon receipt of such information, the State and the Commission shall have the opportunity to present the observations they deem reasonable within the term indicated in operative paragraph three hereof.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

By virtue of the authority granted by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31 of the Rules of Procedure,

DECIDES:

1. To order the State of Peru to maintain the measures it had adopted and to adopt, forthwith, the measures that are necessary to protect the life and physical integrity of Mr. Luis Alberto Ramirez Hinostroza, of his wife Susana Silvia Rivera Prado and of his three daughters, Yolanda Susana Ramirez Rivera, Karen Rose Ramirez Rivera and Lucero Consuelo Ramirez Rivera, as well as of Mr. Raúl Angel Ramos De la Torre and César Manuel Saldaña Ramírez.

2. To require the representatives to submit to the Inter-American Court of Human Rights the information indicated in Considering clauses 31 and 33 of this Order, no later than March 17, 2010.

3. To require the Inter-American Commission on Human Rights and the State of Peru to forward the observations to the information that shall be submitted, in accordance with the preceding operative paragraph, no later than April 16, 2010.

4. To require the State of Peru to continue informing the Inter-American Court of Human Rights, every three months, as of the date indicated in operative paragraph three, on the compliance and implementation of the measures indicated in operative paragraph one of this Order.

5. To require the representatives of the beneficiaries and the Inter-American Commission of Human Rights to present their observations to the quarterly reports of the State, within the term of four and six weeks, respectively, as of their reception.

6. To repeat to the State of Peru to allow the participation of the beneficiaries' representatives in the planning and implementation of the protective measures and to, in general, keep them informed on the progress of such measures.

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

Leonardo A. Franco
Acting President

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Leonardo A. Franco
Acting President

Pablo Saavedra Alessandri
Secretary