

**Order of the
Inter-American Court of Human Rights
May 28, 2010**

Request for Provisional Measures regarding Venezuela

Matter of COFAVIC

Case of the Caracazo

HAVING SEEN:

1. The brief of March 4, 2010, and its annexes, of the Center for Justice and International Law (hereinafter "CEJIL") and the Committee for Next of Kin of the Victims of the Events of February and March of 1989 (hereinafter "COFAVIC"), acting as the representatives (hereinafter, "the representatives"), by which they submitted before the Tribunal a request for provisional measures, in conformity with Articles 63(2) of the Inter-American Convention on Human Rights (hereinafter, "the American Convention" or "the Convention") and Article 27 of the Rules of the Court¹ (hereinafter "the Rules"), with the goal that Venezuela (hereinafter "the State" or "Venezuela") grant provisional measures in favor of "the representatives of the victims that make up the COFAVIC organization." Specifically, they indicated that the beneficiaries of the measures would be Ms. Aura Rosa Liscano, President of COFAVIC; Hilda Rosa Páez, Executive Secretary; Maritza Romero Castro, Administrator; Yris del Valle Medina, Substitute President; and Liliana Ortega, lawyer for the victims.
2. The facts alleged by the representatives, upon which the request for provisional measures was based, *inter alia*:
 - a) on June 23, 2009, in the webpage aporrea.org the "labor of COFAVIC was criticized for using international legal means;"
 - b) on September 2, 2009, Mr. Mario Silva, a member of the national leadership of the Socialist Party of Venezuela and host of the show "La Hojilla"– transmitted by the official television station of the State – signaled that "they are using COFAVIC [...] to accuse the president of criminalizing protests[,] of being a dictator." Also, he said that COFAVIC "tried to charge for all the indemnities, to charge for them and to keep a percentage for themselves;"
 - c) on September 21, 2009, the Prosecutor General of the Republic, "with the objective of criminalizing and disqualifying the victims, proceeded to read before the media [...] the declarations made by the next of kin of the victims" and questioned that the victims "sa[id] to the media things that they must have said to the [P]ublic [M]inistry." Altogether with that aforementioned, on March 1, 2010, Mr. Alejandro Castillo, Director of the Procedural Actions of the Public Ministry, expressed that "those who have not supported us are the members of COFAVIC;"

¹ Approved by the Court in its LXXXV Ordinary Period of Sessions held November 16-28, 2009

d) on September 22, 2009, Ms. Rubis Borjas, Ms. Marisol Montenegro and Ms. Laura Liscano, next of kin of the victims of the Caracazo, "received various calls to their cell phones from the alleged employees belonging to the Laboratory of Genetic Identification of the Body of Scientific, Criminal and Criminalist Investigations [...] with the goal that they appear before the Laboratory [...] to have samples of [DNA] taken[, nevertheless the] presumed employee that had made the reiterated calls had not wanted to full identify him/herself [...] and neither would agree to issue the information in writing." The same day, Ms. Fresia Ipinza, Director of the Civil Anticorruption Association Organized Popular Demand, "strongly reprimanded the victims grouped in COFAVIC accusing them of conspiracy, murderers and coup supporters;"

e) on November 27, 2009, it was indicated in the newspaper, the Orinoco Post, that Liliana Ortega and COFAVIC "received subvention from at least 30 powerful world institutions, [...but] they cheat by saying that the section that must be informed of its financing is under construction." On November 4, in the same newspaper, an article titled "Tourism of Human Rights" was published, that affirmed that the "supposed non-governmental organizations [...] will stand in line to denounce the violations of the Government of human rights. A complete delegation [...] will enjoy a week in the fall in the northeast of the United States, at the cost of the apparent defense of the rights of the citizens;"

f) On November 4, 2009, the Congresswoman Desiree Santos Amaral manifested that, within the framework of the holding of the 137th Period of Sessions of the Inter-American Commission, that "Cofavic (was)[t]here, an NGO that later converted into an anti-Chavez organism." In the same sense, on February 26, 2010, Ms. Gabriela Ramirez, the Ombudsman of Venezuela, manifested that "the [V]enezuelan [S]tate, as the spokesman of President Chavez, immediately assumes the responsibility for the facts and indemnifies the victims, only 44 victims were recognized in the report of a non-governmental organization recently made in opposition;"

g) on January 24, 2010, "in District 57 of the Metropolitan Police in the Police Training, the declarations of Liliana Ortega of COFAVIC published that day in the El Nacional and El Universal newspapers were read and highly criticized and criminalized by the Commanders before each troop[, where] she had talked about the grave impunity upon which rely the police employees who commit grave crimes against human rights," and

h) on the 25 and 26 of February and on March 1, 2010, the Prosecutor General of the Republic publically signaled that COFAVIC had not offered information pre mortem about the Caracazo victims required by the Public Ministry, for which it signaled that "if the persons voluntarily do not want to collaborate with the Public Ministry [...] they will [have] to do it by legislation means, and in agreement with the guidelines established by Law."

3. The arguments of the representatives to support their request for provisional measures, namely:

a) "the recent stigmatization to which the [representatives of COFAVIC] have been subject to, and the possibilities of raids, searches and judicial investigations that have been raised against them by the Prosecutor General of the Republic, a situation that affects in a grave and urgent manner the integrity of the members of said organization[...]. These attacks, as well as other acts of criminalization by the part of the high public employees has arisen in the framework of the [21] anniversary of

Caracazo and of the recent publication of the report [of the Inter-American Commission on Human Rights] about 'Democracy and Human Rights in Venezuela.'" They added that due to "[the] declarations the way is open so that COFAVIC can be the victim of actions against it, like for example, a raid or search of its headquarters or the formulation of accusations for the crime of obstruction of justice against the Board of Directors of COFAVIC, although no legal motives exist for it."

b) the fact that the Public Ministry affirms that the next of kin of the victims do not collaborate with the clarification of the facts "reveals once more the multiple mechanisms of impunity that prevail in this case, [... as well as] a policy of the State that criminalizes and harasses the defenders of human rights used including their organs of judicial investigation;"

c) that aforementioned "may generate in some sectors of the population manifestations of hostility toward the labor that this organization is [...] fulfilling;"

d) COFAVIC represents in total, 14 of the next of kin of the victims connected with the graves of the La Peste sector of the General South Cemetery, who have been submitted recently to questioning that is "re-victimizing by the employees of the Public Ministry," and

e) regarding the affirmations of the lack of collaboration with the Public Ministry, "COFAVIC has sent the information pre-mortem that it has of the victims in various occasions to the Public Ministry, to the Institute of Legal Medicine and to the Tribunals that heard the case," and that "the Inter-American Court sent all this information to the Ministry of Foreign Relations of Venezuela on July 5, 1999."

4. The communication of the Secretary of the Court (hereinafter "the Secretary") on March 9, 2010, through which, following the instructions of the President of the Court, granted a time period to the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") and to the State until March 17, 2010, to present their observations to the request for provisional measures (*supra* Having Seen 1). Through said communication of the Secretary of the Court of March 19, 2010, at the request of the Commission, it granted an extension for the presentation of the observations. Also, through communication of the Secretary of March 25, 2010, it reiterated to the State of the requirement to present its observations.

5. The brief of March 23, 2010, by which the Inter-American Commission sent its observations and signaled, *inter alia*, that:

a) signaled its profound preoccupation for the manifestations informed of by the representatives which reflect the lack of advances by the State in the clarification of the responsibility for the violations committed. In this sense, they signaled that the case of Caracazo is under the competence of the organs of the system since the year 1995, when the Commission began the processing of the case, and that the Court has been supervising the fulfillment of that ordered in the judgments of the merits and reparations of 1999 and 2002;

b) the information provided exemplifies the "closed attitude" to which some of the victims and their representatives are submitted in the framework of the process of exhumation and identification of the remains and bones of their next of kin, which is the objective of the supervision of compliance with judgment; that the State tries to impose

the procedural charges to whom they correspond, and that the rebellions of the state authorities may be considered as accusations that stigmatize the organization; and

c) stressed the importance of the work carried out in the society by the defenders of human rights.

6. The Communication of the State of April 9, 2010, by which they presented their observations and signaled, *inter alia*, that:

a) The Court must declare inadmissible the request for provisional measures, since they do not fulfill the requirements of extreme gravity and urgency, as was decided by the Court "in the Order of July 9, 2009, in the Case of *Liliana Ortega*," in which the circumstances narrated by the beneficiaries were identical to the arguments in the present request;

b) Of the declarations transcribed by the representatives "it is not possible to infer the intention of the State to criminalize the work carried out by the victims or to initiate legal actions against COFAVIC or its members." On the contrary, the Public Ministry has sustained that it owes security, guarantees and answers to the victims of the Caracazo "for which it has pursued the fulfillment of the Order of the Court of September 2009 in this case," and

c) "the information required by the Public Ministry does not contain information that prejudices or diminishes the reputation of the victims of the facts of Caracazo," but that, on the contrary, said information is requested to favor the victims that are represented, for which it cited diverse legislation about the professional secret, with the goal to show that they are not applicable to the present situation.

7. The brief of the representatives of May 20, 2010, though which they sent to the Court "additional information regarding the request for measures." Specifically, they signaled the presumed facts that happened during the month of April 2010, in the framework of the questioning made to the next of kin of the victims of *Caracazo* before the Hundred and Twenty-Seventh office of the Public Ministry, during which they referred that the authorities "are asking catch questions to the victims under the argument of identifying the remains of their loved ones regarding the actions of COFAVIC and of the lawyer Liliana Ortega." Also, that "the access to the case files of *Caracazo* has been denied to the lawyers of COFAVIC."

CONSIDERING THAT:

1. Venezuela is a State Party to the American Convention since August 9, 1977, and, in accordance with Article 62 of the Convention, it recognized the adjudicatory jurisdiction of the Court on June 24, 1981.

2. Article 63(2) of the American Convention provides 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 27 of the Rules of the Court:

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

[...]

3. In contentious cases before the Court, victims or alleged victims, or their representatives, may submit to it a request for provisional measures, which must be related to the subject matter of the case.

[...]

5. The Court, or if the Court is not sitting, the Presidency, upon considering that it is possible and necessary, may require the State, the Commission, or the representatives of the beneficiaries to provide information on a request for provisional measures before deciding on the measure requested.

4. That the Tribunal has noted that provisional measures are of a twofold nature: precautionary and protective.² The precautionary nature of provisional measures is connected to the framework of international adversarial cases. In this regard, the purpose and goal of said measures is to preserve the rights that are at risk until the dispute is settled. The purpose and goal is to guarantee the integrity and effectiveness of the decision on the merits, thus preventing the rights at issue from being infringed, a situation that may render the final decision innocuous or hamper its effective application. Hence, provisional measures enable the State concerned to comply with the final decision and, if applicable, to go ahead with the reparations so ordered.³ As regards the protective nature of provisional measures, this Court has pointed out that they are a true judicial guarantee of a preventive nature, since, inasmuch as they seek to avoid irreparable damage to persons, they protect human rights.⁴

5. In the present matter, the presumed beneficiaries – in the framework of the supervision of compliance with judgment of the Caracazo case - required the present provisional measures. For this reason, the Tribunal remembers that both, the protective dimension as well as the precautionary dimension, are necessary to comply with the three requirements consecrated in Article 63(2) of the Convention, with the effect of conceding the provisional measures that are requested, namely: i) "extreme gravity;" ii) "urgency," and iii) that it tries to "avoid irreparable damage to persons." These three conditions must coexist and must be present in every situation in which the intervention of the Tribunal is requested.⁵

6. Regarding gravity, for the effects of the adoption of provisional measures, the Convention requires it to be "extreme," meaning, that it is found in its most intense or elevated level. The urgent character implies that the risk or threat involved is imminent, which requires that the answer to remedy it be immediate. Finally, regarding the harm, there must

² Cf. *Case of Herrera Ulloa Vs. Costa Rica* ("La Nación" Newspaper). Provisional Measures regarding Costa Rica. Order of the Court of September 7, 2001, Considering fourth; *Matter of Cardona and others*. Provisional Measures regarding Colombia. Order of the Court of February 2, 2010, Considering thirteenth; and *Matter of Belfort Istúriz and others*. Provisional Measures regarding Venezuela. Order of the Court of April 15, 2010, Considering sixth.

³ Cf. *Case of Carpio Nicolle and others*. Provisional Measures regarding Guatemala. Order of the Court of July 6, 2009, Considering fourteenth; *Matter of Giraldo Cardona and others*, *supra* Note 2, Considering thirteenth; and *Matter of Belfort Istúriz and others*, *supra* Note 2, Considering sixth.

⁴ Cf. *Case of Herrera Ulloa v. Costa Rica* ("La Nación" Newspaper), *supra* Note 2, Considering fourth; *Matter of Giraldo Cardona and others*, *supra* nota 2, Considering thirteenth; and *Matter of Belfort Istúriz and others*, *supra* Note 2, Considering sixth.

⁵ Cf. *Case of Carpio Nicolle and others*, *supra* Note 3, Considering fourteenth; *Matter of Eloisa Barrios and others*. Provisional Measures regarding Venezuela. Order of the Court of February 4, 2010, Considering second; and *Matter of Belfort Istúriz and others*, *supra* Note 2, Considering seventh.

exist a reasonable probability that it will materialize and must not deal with goods or legal interests that can be repaired.⁶

7. Before a request for provisional measures, the Court cannot consider the merits of any argument that is not one of those strictly related with extreme gravity, urgency and necessity to avoid irreparable damage to persons. Any other matter can only be brought before the Court in a contentious case.⁷

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8. The Tribunal reiterates that the procedural burden to demonstrate prima facie the situation of extreme gravity and urgency to avoid irreparable damages falls upon the applicants that, in the present case, are the representatives.⁸

9. According to this Court, the alleged declarations of the public employees that would discredit and call into question the work of COFAVIC, could, for example, self-limit the exercise of the work of the defense of human rights. Nevertheless, the determination of this must be analyzed in the framework of the merits of a contentious case.

10. Regarding the allegation that the aforementioned declarations of public employees may cause judicial orders for raids and investigation that would compromise the integrity of the members of COFAVIC, the Tribunal observes that such orders of searching and investigation do not currently exist, but that this is a hypothesis and, therefore, the integrity of the beneficiaries is not currently threatened. In any event, the representatives – beyond their statements – have not accredited the causal nexus between such declarations and the eventual orders for raids and investigation as a consequence of such.

11. For that provided, the Tribunal considers that all the requirements demanded in Article 63(2) of the Convention and Article 27 of the Rules of the Court do not concur, so that the request for provisional measures submitted by the representatives must be declared inadmissible.

12. In addition, the Court finds that the relevant information issued by the representatives for the supervision of compliance with judgment of the *Judgment of Reparations and Costs of August 29, 2002, in the Case of Caracazo v. Venezuela* will be incorporated into the case file, to be evaluated altogether in the framework of the compliance of that ordered in its Judgment of the present case.

13. Finally, the Tribunal remembers that the States have the constant and permanent duty of complying with the general obligations that correspond to it under Article 1(1) of the Convention, of respecting the rights and liberties recognized in it and to guarantee their free

⁶ Cf. *Matter of the 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 Capital El Rodeo I & El Rodeo II Judicial Confinement Center* Provisional Measures regarding Venezuela. Order of the Court of November 24, 2009, Considering thirteenth; and *Matter of Belfort Istúriz and others*, *supra* Note 2, Considering eighth.

⁷ Cf. *Case of James and Others*. Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 29, 1998, Considering sixth; *Matter of Eloisa Barrios and others*, *supra* Note 5, Considering thirteenth; and *Matter of Belfort Istúriz and others*, *supra* Note 2, Considering ninth.

⁸ Cf. *Matter of Belfort Istúriz and others*. Provisional Measures regarding Venezuela, *supra* Note 2, Considering fifth.

and full exercise to each person subject to its jurisdiction.⁹ Specifically, the Court reminds that the States have the particular duty to protect those persons that work in non-governmental organizations, as well as to grant effective and adequate guarantees to the defenders of human rights so that they may freely carry out their activities, avoiding actions that limit or create obstacles for their work, because the work that they carry out constitutes a positive and complementary contribution to the efforts made by the State in virtue of its position of guarantor of the rights of persons under its jurisdiction.¹⁰

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

In use of the attributes conferred by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31 of the Rules of the Court,

RESOLVES:

1. To dismiss the request for provisional measures by the representatives.
2. To incorporate as an annex the respective documentation to the case file of the supervision of compliance of the Judgment of Reparations and Costs of August 29, 2002, in the case of the Caracazo v. Venezuela.
3. To require the Secretary to notify the present Order to the representatives, the Inter-American Commission on Human Rights and to the Bolivarian Republic of Venezuela.

⁹ Cf. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Court of January 15, 1988, Considering third; *Case of García Prieto and others*. Provisional Measures regarding El Salvador. Order of the Court of February 3, 2010, Considering fifteenth; and *Matter of Belfort Istúriz and others*. Provisional Measures regarding Venezuela, *supra* Note 2, Considering twenty-second.

¹⁰ Cf. *Case of the Mongas Judicial Confinement Center*. Order of the Inter-American Court of Human Rights of February 9, 2006, Considering fourteenth; *Matter of Fernández Ortega and others*. Provisional Measures regarding Mexico. Order of the Court of April 30, 2009, Considering sixteenth; and *Matter of Giraldo Cardona and others*. Provisional Measures regarding Colombia. Order of the Court of February 2, 2010, Considering fortieth.

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
Secretary

So ordered,

Diego García-Sayán
Presidente

Pablo Saavedra Alessandri
Secretary