

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS***

JULY 5, 2011

PROVISIONAL MEASURES REGARDING VENEZUELA

CASE 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; June 29 and September 22, 2005; February 4 and November 25, 2010 and February 21, 2011. In the latter, the Court declared that:

The acts allegedly committed against the life of Nestor Caudí Barrios on January 2, 2011, as well as the deaths of Wilmer Jose Flores Barrios on September 1, 2010; Oscar Barrios on November 28, 2009 and Rigoberto Barrios on January 19, 2005, show the lack of compliance by the State with the provisional measures ordered, in violation of the terms set forth in article 63.2 of the American Convention on Human Rights.

[And decided]:

2. To maintain the provisional measures ordered by the Inter-American Court of Human Rights by means of Orders of November 23, 2004; June 29 and September 22, 2005 and February 4 and November 25, 2010.

3. To require the State to immediately and effectively adopt all the necessary and special measures, in addition to the ones it had already adopted, to protect and guarantee the life and personal integrity of the beneficiaries of the [...] measures.

4. To require the State to provide immediate and effective security to each one of the beneficiaries of the measures, by means of permanent guard measures, as well as to the homes of Maritza Barrios, Juan Barrios and Orismar Carolina Alzul Garcia, and agree on more comprehensive provisional measures within the framework of the dialogue between the beneficiaries and the State. The State must guarantee the security and confidential nature of the information furnished by the beneficiaries.

* Judge Alberto Pérez Pérez informed the Tribunal that, due to *force majeure* reasons, he could not participate in the deliberation and signing of this Order.

5. To require the State to inform the Inter-American Court of Human Rights, no later than March 22, 2011, on the recent attack lead against Nestor Caudí Barrios and on all the special and necessary measures adopted to avoid the commission of acts that are a threat to the life and personal integrity of the beneficiaries of these provisional measures, according to the terms set forth in Operative Paragraph four of [the] Order. In addition, said report must include an evaluation of the situations of risk faced by each one of the beneficiaries, as well as a description of the specific, adequate and sufficient measures and means of protection for each one of them.

6. To order the State to continue informing the Inter-American Court of Human Rights, on a two-month basis, on the provisional measures already adopted and to order the beneficiaries of these measures or their representatives to submit their observations to said reports of the State, within four weeks of receiving notification of the reports and the Inter-American Commission on Human Rights to submit its observations to such reports of the State within six weeks of receiving it.

[...]

2. The communication of the Court's Secretariat (hereinafter, the "Secretariat") of April 5, 2011, by means of which it was noted that the time limit for the Bolivarian Republic of Venezuela (hereinafter, the "State" or "Venezuela") to submit the State's report required in operative paragraph five of the Court's Order of February 21, 2011, had expired on March 22, 2011, and yet this Secretariat had still not received said report.

3. The communication of the Inter-American Commission on Human Rights (hereinafter, the "Inter-American Commission" or the "Commission") of May 30, 2011, by means of which it informed that on May 28, 2011, "Mr. Juan José Barrios was murdered [by] two men dressed in black, who shot him several times".

4. The communication of the Secretariat of June 2, 2011, by means of which the State was requested to present a report on the recent facts related to the alleged murder of Mr. Juan Jose Barrios (hereinafter, also "Juan Barrios") and the proceedings carried out to such effect; moreover, the State was ordered to adopt, immediately and effectively, all the necessary and special measures, in addition to the measures already adopted, to protect and guarantee the lives and personal integrity of the beneficiaries of the measures.

5. The report of the State of June 10, 2011, by means of which the State made reference to the proceedings carried out in order to shed light on the facts related to the death of Juan Barrios and establish the criminal responsibility.

6. The brief of the beneficiaries' representatives (hereinafter, the "representatives") of June 20, 2010, by means of which they forwarded additional information to the State's response regarding the recent murder of Mr. Juan Jose Barrios and, in general, regarding the provisional measures granted in favor of the members of the Barrios family.

7. On June 23, 2011, the Commission submitted its observations to the State's report, in which it mentioned that "the State limited to inform on the launch of the criminal investigation in which some proceedings were ordered, such as the technical inspection of the crime scene". In addition, it expressed "its deep concern about the limited information furnished by the State" and it considered that the State must "give priority to the situation of the Barrios family by means of the adoption of immediate protective measures, which must be agreed by consensus with the beneficiaries through adequate mechanisms of participation".

CONSIDERING THAT:

1. Venezuela has been a State Party to the American Convention on Human Rights (hereinafter, the "American Convention" or the "Convention") since August 9, 1977, and that it accepted the contentious jurisdiction of the Court on June 24, 1981.

2. The Tribunal has established that provisional measures are not only preventive in nature, in the sense that they preserve a juridical situation, but they are also essentially protective inasmuch as they seek to safeguard human rights and avoid irreparable damage to persons¹. Regarding the preventive nature, these measures are intended to preserve the rights that may be at risk until the controversy is settled. Its purpose is to ensure the integrity and effectiveness of the decision on the merits and in this way, avoid the litigious rights being impaired, situation which may adversely affect the useful purpose of the final decision. The provisional measures make it possible for the State in question to comply with the final decision and, if applicable, to go ahead with the reparations so ordered².

3. Likewise, according to the provision established in Article 63(2) of the Convention, provisional measures ordered by the Court are binding on the State in conformity to a basic principle of the law of international responsibility of the States, under which States are required to comply with international treaty obligations in good faith (*pacta sunt servanda*). Any breach to the order of enforcement of provisional measures passed by the Court in proceedings before the Commission and the Court may trigger international responsibility of the States³.

¹ See Case of "La Nación" Newspaper. Provisional Measures regarding Costa Rica. Order of the Court of September 7, 2001, Considering clause four. Case of *Alvarado Reyes et al.* Provisional Measures regarding the United Mexican States. Order of the Court of May 15, 2011; considering clause five; Matter of the Indigenous Community of Kankuamo. Provisional Measures regarding Colombia. Order of the Court's President of June 7, 2011, considering clause five.

² See *Matter of Rodeo II Judicial Confinement Center*. Request for Provisional Measures made by the Inter-American Commission regarding Venezuela. Order of the Court of February 8, 2008, considering clause seven; *Matter of Eloisa Barrios et al.* Provisional Measures regarding Venezuela. Order of the Court of February 21, 2011, considering clause two; *Matter of Maria Lourdes Afiumi*. Provisional Measures regarding Venezuela. Order of the Court of March 2, 2011, Considering clause four.

³ See *Matter of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Court of February 7, 2006; considering clause seven. Case of *Eloisa Barrios et al*, *supra* note 2; considering clause four. Case of *Alvarado Reyes et al*, *supra* note 1, considering clause four.

4. In the context of provisional measures, the Court may only consider those arguments directly related to the extreme gravity, urgency, and the necessity to prevent irreparable damage to persons, which gave rise to the adoption of the measures or if equally serious and urgent fresh circumstances warrant they be maintained. This does not constitute prejudgment on the merits of the case. Any other matter can only be brought forward for consideration by the Court in the course of the pertaining contentious case⁴.

5. According to the Orders of the Inter-American Court of November 23, 2004; June 29 and September 22, 2005; February 4, 2010 and February 21, 2011 (*supra* Having Seen clause 1); the State must, *inter alia*, protect the life and personal integrity of the beneficiaries⁵. Moreover, by means of the Order of November 25, 2010, the State was required to adopt any other measures that may be necessary to effectively protect the life and personal integrity of the beneficiaries, as well as to provide the necessary permanent guard measures to provide security to the homes of Maritza Barrios, Juan Barrios, and Orismar Carolina Alzul García and ensure and effectively implement the conditions necessary for the members of the Barrios family who have been forced to move to another regions of the country to return to their homes.

A) Regarding the death of Mr. Juan Jose Barrios and the general situation of the other beneficiaries

6. On May 30, 2011, the Commission informed that it received information according to which on May 28, 2011, Mr. Juan Jose Barrios, a beneficiary of these measures, was murdered. According to what was reported by the Commission, said person “was intercepted by two men dressed in black who shot him several times. Mr. Juan Barrios took several steps and fell in a pond”, where his brothers did not find any vital signs when they found him on Sunday May 29, at 10 a.m. As evidence of its arguments, the Commission attached two press releases. It also alleged that Mr. Juan Barrios “was not only a beneficiary of the protective measures that the Venezuelan State has not complied with, but he was also considered a victim of several violations of the American Convention in the Merits Report No. 11/10”.

7. In this respect, in its report of June 10, 2011, the State mentioned that “the [G]overnment Attorney’s Office [...] of the Public Prosecutor’s Office [...] of the State of Aragua, under the charge of Guillermo Jose Raven Freites, ordered the launch of a criminal investigation upon hearing [...] that on May 29, 2011, the dead body of Juan Jose Barrios was found; said office also ordered the conduct of proceedings in order to

⁴ See *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 29, 1998, Considering clause six; *Matter of Jose Luis Galdamez Alvarez et al.* Provisional Measures Regarding Honduras. Order of the Court of February 22, 2011, considering clause seven. *Matter of L.M.* Provisional Measures regarding Paraguay. Order of the Court of July 1, 2011, considering clause five.

⁵ Eloisa Barrios, Inés Barrios, Beatriz Barrios, Orismar Carolina Alzul García, Pablo Solórzano, Caudí Barrios, Jorge Barrios, Juan Barrios, Maritza Barrios, Roni Barrios, Roniex Barrios, Luis Alberto Barrios, Yelitza Lugo Pelaes, Arianna Nazaret Barrios, Oriana Zabaret Barrios, Víctor Cabrera Barrios, Beatriz Cabrera Barrios, Luimari Guzmán Barrios, Luiseydi Guzmán Barrios, Génesis Andreina Barrios, Víctor Tomas Barrios, Geilin Alexandra Barrios, Elvira Barrios, Darelvis Barrios, Elvis Sarais Barrios, Cirilo Robert Barrios and Lorena Barrios.

shed light on the criminal act and establish the corresponding criminal responsibility” and determined that “the case was at the preliminary stage”. In that same report, Venezuela “undertook to take all actions in order to inform this Court on the progress made in the proceedings and the results thereof, and that it w[ould] forward an [u]pdated report of the case”.

8. In its brief of June 20, 2011, the representatives noted that, apart from the fact that the Public Prosecutor’s Office launched the investigations related to the recent death of Mr. Juan Barrios, the family does not have additional information. They argued that “since it was a violent death, it is up to the State to conduct an *ex officio* investigation into those facts, regardless of the proceedings of the aggrieved next-of-kin”. Moreover, they deemed that Venezuela “must promptly inform the Court on the proceedings resulting from this investigation”.

9. In addition, the representatives stated that “the Scientific Investigations Department is still working on the case of the extra-legal execution of Wilmer Flores [...] and no significant progress was made; therefore, Mr. Luis Aguilera, on many occasions, has called the attention of the Prosecutor's Office [...] in order to prevent this case from being filed”. The representatives also noted that “as usual in the Venezuelan State, each time the bodies of the Inter-American system hand down an opinion on the case [...] the governmental actions are resumed, as in the example of the National Guard and the usual occasional visits to the residence of Mrs. Eloisa Barrios”. To this end, the representatives indicated that “the patrolling rounds were resumed on June 13 when two officials of that military body appeared, approximately at ten in the morning, at the residence of Mrs. Eloisa Barrios; later on, on June 17 they came to visit her”.

10. The representatives indicated that “given the manner in which [the measures] are implemented, the plain measures adopted to guarantee the life and rights of each one of the members of the Barrios family are still ineffective” and they recalled that “it is important for the State to understand that the beneficiaries of the protective measures are the ones who must furnish the information to prepare them”. Moreover, they emphasized that the State “must allocate the funds for the hiring of specialized personnel in order to enforce the protective measures, just as in the development of all logistics”.

11. The Court notes that during the enforcement of the provisional measures, it was announced the deaths of Oscar Barrios, on November 28, 2009; Rigoberto Barrios, on January 19, 2005; Wilmer Jose Flores Barrios, on September 1, 2010; and recently, Juan Jose Barrios, on May 28, 2011, three months after the adoption of the Court’s Order of February 21, 2011. Previously, during the enforcement of the precautionary measures, Luis Alberto Barrios died on September 20, 2004. In addition, the Tribunal notes that one month after the issuance of the Court's Order of November 25, 2010, Nestor Caudí Barrios, another beneficiary of the provisional measures, suffered a death threat. In view of the above, the Court recalls that the foregoing represents a grave non-compliance by the State with the terms set forth in article 63.2 of the American Convention.

12. In this respect, even though Article 1(1) of the Convention establishes the general obligations of States Parties to respect the rights and freedoms enshrined therein and to ensure their free and full exercise to all people subject to their

jurisdiction, when a citizen is a beneficiary of provisional measures, this duty is reinforced in respect to such person and therefore, the State has a particular obligation to protect him or her⁶, which did not happen in the instant case.

13. This Court notes that the State has not duly addressed the implementation, enforcement and supervision of the protective measures in favor of the members of the Barrios family, which place them in a serious vulnerable position.

14. The Court reiterates that the State must immediately and effectively adopt all necessary and special measures to protect and guarantee the lives and personal integrity of the beneficiaries of these measures, according to the terms set forth in the Orders issued by the Tribunal on November 25, 2010 and February 21, 2011, in order to eradicate the sources of risk and avoid the repetition of facts as the ones described herein.

C) On the duty to present information

15. By means of the Secretariat's communication of April 5, 2011 (*supra* Having Seen clause 2), the Court recalled the State to present the report required by the Tribunal by means of the Order of February 21, 2011, regarding "all the necessary and special measures it has adopted to prevent attacks on the lives and personal integrity of the other beneficiaries of these provisional measures", and said information must contain "an evaluation of the situations of risk faced by each of the beneficiaries, as well as a description of the specific, adequate, and sufficient protective measures for each of them". However, to date, the State has not forwarded said information even though the time limit established for the submission of such report expired on March 22, 2011.

16. The Tribunal considers that the report forwarded by the State on June 10, 2011, related to the death of Juan Jose Barrios, does not contain sufficient information to allow the Court evaluate whether the state authorities had fully complied with the duty to adopt and implement all the necessary and special measures, in addition to the ones already adopted, to protect and guarantee the lives and personal integrity of the other beneficiaries of the measures.

17. Furthermore, the Court recalls that, so far, the State has not provided information on the death threat suffered by Nestor Caudi Barrios on November 25, 2010, and it has limited to provide general information on the actions taken by the state authorities regarding the death of Mr. Wilmer Jose Flores Barrios.

18. This Tribunal recalls that those States Parties to the American Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations set by the Tribunal. These obligations also imply the State's duty to report on the measures adopted to comply with such decisions of the Court⁷. The duty to

⁶ See Case of *Velásquez Rodríguez*. Provisional Measures Regarding Honduras. Order of the Court of January 15, 1988, considering clause three; Matter of *A.J. et al.* Provisional Measures regarding Haiti. Order of the Court of February 22, 2011; considering clause sixteen; Case of *Alvarado Reyes et al*, *supra* note 1; considering clause twenty-four.

⁷ See Case of *Barrios Altos V. Peru*. Monitoring Compliance with Judgment. Order of the Court of November 17, 2004; considering clause seven. *Case of Eloisa Barrios et al*, *supra* note 2; considering clause

inform the Court on the compliance with its decisions constitutes an obligation that requires the effective compliance with the formal presentation of a timely document and the specific, current, truthful and detailed material information upon which said obligation relies⁸. Timely fulfillment of the State's obligation to report to the Court on the exact manner in which it is complying with each of the aspects ordered by the latter is essential to evaluate the whole status of compliance with the provisional measures in this case⁹.

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,

DECLARES THAT:

1. The death of Mr. Juan Jose Barrios, which occurred on May 28, 2011, evidences, one more time, the non-compliance by the State with the provisional measures ordered, in violation of the terms set forth in article 63(2) of the American Convention on Human Rights.

AND DECIDES:

1. To rescind the provisional measure in favor of Mr. Juan Jose Barrios, who was a beneficiary of these provisional measures.

2. To maintain all the other provisional measures ordered by the Inter-American Court of Human Rights by means of its Orders of November 23, 2004; June 29 and September 22, 2005; February 4 and November 25, 2010 and February 21, 2010.

3. To reiterate that the State must immediately and effectively adopt all the necessary and special measures, in addition to the ones it had already adopted, to protect and guarantee the lives and personal integrity of the beneficiaries of the provisional measures, namely: Eloisa Barrios, Inés Barrios, Beatriz Barrios, Orismar

twenty-four. *Case of Acevedo Buendía et al V. Peru. Monitoring Compliance with Judgment*. Order of the Court of July 1, 2011, considering clause twenty-six.

⁸ See *Matter of Liliana Ortega et al*. Provisional Measures regarding Venezuela. Order of the Court of December 2, 2003; considering clause twelve. *Matter of Eloisa Barrios et al*, *supra* note 2; considering clause twenty-three. *Case of Acevedo Buendía et al V. Peru*, *supra* note 7; considering clause twenty-six.

⁹ See *Case of the "Five Pensioners" V. Peru. Monitoring Compliance with Judgment*. Order of the Court of December 17, 2004; considering clause five. *Matter of Eloisa Barrios et al*, *supra* note 2; considering clause twenty-three. *Case of Acevedo Buendía et al V. Peru*, *supra* note 7; considering clause twenty-six.

Carolina Alzul García, Pablo Solórzano, Jorge Barrios, Maritza Barrios, Roni Barrios, Roniex Barrios, Luis Alberto Barrios, Yelitza Lugo Pelaes, Arianna Nazaret Barrios, Oriana Zabaret Barrios, Víctor Cabrera Barrios, Beatriz Cabrera Barrios, Luimari Guzmán Barrios, Luiseydi Guzmán Barrios, Génesis Andreina Barrios, Víctor Tomas Barrios, Geilin Alexandra Barrios, Elvira Barrios, Darelvis Barrios, Elvis Sarais Barrios, Cirilo Robert Barrios and Lorena Barrios. To that end, all sources of risk must be eradicated in order to avoid the repetition of facts such as the ones described herein.

4. To reiterate that the State must provide immediate and effective security to each one of the beneficiaries of the measures, by means of permanent guard measures, as well as to the homes of Maritza Barrios and Orismar Carolina Alzul Garcia, and to agree on more comprehensive provisional measures within the framework of the dialogue between the beneficiaries and the State. The State must guarantee the security and confidential nature of the information furnished by the beneficiaries.

5. To require the State to inform the Inter-American Court of Human Rights, no later than August 27, 2011, on all the special and necessary measures adopted to avoid the commission of acts that are a threat to the life and personal integrity of the beneficiaries of these provisional measures, according to the terms set forth in Operative Paragraph four of this Order. In addition, said report must include an evaluation of the situations of risk of each one of the beneficiaries, as well as the description of the specific, adequate and sufficient measures and means of protection for each one of them.

6. To order the State to continue informing the Inter-American Court of Human Rights, on a two-month basis, on the provisional measures already adopted and order the beneficiaries of these measures or their representatives to submit their observations, within four weeks of receiving notification of the State's reports and the Inter-American Commission on Human Rights to submit its observations to such reports of the State within six weeks of receiving them.

7. To require the Secretariat of the Court to notify this Order to the Inter-American Commission on Human Rights, the representatives of the beneficiaries and the Bolivarian Republic of Venezuela.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary