

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 22, 2011**

PROVISIONAL MEASURES WITH REGARD TO HAITI

MATTER OF A.J. *ET AL.**

HAVING SEEN:

1. The Order of the then President of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) of August 24, 2009 (hereinafter “the Order of the President” or “Order for urgent measures”), in which she required the State to adopt, forthwith, all necessary measures to protect the life and personal integrity of A. J., J. L., Sterlin Joudain, Michelet Laguerre, Pierre Luc Sael and André Junior Laurore.

2. The Order of the Inter-American Court of Human Rights of September 21, 2009 (hereinafter “the Order on provisional measures), which ratified the Order of the President of the Court. It also expanded the provisional measures to protect the life and personal integrity of the next of kin of the beneficiaries Sterlin Joudain, Michelet Laguerre, Pierre Luc Sael and André Junior Laurore. However, the Court admitted this expansion of the measures to the said next of kin on a provisional basis, while awaiting further information on the individual situation, the existence, the nature, and the origin or source of risk.

3. The brief of October 6, 2009, in which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) advised, *inter alia*, of the decease of S. J., a relative of one of the beneficiaries, on September 28, 2009; before he died, he had indicated “that the men who beat him rebuked him for having sought help [...] in the case of the rape” of his relative. However, no request was made to expand the measures to other members of the family based on this fact.

4. The communication of October 16, 2009, whereby the Secretariat of the Court (hereinafter “the Secretariat”), on the instructions of the then President of the Court, reminded the State that the deadline for forwarding its report had expired on October 14, 2009, without the Secretariat of the Court having received the report. It asked the State to forward it as soon as possible.

* In the Order of August 24, 2009, the President of the Court considered it appropriate not to publish the identity of two of the beneficiaries of the urgent measures ordered, owing to the nature of the alleged violations reported and considering the age of one of them at the time of the facts. However, the State was informed of their names, confidentially, so that it could offer them the protection required in the Order. Furthermore, the President asked the representatives and the Commission for their opinion on the need to maintain the identity of these two individuals in any future decisions of the Court. The Inter-American Commission responded that “the confidentiality of their identity should be maintained as required by the President in her Order of August 24, 2009.”

5. The brief of October 28, 2009, in which the Inter-American Commission: (i) individualized the immediate next of kin of the representatives who “live under the same roof,” and for whom an expansion of the provisional measures had been requested (*supra* having seen paragraph 2), indicating that the violence has gradually been extended to individuals who, “although they were not involved directly in the matter, are related to the beneficiaries in some way”; (ii) advised that “a person connected to [*Action Citoyenne pour le Respect des Droits Humains* (hereinafter “ACREDH”)] who had not played any part in this matter was attacked in [...] September 2009, apparently by individuals linked to the police,” and (iii) recalled the information provided regarding the death of S. J., relative of one of the beneficiaries. The Commission considered that it was appropriate to maintain the expansion ordered provisionally to the next of kin of the said representatives.

6. The brief of November 19, 2009, in which the Republic of Haiti (hereinafter “the State” or “Haiti”) advised that the Minister of Justice and Public Security had issued instructions to the Government’s delegate to the Petit-Goâve Court of First Instance to conduct an investigation into the facts described. In addition, it indicated that the said delegate would “make contact” with the beneficiaries to determine the appropriate measures together with them.

7. The brief of November 26, 2009, in which the representatives advised that they had still not been contacted by the authorities, as the State had indicated.

8. The brief of January 6, 2010, in which the Inter-American Commission took note of the information provided by the State (*supra* having seen paragraph 6), and expressed its hope that, in its next report, the State would submit more detailed information on the measures ordered. In addition, it indicated that Rodeline Joseph, a family member of one of the beneficiaries (*supra* having seen paragraph 5), “was the victim of an attack by a group of men [...] while visiting her mother-in-law in Petit-Goâve” on December 26, 2010. Lastly, the Commission indicated that it had faced difficulty in establishing a fluid and ongoing dialogue with the beneficiaries and their representatives.

9. The communication of January 11, 2010, in which the Court’s Secretariat, on the instructions of the President of the Court, reminded the State and the representatives that the time limits for submitting, respectively, the report and the observations required in the Order of September 21, 2009, had expired, and requested that they be forwarded as soon as possible.

10. The communications of June 2 and 18, 2010, in which the Secretariat, on the instructions of the plenum of the Court, asked the State, the Commission and the representatives to submit up-to-date information regarding the situation of the beneficiaries of these provisional measures by July 16, 2010, at the latest.

11. The brief of July 16, 2010, and its attachments whereby, in response to the Court’s request, the Inter-American Commission advised that: (i) Sterlin Joudain, André Junior

Laurore, Sonise Joseph and Josué Matthieu Laurore, beneficiaries of the provisional measures, had died during the earthquake on January 12, 2010; (ii) on May 8, 2010, a threat had been reported against Rodeline Joseph, during which an alleged criminal went to her mother's home to threaten and intimidate those present; (iii) it had no new information regarding threats to A. J. and J. L. but, according to the representatives, "this possibility cannot be discounted." In addition, the Commission provided, *inter alia*, a copy of the complaint filed by Rodeline Joseph before the Justice of the Peace of the Petit Goâve municipality regarding the events that occurred on December 26, 2009 (*supra* having seen paragraph 8). Lastly, the Commission reiterated the difficulty of communicating with the representatives, a situation exacerbated by the above-mentioned earthquake.

12. The communication of July 23, 2010, in which the Secretariat, on the instructions of the President of the Court, reminded the State and the representatives that the time limit for submitting updated information on the situation of the beneficiaries had expired on July 16, 2010, and therefore requested that the information be forwarded as soon as possible.

13. The brief of August 18, 2010, in which the Inter-American Commission forwarded a brief of the representatives in which the latter, *inter alia*, referred to events that occurred before the adoption of provisional measures, or that were not related to the beneficiaries or to the alleged facts being examined in this proceeding.

14. The communication of August 28, 2010, in which the Secretariat, on the instructions of the President of the Court, reminded the State that the time limit for forwarding updated information on the situation of the beneficiaries had expired, and requested that the information be sent as soon as possible.

15. The State has not responded to the Court's requests, and neither the Commission nor the representatives have provided further information since that date.

CONSIDERING THAT:

1. Haiti has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since September 27, 1977, and, pursuant to Article 62 of the Convention, accepted the contentious jurisdiction of the Court on March 20, 1998.

2. Article 63(2) of the American Convention stipulates that, "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With regard to a case not yet submitted to the Court, it may act at the request of the Commission." This provision is, in turn, regulated by Article 27 of the Court's Rules of Procedure.¹

¹ Rules of Procedures approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

3. The provisions established in Article 63(2) of the Convention signify that the adoption by the State of the provisional measures that this Court orders it to take is compulsory, because the basic principle of the law on State responsibility, upheld by international case law, indicates that States must comply with their treaty-based obligations in good faith (*pacta sunt servanda*).²

4. These provisional measures are not related to a case being heard by the Court, but originated from a request for precautionary measures submitted to the Inter-American Commission together with an individual petition on January 12, 2009. According to the information provided by the Commission, this petition is at the preliminary examination stage as No. 28-09, and the Court does not have recent information on the progress of the case before the Commission.

a) Regarding the beneficiaries of provisional measures

5. The documentation forwarded by the parties does not provide recent information on the situation of risk of the beneficiaries of the provisional measures. In this regard, the Court observes that, since the issue of the Order of September 21, 2009, neither the Commission, nor the State or the representatives have provided specific, up-to-date information on the beneficiaries of the measures, Michelet Laguerre and Pierre Luc Sael. Furthermore, regarding A.J. and J.L., the Commission indicated that “it has no new information about threats” against them (*supra* having seen paragraph 11). Lastly, the Court takes note of the information provided by the Commission concerning the death of Sterlin Joudain and André Junior Laureore, beneficiaries of the provisional measures, as a result of the January 12, 2010 earthquake (*supra* having seen paragraph 11).

b) Regarding the next of kin of the representatives, beneficiaries of provisional measures

6. In its Order of September 21, 2009, the Court admitted the provisional expansion of the provisional measures in favor of determined next of kin of the four members of ACREDH (*supra* having seen paragraph 2).

7. The Commission, within the time frame granted, individualized the next of kin of the beneficiaries regarding whom the Court had ordered the expansion of the provisional measures. However, in response to the request for specific information about their risk situation, it advised that they were “members of the immediate family [...] who live under the same roof” as some of the beneficiaries and that the facts “indicate that the violence has

² Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, sixth considering paragraph; *Case of Eloisa Barrios et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 25, 2010, third considering paragraph, and *Matter of Alvarado Reyes et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of November 26, 2010, fourth considering paragraph.

gradually been extended to individuals indirectly related to the matter (*supra* having seen paragraph 5).

8. The updated information provided by the Commission reveals that Rodeline Joseph, a direct relative of Pierre Luc Sael, was the victim of attacks and acts of intimidation on at least two occasions: (a) on December 26, 2009, she was attacked by a group of men with sticks, supposedly because she was Pierre Luc Sael's companion (*supra* having seen paragraphs 8 and 11), and (b) on May 8, 2010, a former detainee allegedly went to her mother's home to threaten her (*supra* having seen paragraph 11). The Court also takes note of the information provided by the Commission on the death of Sonise Joseph and Josué Matthieu Laureore, next of kin of the beneficiary André Junior Laureore, who also died as a result of the earthquake of January 12, 2010.

9. The Court observes that although the Inter-American Commission forwarded information on attacks allegedly suffered by a relative of one of the beneficiaries, it is not evident from this information that the said acts have any relationship to the alleged facts that led the Court to adopt these provisional measures. For their part, neither the beneficiaries nor their representatives provided any information on the next of kin of the beneficiaries for whom the expansion had been requested. Consequently, the Court has no information on "the individual situation, the existence, the nature, and the origin or source of the respective risk of the next of kin mentioned in the Inter-American Commission's expansion request," as required in the sixth operative paragraph of the Order of September 21, 2009, that would permit retaining the provisional measures with regard to them.

c) *Conclusion*

10. Article 63 of the Convention requires the presence of three conditions to enable the Court to order provisional measures: (a) extreme gravity"; (b) urgency," and (c) that they are required "to avoid irreparable damage to persons." These three conditions are co-existent and must be present in any situation in which the Court's intervention is requested. Similarly, these three conditions must persist for the Court to maintain the protection ordered. If one of them is no longer in effect, the Court must assess the pertinence of continuing the protection ordered.

11. When ordering measures of protection, the Court or whoever presides it, does not require, in principle, evidence of the facts that *prima facie* appear to comply with the requirements of Article 63(2) of the Convention. However, to the contrary, maintaining protection measures requires the Court to evaluate the persistence of the situation of extreme gravity and the urgency of avoiding irreparable damage that gave rise to them,³ based on probative information.⁴

³ Cf. *Matter of the Kankuamo Indigenous People*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of April 3, 2009, seventh considering paragraph; *Case of Eloisa Barrios et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 25, 2010, fourth considering paragraph, and *Matter of the Mendoza Prisons*.

12. These measures were ordered owing to the *prima facie* assessment of a threat to the rights to life and personal integrity of the beneficiaries established in the Order of the President of the Court at the time dated August 24, 2009.

13. However, when adopting this Order, the Court notes and weighs that the requirement of forwarding information in order to maintain these provisional measures has not been complied with. Indeed, the Court recalls that the beneficiaries and their representatives have not responded satisfactorily to the reiterated requests *supra* having seen paragraphs 9, 10 and 12); thus, the Court does not have the minimum information to support the interest or the desire of the beneficiaries to maintain these provisional measures in force or on the persistence of the alleged situation of extreme gravity and urgency and the need to avoid irreparable damage to them. The Court also observes that, in this proceeding on provisional measures, the State has not provided a satisfactory response to the measures ordered by the Court in its Order of September 21, 2009 (*supra* having seen paragraph 2). During this proceeding, the State had responded that it would take measures and that it would communicate with local authorities, actions that apparently have not occurred (*supra* having seen paragraph 7).

14. Furthermore, the Court also observes that the State failed to forward the information requested by the Court in the Secretariat's communications of January 11, June 2 and July 23, 2010. It is pertinent to recall that it is essential that the State respond and provide information when the organs of the inter-American human rights system request this so that the protection mechanism can function effectively.⁵

15. In view of the absence of information on extreme gravity and the urgency of avoiding irreparable damage to the life and personal integrity of the beneficiaries, the Court proceeds to lift the provisional measures adopted in this matter.

16. Lastly, the Court reiterates that Article 1(1) of the Convention establishes the general obligation of the States Parties to respect the rights and freedoms recognized

Provisional measures with regard to the Argentine Republic. Order of the Inter-American Court of Human Rights of November 26, 2010, fortieth considering paragraph.

⁴ Cf. *Case of Carpio Nicolle et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, fifteenth considering paragraph; *Matters of the Monagas Detention Center ("La Pica"); the Capital Region Penitentiary Center Yare I and Yare II (Yare Prison); the Occidental Region Penitentiary Center (Uribana Prison), and the Capital Detention Center El Rodeo I and El Rodeo II.* Provisional measures with regard to the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2009, fourth considering paragraph, and *Matter of the Mendoza Prisons*, *supra* nota 3, fortieth considering paragraph.

⁵ Cf. *Matter of A.J. et al.* Provisional measures with regard to Haiti. Order of the Inter-American Court of Human Rights of September 21, 2009, ninth considering paragraph, and *Matter of Guerrero Larez.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, twelfth considering paragraph.

therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, under all circumstances. Moreover, provisional measures are of an exceptional nature and are complementary to this general obligation of the States. In this regard, the presumptions considered by the Court to lift provisional measures cannot signify that the State is relieved of its protection obligations under the Convention. Consequently, the Court emphasizes that, irrespective of the existence of specific provisional measures, the State is obliged to ensure the rights of A.J., J.L., Michelet Laguerre, Pierre Luc Sael, and their respective next of kin.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the powers conferred upon it under Article 63(2) of the American Convention on Human Rights and Article 27 of the Court's Rules of Procedure,

DECIDES:

1. To lift the provisional measures ordered by the Inter-American Court of Human Rights on September 21, 2009, in favor of A.J., J.L., Michelet Laguerre, Pierre Luc Sael, Sterlin Joudain, André Junior Laurore, Sonise Joseph, Josué Matthieu Laurore and their respective next of kin.
2. To request the Secretariat to notify this Order to the Inter-American Commission on Human Rights, the representatives of the beneficiaries, and the State.
3. To close this file.

Diego García-Sayán
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary