

**Order of the
Inter-American Court of Human Rights**

February 4, 2010

**Provisional Measures
Regarding Venezuela**

Matter of Eloisa Barrios et al.

Having Seen:

1. The Orders of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, “the Court”, or “the Tribunal”) issued on November 23, 2004 and June 29 and September 22, 2005. Through the latter, the Court resolved to:

1. Reiterate the Orders of the Inter-American Court of Human Rights of November 23, 2004 and June 29, 2005 in favor of the beneficiaries of the [...] provisional measures.
2. Reiterate to the State the disposition that it maintain the measures it has adopted and to immediately issue those necessary to effectively protect the life and personal integrity of Mrs. Eloísa Barrios, Inés Barrios, Beatriz Barrios, and Carolina García, and of Messrs. Pablo Solórzano, Caudy Barrios, Oscar Barrios, Jorge Barrios, and Juan Barrios.
3. Require that the State expand, without delay, the measures necessary to protect the life and personal integrity of the following people: Roni Barrios, Roniex Barrios, and Luis Alberto Barrios; Yelitza Lugo Pelaes, Arianna Nazaret Barrios, and Oriana Zabaret Barrios; Víctor Cabrera Barrios, Beatriz Cabrera Barrios, Luimari Guzmán Barrios, and Luiseydi Guzmán Barrios; Wilmer José Barrios, Génesis Andreina Barrios, Víctor Tomas Barrios, and Geilin Alexandra Barrios; Elvira Barrios, Darelvis Barrios, Elvis Sarais Barrios, Cirilo Robert Barrios, and Lorena Barrios.
4. Require that the State provide the permanent protection measures necessary to provide security to the home of Mrs. Orismar Carolina Alzul García, in the terms of considering clause number seventeen of the [...] Order.
5. Require that the State guarantee and effectively implement the conditions necessary so the members of the Barrios family, who have been forced to move to other regions of the country, be able to return to their homes.
6. To require that the State inform the Inter-American Court of Human Rights on the measures it has adopted in compliance of the [...] Order no later than October 24, 2005, when it shall provide details on the facts that occurred with regard to Messrs. Juan Barrios and Caudy

Barrios, as well as the measures it is adopting in order to avoid acts that threaten the life or personal integrity of the beneficiaries of [the] provisional measures.

[...]

2. The Order of the President of the Court (hereinafter "the President") of December 18, 2009, through which it summoned to a hearing to listen to the updated and detailed information from the Republic of Venezuela (hereinafter "Venezuela" or "the State"), as well as the observations of the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") and of the representatives of the beneficiaries of the measures (hereinafter "the representatives") regarding: a) the alleged "extrajudicial execution" of Oscar Barrios and the diligences made by the State in this sense; b) the implementation of the measures ordered by the Court, and c) the implementation of the necessary permanent measures of protection to offer security to the homes of Maritza Barrios, Orismar Carolina Alzul García, and Juan Barrios.
3. The briefs of the representatives of January 21 and 28, 2010, through which they forwarded their observations to the implementation of said provisional measures.
4. The arguments of the parties at the public hearing regarding the present provisional measures held on January 28, 2010, at the seat of the Tribunal.¹

Considering that:

1. Venezuela is a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since August 9, 1977 and it acknowledged the Court's contentious jurisdiction on June 24, 1981.
2. 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. Likewise, the three conditions described must persist for the Court to be able to maintain the protection ordered. If one of them is no longer valid, the Tribunal shall assess the appropriateness of continuing with the protection ordered.²
3. Based on its jurisdiction, within the framework of provisional measures the Court shall only consider arguments related strictly and directly to the extreme gravity, urgency, and need to avoid irreparable damage to people. As such, in order to decide whether the provisional measures should continue, the Tribunal shall analyze if the situation of extreme gravity and urgency that determined their adoption persists, or if new circumstances equally

¹ The following appeared at said hearing, for the Inter-American Commission: Lilly Ching and Silvia Serrano, advisors; for the representatives of the beneficiaries of the provisional measures: Viviana Krsticevic and Francisco Quintana, and for the State: German Saltrón Negretti, State Agent; Jesús Arias, Advising Minister and Head of Commercial Matters of the Embassy of Venezuela in Costa Rica and Javier Gómez, Advisor of the Embassy of Venezuela in Costa Rica.

² *Case of Carpio Nicolle*. Provisional measures regarding Guatemala. Order of the Court of July 6, 2009, Considering clause fourteen; *Matter of Guerrero Larez*. Provisional measures regarding Venezuela. Order of the Court of November 17, 2009, Considering clause ten, and *Case of the La Rochela Massacre*. Provisional Measures regarding Colombia. Order of the Court of November 19, 2009, Considering clause fourteen.

grave and urgent call for maintaining them. Any other matter may only be brought before the Court through contentious cases.³

4. Pursuant with the Orders of the Inter-American Court of November 23, 2004 and June 29th and September 22, 2005 (*supra* Having Seen paragraph 1) the State shall, *inter alia*, adopt the provisional measures with the object of: a) protecting the life and personal integrity of the beneficiaries;⁴ b) offering the permanent protection measures necessary to provide security to the homes of Maritza Barrios, Juan Barrios, and Orismar Carolina Alzul García; c) guaranteeing and implementing in an effective manner the conditions necessary so the members of the Barrios family, who have been forced to move to other regions of the country, may return to their homes, and d) investigating the facts that motivated the adoption and the maintenance of these provisional measures.

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5. Based on that stated in the Order of the President of December 18, 2009, and taking into consideration the information presented by the parties at the public hearing held on January 28, 2010, the Court will refer to the following aspects with regard to the implementation of the provisional measures in the present matter.

A) On the situation regarding the alleged “extrajudicial execution” of Oscar Barrios and the diligences the State has carried out in this regard

6. At the hearing, and through a brief presented on January 28, 2010, the representatives of the beneficiaries stated that the Tribunal was “informed a few days after his execution,” of the death of Oscar Barrios,⁵ but that despite reiterated requests for information by the Court, the State had not presented observations in this regard. Likewise, they indicated that up to this date Oscar Barrios’s next of kin were not aware of diligences carried out by the State. They expressed their fear that this situation could result in the disappearance of evidence, and they indicated that “in similar cases, including those of other members of the Barrios family, it is precisely the lack of evidence and force of the investigations that led at the end of the day to acquittals.”

³ *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 20, 1998, Considering clause six; *Matter of the Penitentiary Center of the Central Occidental Regional: Uribana Prison.* Provisional Measures regarding Venezuela. Order of the Court of November 24, 2009, Considering clause five, and *Matter of the Urso Branco Prison.* Provisional Measures regarding Brazil. Order of the Court of November 25, 2009, Considering clause four.

⁴ Eloisa Barrios, Inés Barrios, Beatriz Barrios, Orismar Carolina Alzul García, Pablo Solórzano, Caudy Barrios, Oscar Barrios, Jorge Barrios, Juan Barrios, and Maritza Barrios; Roni Barrios, Roniex Barrios, Luis Alberto Barrios, Yelitza Lugo Pelaez, Arianna Nazaret Barrios, Oriana Zabaret Barrios, Víctor Cabrera Barrios, Beatriz Cabrera Barrios, Luimari Guzmán Barrios, Luiseydi Guzmán Barrios, Wilmer José Barrios, Génesis Andreina Barrios, Víctor Tomas Barrios, Geilin Alexandra Barrios, Elvira Barrios, Darelvis Barrios, Elvis Sarais Barrios, Cirilo Robert Barrios, and Lorena Barrios.

⁵ Through the brief of December 2, 2009, the representatives informed the Court that “on November 28, 2009, the teen Oscar Barrios [of 22 years of age], beneficiary of the present provisional measures, was executed by alleged officials of the Police of the State of Aragua.” Through the brief of December 4, 2009, the Commission expressed “its deep concern for the murder of Oscar Barrios on [...] November 28, 2009.” The State did not present observations regarding the alleged extrajudicial execution of Oscar Barrios, despite the fact that the forwarding of its observations were requested and reiterated by this Court on several occasions.

7. At the public hearing, the Commission expressed that it was difficult to accept that the State indicated as “the death of five members of [the Barrios] family was what correspond[ed] to abuse of authority.”

8. At the public hearing the State informed that the Fourteenth Public Prosecutors’ Office of the State of Aragua, under the responsibility of attorney Guillermo José Raven Freite, started the corresponding investigations. Interviews have been carried out with the next of kin of the deceased, and the statement of a referential witness of the investigated fact has been taken, but this has not led to the identification of the perpetrators or participants in the criminal act. Therefore, the investigation is currently in its initial phases.

B) On the general situation of the beneficiaries and the implementation of the measures ordered by the Court

9. In their brief of January 21, 2010, the representatives informed that on January 12, 2010, a meeting was held at the headquarters of the Victim’s Attention Unit, annexed to the Superior Office of the Prosecutor of the Public Prosecutors’ Office in the State of Aragua, with the purpose of evaluating the situation of Víctor Cabrera Barrios and the implementation of the measures of protection. However, the representatives stated that “the actions of the State of Venezuela are redundant in regards to the holding of work meetings [...] given that each time the Commission or [t]he Court summon hearings with the only purpose of proving interest in the compliance with the measures[, and] once the hearings are held, [...] the criminal investigations and the trials are paralyzed once again [and that] the measures of protection, each time, seem further in sight of satisfying their purpose.” Likewise, the representatives criticized the fact that at said meeting they only discussed the implementation of the measures for Víctor Cabrera Barrios, but in regards to the other members, they only received negative replies from the State. In that sense, the representatives indicated that the State “continue[d] to fail to comply with the stipulations of the orders of the Court in regards to the implementation, evaluation, and supervision of the measures of protection.”

10. At the public hearing and through a brief presented on January 28, 2010, the representatives stated that despite the meeting held on January 12, 2010, “up until now, none of the things offered has been complied with[, given that the] lack of coordination between the public organizations and the apathy make it impossible for the State [...] to assume with dedication and care, the implementation of the urgent and necessary measures that guarantee and protect the lives and assets of the beneficiaries.” The representatives referred to the situation and condition of delicate health of several of the beneficiaries⁶ and expressed their specific concern for the emotional state of Mrs. Elvira Barrios, which, as a result of the death of her son Oscar Barrios, has deteriorated so severely that she has gone as far as to attempt suicide twice. Subsequently, the representatives filed a series of proposals with the objective of achieving “the full coordination so as to guarantee effective protection” and they handed over a list with the addresses of the members of the Barrios family in order to ease the implementation of the measures in favor of all the beneficiaries.

⁶ Elvira Barrios, Maritza Barrios, Oneida Barrios, Eloisa Barrios, Pablo Solórzano, Juan Barrios, Caudi Barrios, and Víctor Barrios.

11. At the public hearing the Commission expressed its “profound disappointment” in the involvement of the hearing given the State’s lack of preparation and the useless information presented. Additionally, it made reference to the failures in the implementation of the protection measures by the State: partial and insufficient visits, absence of measures to guarantee the return of the next of kin who were forced to move and the lack of participation of all the beneficiaries in the meetings for the implementation of these measures. Therefore, the Commission concluded that it is necessary to create a “form of dialogue [...] in the presence of state officials who have decision-making power” and it demanded the implementation of measures for the effective protection of the life and personal integrity of the beneficiaries, the participation of the beneficiaries in the design of said measures, the investigation of the facts that resulted in the measures, and for the State to inform on the status of compliance regarding the same.

12. At the public hearing, the State acknowledged that there are problems in the implementation of said measures, but it reiterated its willingness to comply with them. However, it insisted that the implementation must be carried out in strict compliance with the “Law for the protection of victims, witnesses, and other procedural subjects” of October 4, 2006.

C) On the implementation of the permanent measures of protection necessary to offer security to the homes

13. At the hearing and through a brief filed on January 28, 2010, the representatives stated that the permanent protection measures at the homes of Maritza Barrios, Juan Barrios, and Orismar Carolina Alzul García “were not effectively implemented.” However they agreed to lift these special measures in order to implement the provisional measures “pursuant with the parameters [...] stated [in their brief of January 28, and] with the condition that the executors and supervisors be officials specialized in guarding and custody of people.” Thus, the representatives handed over a list with the addresses of the members of the Barrios family who reside in the State of Aragua, in order to achieve the best implementation of the measures.

14. At the public hearing the Commission reiterated the State’s deficiencies in the implementation of the protection measures and demanded their implementation for the effective protection of the life and personal integrity of the beneficiaries.

15. At the public hearing, the State did not present updated information regarding the state of compliance with said measures. However, it stated that the beneficiaries had not collaborated enough, since they had not provided the correct home addresses or informed of a change in the same to the state authorities, or they had refused to provide the address of their homes, arguing fear and lack of trust in the police agents, and that, therefore the State had not been able to comply with the measures, despite having the best intention of doing so. Likewise, it stated that it was “impossible to coordinate and guarantee [the protection of 28 homes]” and that, in that case, they would have to “place all the people at a single location, or two [...] or three,” or, if necessary, move them to out of Aragua and to a distinct state. Finally, the State expressed its willingness to consider the proposals made by the representatives and to continue its dialogue with them.

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16. The Court has verified that according to the information presented by the parties (*supra* Considering clauses 6 through 15), since the time the provisional measures came into effect, the beneficiaries of the measures have continued to be the object of acts of harassment, intimidation, and other situations that put their life and personal integrity at risk or have affected them. Therefore, this Tribunal considers that there is a situation of extreme gravity and urgency that puts in grave risk the life and integrity of the beneficiaries of the present measures.

17. Specifically, this Tribunal considers that the death of another beneficiary, Oscar Barrios, is a clear indication of the lack of effective implementation of the provisional measures. This necessarily implies the State's failure to comply with the measures ordered by the Court, whose main purpose is the effective protection and preservation of the life and personal integrity of the members of the Barrios family.⁷ This death is an extremely grave fact that the Tribunal regrets.

18. In this sense, the Court considers that the State has not effectively adopted the provisional measures ordered by this Tribunal in its previous Orders (*supra* Having Seen paragraph 1). Due to the gravity of the situation of the members of the Barrios family, proven by the most recent facts provided by the representatives and the Commission, it is necessary to reiterate the requirement made to the State, to immediately and effectively adopt all the measures necessary to guarantee the full exercise of the rights to life and humane treatment of the members of the Barrios family, to avoid and stop the threats and harassment, as well as to allow the beneficiaries to lead a normal life without fear.

19. In addition to the aforementioned, this Tribunal observes that the State has failed to duly inform on the implementation of the measures for the protection of the life and personal integrity of the beneficiaries of the provisional measures issued by the Court, nor has it informed on whether these measures have been effective in protecting those rights, or if the representatives have been able to participate in the implementation of the measures. Nor has it offered updated and detailed information on the investigations ordered by the Court (*supra* Considering clauses 9 and 15).

20. In this regard, the Court considers it appropriate to reiterate that the States Party to the American Convention are required to guarantee compliance with the provisions thereof and their effects (*effet utile*) within their own domestic laws. This principle is applicable not only to the substantive provisions of human rights treaties (*i.e.* those dealing with protected rights) but also to procedural rules, such as those concerning compliance with the decisions of the Court. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁸

⁷ Cfr. *Case of the Jiguamiandó and Curbaradó Communities*. Provisional measures regarding Colombia. Order of the Court of February 7, 2006, Considering clause twenty-one.

⁸ Cfr. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Bámaca Velásquez*. Provisional Measures regarding Guatemala. Order of the Court of January 27, 2009, Considering clause six, and *Case of 19 Tradesmen*. Provisional Measures regarding Colombia. Order of the Court of July 8, 2009, Considering clause five.

21. In this sense, the States Parties to the Convention who have acknowledged the Court's contentious jurisdiction have the duty to comply with the obligations established by the Tribunal. This obligation includes the State's duty to inform the Court of the measures adopted in compliance of that ordered by the Tribunal in those decisions.⁹ For its effective compliance, the duty to inform constitutes an obligation which requires the formal presentation of a document within the established time period and the specific, certain, real, and detailed reasons for said obligation.¹⁰ The timely observance of the State's obligation to inform the Tribunal of how it is complying with each of the matters ordered by the latter is fundamental in evaluating the status of compliance with the Judgment as a whole.¹¹

Therefore:

The Inter-American Court of Human Rights,

pursuant to the authority conferred by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31 of the Rules of Procedure,

Resolves to:

1. Declare that the death of the beneficiary Oscar Barrios denotes the State's failure to comply with an effective implementation of the provisional measures ordered by this Court.
2. Maintain the provisional measures ordered by the Inter-American Court of Human Rights through its Orders of November 23, 2004 and June 29th and September 22, 2005.
3. Reiterate to the State that it shall maintain the measures it has adopted and immediately issue those necessary to effectively protect the life and personal integrity of the beneficiaries of the present provisional measures.
4. To reiterate to the State that it shall offer the permanent measures of protection necessary to offer security to the homes of Maritza Barrios, Juan Barrios, and Orismar Carolina Alzul García, without detriment to the possibility to allow the parties to agree on

⁹ *Case of Barrios Altos v. Peru*. Monitoring Compliance with Judgment. Order of the Court of November 17, 2004, Considering clause seven; *Case of Cantoral Benavides v. Peru*. Monitoring Compliance with Judgment. Order of the Court of November 20, 2009, Considering clause twenty, and *Case of Ivcher Bronstein v. Peru*. Monitoring Compliance with Judgment. Order of the Court of November 24, 2009, Considering clause seven.

¹⁰ *Cfr. Matter of Liliana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Court of December 2, 2003, Considering Clause number twelve; *Case of the Mapiripán Massacre*. Provisional Measures regarding Colombia. Order of the Court of May 3, 2008, Considering clause ten, and *Matter of Lysias Fleury*. Provisional Measures regarding Haiti. Order of the Court of November 25, 2008, Considering clause eight.

¹¹ *Case of Five Pensioners v. Peru*. Monitoring Compliance with Judgment. Order of the Court of November 17, 2004, Considering clause five; *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Monitoring Compliance with Judgment, Order of the Court of November 19, 2009, Considering clause seven, and *Case of Ivcher Bronstein*, *supra* note 9, Considering clause seven.

more comprehensive provisional measures within the framework of the dialogue between the beneficiaries and the State.

5. Require that the State guarantee and implement in an effective manner the conditions necessary for the members of the Barrios family, who were forced to move to other regions of the country, to return to their homes.

6. Require that the State inform the Inter-American Court of Human Rights of the measures adopted in compliance with the present Order, no later than March 18, 2010, when it shall offer details regarding the facts that occurred in relation to Mr. Oscar Barrios, as well as the measures it is adopting in order to avoid acts that may threaten the life or personal integrity of the beneficiaries of these provisional measures.

7. Require that the representatives of the beneficiaries of the measures, present to the Inter-American Court of Human Rights within a two-week period as of the notification of the State's report, the observations considered appropriate.

8. Require that the Inter-American Commission of Human rights, present to the Inter-American Court of Human Rights within a four-week period as of the notification of the State's report, the observations considered appropriate.

9. Reiterate to the State that it continue informing the Inter-American Court of Human Rights every two months regarding the provisional measures adopted, and to require that the beneficiaries of these measures or their representatives present their observations within a four-week term as of the notification of the State's report, and that the Inter-American Commission of Human Rights present its observations to said State reports within a six-week term as of its receipt.

10. Request that the Secretariat of the Court notify the present Order to the Inter-American Commission of Human Rights, the representatives, and the State.

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 Alesandri
Registrar

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Registrar