

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 15, 2011**

**REQUEST FOR PROVISIONAL MEASURES FILED BY
ALEJANDRO PONCE VILLACÍS AND ALEJANDRO PONCE MARTÍNEZ**

REGARDING THE REPUBLIC OF ECUADOR

HAVING SEEN:

1. The Judgment of May 6, 2008, on the preliminary objection and merits and the Judgment of March 3, 2011, on reparations and costs in the case of *Salvador Chiriboga v. Ecuador*.
2. On March 27, 2011 the attorneys in the case of *Salvador Chiriboga v. Ecuador - Alejandro Ponce Villacís and Alejandro Ponce Martínez* - requested that the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-America Court”) adopt provisional measures to their benefit, pursuant the provisions of articles 63(2) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and 27(3) of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), with the objective of having the Republic of Ecuador (hereinafter “the State” or “Ecuador”) “abstain from taking action intended to use false accusations to harass, persecute, or intimidate these attorneys who [participated] as representatives of the victim in the case of *Salvador Chiriboga*.”
3. The alleged facts that serve as grounds for the request for provisional measures filed by the victim’s representatives, namely:
 - a. On March 26, 2011, at approximately 17:20, when Mr. Alejandro Ponce Villacís was travelling in his vehicle through the city of Quito, Ecuador, two police officers asked him to stop his vehicle at the intersection with Baquedano. After he did so, the police officers asked him for his driver’s license and registration. When Mr. Ponce Villacís gave them the documents, the police officers went back to their patrol car. Mr. Ponce Villacís indicated that the police officers then told him they had an order to search the automobile, accusing him of carrying weapons. Mr. Ponce Villacís did not allow this and asked them if they had the corresponding search warrant. Both police officers responded negatively, stating that they had orders from “[their] Colonel,” without giving the colonel’s identity;
 - b. Mr. Ponce Villacís told them that what they were doing was a reprisal for his participation in the case of *Salvador Chiriboga* and the police officers gave out a mocking laugh. Mr. Ponce Villacís also indicated that neither of the police officers identified themselves, and that they were in constant communication by radio with a third person;
 - c. The two police officers that asked him to stop the car belonged to the Tourism Police unit, according to the emblem Mr. Ponce Villacís was able to observe on their

arms, and the green vests they were wearing bore the numbers 134 and 169. Additionally, they were travelling in a patrol car with license plate PXB-310, which, even though operated by members of the National Police Force of the Tourism unit, belongs to the Metropolitan Public Company of Logistics for Safety and Civic Coexistence, which is under the authority of the Municipality of the Metropolitan District of Quito;

d. Next, a second patrol car from the same company appeared with two additional police officers. They told him that it was a traffic problem, but that they had to wait for the colonel. At the same time, one of the two officers that made the initial stop told him he had committed two misdemeanors and that one of them was having “resisted an officer”. When Mr. Ponce Villacís asked him what he had done to resist, the police office would not respond;

e. Mr. Ponce Villacís stated that in the conversation among the police officers, he overheard one of them say “he’s the attorney.” However, he could not hear anything else;

f. Later, more police officers arrived on motorcycles. One of them, a traffic officer, assumed leadership of the incident and told him that the vehicle had been stopped for failing to comply with the 2010 vehicle registration requirements and that Mr. Ponce Villacís would have to accompany him. Mr. Ponce Villacís responded to this order by telling him that this was not the proper procedure under the law. He told them that they could take the car if they wanted to, but that he was not going to go with them;

g. Mr. Ponce Villacís also stated that all during the procedure there was a person dressed in black and wearing a bulletproof vest standing next to his vehicle. The person had an intimidating attitude and, without speaking a word, he took a picture of him and left;

h. Finally the traffic police officer returned his documents, did not give him any ticket whatsoever, recommended that he register the vehicle, and told him he could leave, and

i. Mr. Ponce Villacís stated that as he was driving home, a gray Chevrolet without a license plate was following him. He decided not to go home but to his law office. He got out of the car with his daughter, who was with him the whole time, and later exited the building through a different door.

4. The communication dated March 28, 2011, from the Secretariat of the Court (hereinafter “the Secretariat”) following the instructions of the President of the Tribunal (hereinafter “the President”) and based on Article 27(5) of the Rules of Procedure requesting that the State forward any comments it considered pertinent on the request for provisional measures along with any other documentation considered relevant, and to do so no later than April 8, 2011.

5. On April 5, 2011, Mr. Alejandro Ponce Villacís reported on an alleged new fact that took place on April 4, 2011. He stated that the new fact is directly related to his request for measures. In this sense, he indicated that on that day, at around 22:30, while he was eating at an establishment named King Cross in the city of Quito, he saw a police car pass in front of the

restaurant. Initially, he did not pay much attention to it. A few minutes later, however, he saw the police car again. It stopped in front of the window located precisely at the table where he was eating, immediately turning on the emergency lights on the patrol car's roof and activating its siren repeatedly, clearing drawing attention to itself. This obviously caught his attention, and he became concerned when he noticed it was the same patrol car - that is, the one identified with No. 133 and license plate PWB-310 - to which he made reference in his communication of March 27, 2011. After stopping for less than a minute and making sure he noticed its presence, the patrol car left. Additionally, he pointed out that his own presence at that location was evident, not only because he was sitting right in the restaurant's window but because his car was parked just a few meters away. He stated that there are not many vehicles with the same model and characteristics as the one he owns, thus its presence in that location did not go unnoticed by the police. In his opinion, therefore, it is clear that members of the National Police Force wanted him to notice their presence, probably for purposes of intimidation.

6. The Secretariat's communication of April 6, 2011, through which, following the President's instructions, it requested that in the comments it was to submit on April 8, 2011, the State also include any comments it considered pertinent regarding the alleged intimidating fact of April 4th of that year mentioned by Mr. Alejandro Ponce Villacís.

7. On April 12, 2011, the State forwarded its comments on the facts related to this request and indicated that "these facts have been brought before [...] the Ministry of the Interior of Ecuador, [...] as well as the General Command of the National Police Force." Likewise, it mentioned that "they have issued various official letters requesting information and they have held meetings with the General Commanding Officer of the National Police Force (in charge) in order to make sure that the corresponding investigations are carried out." It added that the State commits to informing the Court of the result of the investigations carried out in this case. Finally, it stated that "[i]f the incidents mentioned by Mr. Ponce Villacís are true and they are occurring, then the State itself, as it has been doing in recent years with its policies for the protection, promotion, and guarantee of human rights, will take the pertinent measures to correct, *ex officio* and within the national jurisdiction, the infringements allegedly committed against attorney Ponce."

8. The Secretariat's communications of April 15, 2011, through which it informed the parties that both the request for provisional measures and the State's observations would be taken before the Tribunal during the 43rd Special Period of Session to be held from May 16 to 21 in the city of Panama. Likewise, following the President's instructions, the State was reminded of its obligation to adopt the mechanisms it considers effective to guarantee the free and full exercise of the rights of all persons under its jurisdiction, especially the right to humane treatment, pursuant to the general obligations of the States Parties to the American Convention on Human Rights enshrined in Article 1(1) of the Convention.

CONSIDERING THAT:

1. Ecuador has been a State Party to the American Convention since November 22, 1969, and that it accepted the binding jurisdiction of the Court on December 8, 1977.

2. Article 63(2) of the American Convention states that, “In 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 Procedure of the Court:

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

[...]

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. The Tribunal has stated that provisional measures have two characteristics: one precautionary and the other protective.¹ The precautionary nature of provisional measures is linked to the framework of international disputes. In that sense, the objective and purpose of these measures is to preserve the rights that are possibly at risk until the controversy is resolved. Their objective and purpose is to guarantee the integrity and effectiveness of the decision on merits and thus avoid infringement of the rights in question, which could make the final decision innocuous or nullify its *effet utile*. Therefore, provisional measures allow the State in question to comply with the final decision and, where appropriate, proceed with the reparations ordered.² With regard to the protective nature of the provisional measures, this Court has stated that provisional measures become a true jurisdictional guarantee of a

¹ Cfr. *Case of Herrera Ulloa v. Costa Rica* (“*La Nación*” Newspaper). Provisional Measures regarding Costa Rica. Order of the Court of September 7, 2001, Considering 4; *Matter of Mery Naranjo et al.* Provisional Measures regarding Venezuela. Order of the Court of March 4, 2011, Considering 5, and *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the President of the Court of April 1, 2011, Considering 4.

² Cfr. *Matter of the Capital El Rodeo I and El Rodeo II Judicial Confinement Center.* Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, Considering 7; *Matter of Eloísa Barrios et al.* Provisional Measures regarding Venezuela. Order of the Court of February 21, 2011, Considering 2, and *Matter of Maria Lourdes Afiumi.* Provisional Measures regarding Venezuela. Order of the Court of March 2, 2011, Considering 4.

preventive nature³ in their protection of human rights, provided they seek to avoid irreparable damages to persons.⁴

5. In this case, Alejandro Ponce Villacís and Alejandro Ponce Martínez (hereinafter the petitioners) have acted as Mrs. María Salvador Chiriboga’s legal representatives. The Court issued a Judgment on reparations in the Case of *Salvador Chiriboga v. Ecuador* last March 3, 2011, which was notified to the State of Ecuador on March 23, 2011. Currently, that Judgment is in the monitoring compliance stage. According to the representatives, the alleged acts of “harassment” occurred on March 26 and April 4, 2011.

6. The Tribunal recalls that compliance with the three requirements established in Article 63(2) of the Convention is necessary in order to be able to grant provisional measures, namely: i) “extreme gravity”; ii) “urgency”, and iii) that they try to “avoid irreparable damages to the persons.” These three conditions coexist and must be present in all situations in which the Tribunal’s intervention is requested.⁵

7. Regarding gravity, for the purposes of the adoption of provisional measures, the Convention requires that it be “extreme” - that is, that it be at its most intense or highest level. Its urgent nature means that the risk or threat involved is imminent, which requires that the response for their solution be immediate. Finally, regarding damage, there must be a reasonable probability that it be carried out and it must not affect legal rights or interests that can be repaired.⁶

8. When presented with a request for provisional measures, the Court cannot consider the merits of any argument apart from those strictly related to extreme gravity, urgency, and the need to avoid irreparable damages to persons. All other matters can only be brought before the Court in a contentious case.⁷

³ Cfr. *Case of Herrera Ulloa v. Costa Rica* (“*La Nación*” Newspaper), *supra* footnote 1, Considering 4; *Case of Wong Ho Wing v. Perú*. Provisional Measures regarding Peru. Order of the Court of March 4, 2011, Considering 10, and *Matter of Alvarado Reyes*, *supra* footnote 1, Considering 5.

⁴ Cfr. *Matter of the Capital El Rodeo I and El Rodeo II Judicial Confinement Center*, *supra* footnote 2, Considering 8; *Matter of Maria Lourdes Afiuni*, *supra* footnote 2, Considering 4, and *Case of Wong Ho Wing v. Peru*, *supra* footnote 3, Considering 3.

⁵ Cfr. *Case of Carpio Nicolle et al.*, Provisional Measures regarding Guatemala. Order of the Court of July 6, 2009, Considering 14; *Matter of the Forensic Anthropology Foundation*. Provisional Measures regarding Guatemala. Order of the Court of February 22, 2011, Considering 2, and *Matter of Alvarado Reyes*, *supra* footnote 1, Considering 12.

⁶ Cfr. *Matter of Monagas Judicial Confinement Center* (“*La Pica*”), *Yare I and Yare II Capital Region Penitentiary Center* (*Yare Prison*), *Penitentiary Center of the Central Occidental Region* (*Uribana Prison*), and *Capital El Rodeo I and El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Court of November 24, 2009, Considering 3; *Matter of the Colombian Commission of Jurists*. Provisional Measures regarding Colombia. Order of the Court of November 25, 2010, Considering 6, and *Matter of the Socio-Educational Internment Facility*. Provisional Measures regarding Brazil. Order of the Court of February 25, 2011, Considering 8.

⁷ Cfr. *Case of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 29, 1998, Considering 6; *Matter of Eloísa Barrios et al.*, *supra* footnote 2, Considering 3, and *Matter of the Socio-Educational Internment Facility*, *supra* footnote 6, Considering 9.

9. The Court observes that the petitioners have referred to acts of “harassment, persecution, or intimidation with false accusations” by police agents, consisting of an alleged detention, request for documents, and unjustified attempt to search the vehicle of Mr. Ponce Villacís, as well as alleged surveillance and the presence of police officers while he was in a public place. In this regard, the Court considers that these facts do not indicate an extreme gravity meriting the application of provisional measures. As far as the alleged damage, the information provided does not provide elements sufficient to lead to the conclusion that there is a possibility that damage will take place to the detriment of the petitioners’ lives or personal integrity. Due to the absence of the elements of extreme gravity and irreparable nature of the damage, it is not necessary to analyze the requirement of urgency in this case.

10. Additionally, Messrs. Ponce did not report on whether these facts were denounced before the competent domestic authorities. For its part, the State reported that “these facts have been brought before [...] the Ministry of the Interior of Ecuador, [...] as well as the General Command of the National Police Force.” Likewise, it referred to its policy for the protection and guarantee of human rights and mentioned that the State undertakes the commitment to inform the Court of the result of the investigations carried out in the present case. Based on this, it is necessary for the alleged facts to be denounced internally so that the competent authorities have the opportunity to act and fulfill their duties to protect and prevent on behalf of the people subject to State jurisdiction.

11. Based on the aforementioned and the information filed by the representatives, the Tribunal concludes that all the requirements set forth in Articles 63(2) of the Convention and 27 of the Rules of Procedure have not been met. This request for provisional measures must therefore be denied.

12. This notwithstanding, the Court recalls that States have the constant and permanent duty to comply with their general obligations under Article 1(1) of the Convention to respect the rights and liberties acknowledged in the Convention and guarantee their free and full exercise to all persons subject to its jurisdiction.⁸

13. Likewise, the Tribunal recalls that, pursuant to the provisions of Article 54 of its Rules of Procedure, States may not put the representatives or legal advisors of the victims on trial or retaliate against them or their next of kin based on their legal defense before the Court.

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 Article 27 of its Rules of Procedure,

⁸ Cfr. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Court of January 15, 1988, Considering 3; *Matter of the Forensic Anthropology Foundation*, *supra* footnote 5, Considering 41, and *Matter of the Socio-Educational Internment Facility*, *supra* footnote 6, Considering 14.

DECIDES:

1. To deny the request for provisional measures filed by Alejandro Ponce Villacís and Alejandro Ponce Martínez, representatives of the victim in the *case of Salvador Chiriboga vs. Ecuador*.
2. To require the Secretariat of the Court to notify Alejandro Ponce Villacís and Alejandro Ponce Martínez, the Inter-American Commission of Human Rights, and the State of Ecuador of this order.

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
President

Pablo Saavedra Alessandri
Secretary