

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JUNE 30, 2011**

PROVISIONAL MEASURES WITH REGARD TO MEXICO

MATTER OF PÉREZ TORRES *ET AL.* (“CAMPO ALGODONERO”)

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) of July 6, 2009, whereby it decided:

1. To ratify the Order of the President of the Inter-American Court [...] of April 24, 2009.

2. To require that the State maintain in place any measures it may have adopted, and to adopt immediately such measures as may be necessary to protect the live and right to humane treatment of Rosa Isela Pérez Torres and her immediate family members.

[...]

5. To reiterate that the State must continue to enable the beneficiaries to participate in the planning and implementation of the protective measures and, in general, keep them informed as to any progress in the measures.

2. The communications of August 28 and November 5, 2009, and May 5, 2011, in which the State of Mexico (hereinafter “the State” or “Mexico”) presented information on the implementation of the provisional measures ordered by the Court in favor of Mrs. Pérez Torres and her immediate family. In its last brief, the State requested that the provisional measures be lifted.

3. The briefs of September 14 and 29, 2009, whereby Rosa Isela Pérez Torres (hereinafter “Mrs. Pérez Torres” or “the beneficiary”) and her representatives (hereinafter “the representatives”) presented their observations on the information concerning implementation of the provisional measures ordered by the Court in this matter. Since September 2009, the representatives have not provided any information on the beneficiaries’ situation.

* Judge Alberto Pérez Pérez advised the Court that, for reasons beyond his control, he could not be present for the deliberation and signature of this Order.

4. The communications of October 30, 2009, and June 10, 2011, whereby the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) presented its observations on the information concerning implementation of the provisional measures ordered by the Court in this matter.

5. The notes of the Secretariat of the Court (hereinafter “the Secretariat”) of April 13, May 9, and June 7 and 21, 2011, whereby, pursuant to instructions from the President of the Court, the parties were asked to provide information on the present matter in order to analyze whether the factors of extreme gravity and urgency and the possible irreparable nature of the harm persist, which would justify maintaining these provisional measures in force. In particular, in its notes of May 9 and June 7 and 15, 2011, the Secretariat asked the representatives to submit their observations on the State’s request to lift the provisional measures. However, the representatives did not submit their observations.

CONSIDERING THAT:

1. Mexico has been a State Party to the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) since March 24, 1981, and accepted the compulsory jurisdiction of the Court on December 16, 1998.

2. Article 63(2) of the American Convention establishes 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. The provisions of Article 63(2) of the Convention confer a compulsory nature on the State’s adoption of the provisional measures ordered by the Court, given that a basic principle of international law on State responsibility, supported by international case law, indicates that the States must comply with their treaty-based obligations in good faith (*pacta sunt servanda*).¹

4. In the Inter-American Court’s Order of July 6, 2009 (*supra* first having seen paragraph), based on the willingness shown by the State, the Court saw fit to require the State to submit a report within a set time frame in which it: (a) identified and established differences in the degree of danger to Mrs. Pérez Torres and any family members she might indicate; (b) evaluated carefully the existence, characteristics, and origin or source of the danger in each individual situation, and (c) defined specific, adequate and sufficient measures of protection to avoid this danger, if it existed, from materializing. To this end, the Court ruled that the beneficiary and her family members should collaborate fully with the State and facilitate the implementation of the report

¹ 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; *Matter of the Communities of the Jiguamiandó and the Curbaradó. Provisional measures with regard to Colombia*. Order of the President of the Inter-American Court of Human Rights of June 7, 2011, fourth considering paragraph, and *Matter of the Kankuamo Indigenous People. Provisional measures with regard to Colombia*. Order of the President of the Inter-American Court of Human Rights of June 7, 2011, fourth considering paragraph.

a) *Regarding the information and observations submitted by the parties*

5. Initially the State indicated that “the relevant Mexican government institutions ha[d] called a working meeting with t[he beneficiaries] and their representatives in order to discuss implementation of measures that would safeguard the live and right to physical integrity of the interested parties, and allow them to participate in the process of drafting the State’s response to the Court.” However, “owing to [alleged] problems relating to the health and scheduling conflicts of the people who would accompany them, the representatives requested that the meeting [be rescheduled].” Subsequently, the State reported that a meeting had taken place on September 4, 2009, without the participation of Mrs. Pérez Torres, and at which:

(i) “[It was] proposed to the representatives [...] that the institutions responsible for ‘identifying and establishing differences in the degree of danger to Mrs. Pérez Torres and her family should be the Attorney General’s Office, the Secretariat of Public Security of the State of Chihuahua, and/or the Federal Secretariat of Public Security; and if [the representatives] disagreed with this proposal, they should indicate a public institution other than those mentioned.’ Also, “it was made clear to them that once this had been accomplished, it would be possible to determine the methodology and timing to draw up the report requested by the Court, the profile of those who would prepare it, and the appropriate place for this; and they were also advised that they would be provided with the necessary security measures during the process of preparing the report”;

(ii) During this meeting, the representatives advised “that Peace Brigades International had rejected [Mrs.] Pérez Torres’s request for assistance and reiterated the total lack of interest [...] of the municipal, state, and federal public security forces in providing her with measures of protection and security”;

(iii) “Regarding the request for paid, official spaces in which material could be placed with information on women’s rights and the situation in Ciudad Juárez, with a content approved by [Mrs.] Pérez Torres, the State noted [...] that this request was not in keeping with the nature of [...] a provisional measure, and [the representatives] had not explained how this action could prevent possible unlawful conduct against [her].”

6. In addition, in its report of November 5, 2009, the State indicated that, taking into account that Mrs. Pérez Torres and her family had advised that they had requested asylum in another country, it was asking the Court to “[r]ecognize that the decision adopted by [the beneficiaries] to request the Government of another country for asylum is a decision that, based on the information that the beneficiary has presented to the Court [...] lacks any basis or justification.” In addition, in its most recent brief of May 5, 2011, the State emphasized that “a long time (19 months) has passed during which neither the Inter-American Commission nor the beneficiaries have presented elements to demonstrate the existence of a threat and/or a real and imminent danger to them sufficient to justify the measures [in their] favor.” Furthermore, it noted that “the measures offered by the State had been rejected [...] by Mrs. Pérez Torres’ representatives, thus preventing an evaluation of their effectiveness.” Accordingly, the State asked the Court to order that the provisional measures in this matter be lifted.”

7. For her part, in her brief of September 29, 2009, Mrs. Pérez Torres referred to some of the specific measures that had not been put in place at that date, indicating that:

(i) Although the State had agreed to send her emergency numbers that could be used 24 hours a day on a year-round basis, it later indicated that “they were the common emergency numbers for the general public, but that it would provide other specific contact numbers.” However, “[at that] date, the State ha[d] not provided them”;

(ii) She had “decided not to file a criminal complaint before either the local or federal courts” because she has determined that this would not be desirable as it would increase the danger she faced “because [...], in the actual circumstances in Mexico and in a context of impunity, the opening of a formal investigation into threats is a risk factor”;

(iii) It is essential that security be provided by a mechanism other than “public security forces,” for example Peace Brigades International, “that guarantees [her] safety and that of [her] immediate family while it is considered that the risk continues.” According to the beneficiary, the State had made the start of the risk assessment conditional on the beneficiary “accepting the mechanisms” that would prepare it.

(iv) The fundamental element is “to reestablish conditions of security, recognition of social solidarity, and participation [...] as regards a woman’s right to live free from violence since, to date, the information produced tends to create a climate of hate aimed at [human rights] defenders and of disinformation as regards the responsibility of guaranteeing this right.”

8. On September 29, 2009, Mrs. Pérez Torres specified that “she had decided to move, together with [her] immediate family, to another country in which she could request asylum.” She had taken this decision, “having decided that asylum is strictly necessary given that the imminent danger continued despite the urgent measures of protection ordered by the Court and the meetings held with the State seeking to implement them.” Mrs. Pérez Torres advised that “the procedure to request asylum is still being processed, so that it was possible that she would have to return to Mexico.” Consequently, she asked that the provisional measures “remain latent, ready to be activated should she have to return to Mexico.”

9. Regarding the foregoing, the Commission noted that “the information provided by [the beneficiary] indicates that the State has not adopted the measures ordered by the Court.” In that regard, the Commission recalled that “although a report on the beneficiaries’ risk was relevant, it should be prepared in a parallel to the implementation of protective measures.” In its observations of June 10, 2011, the Commission indicated that, in Mexico, Chihuahua headed the list for complaints of attacks against human rights defenders; hence, taking into account this contextual information, together with the threats received that the beneficiary had received, would permit “considering that the situation of risk possibly persists.” Lastly, it indicated that “the essential element in order to evaluate” the request to lift the measures “is the information that the representatives can provide in this regard, particularly as regards the definition of the situation of the beneficiaries as regards their request for asylum abroad.”

b) *Conclusions of the Court*

10. Article 63(2) of the Convention requires that three conditions be met for the Court to be able to order provisional measures: (i) “extreme gravity”; (ii) “urgency,” and (iii) the need “to avoid irreparable damages to persons.” These three conditions are coexistent and must be present in any situation in which the Court’s intervention is requested. Likewise, these three conditions must persist for the Court to maintain the protection ordered. If one of them is no longer valid, the Court must assess the pertinence of maintaining this protection. Any other matter may only be submitted to the Court in the corresponding contentious cases² or in requests for advisory opinions.³

11. When issuing protective measures, the Court or whoever presides it does not require, in principle, evidence of the facts which *prima facie* appear to comply with the requirements of Article 63(2) of the Convention. However, to the contrary, the need to maintain the protective measures calls for the Court to evaluate the persistence of the situation of extreme gravity, urgency, and the need to avoid irreparable damage that gave rise to those measures⁴ based on the evidence.⁵ Thus, maintaining protective measures requires a more rigorous evaluation of the persistence of the situation that gave rise to them.⁶

12. The present measures were issued pursuant to a *prima facie* appraisal of the threat to the beneficiaries’ rights to life and physical integrity. Nevertheless, the Court notes that, despite specific requests from the Court (*supra* fifth having seen paragraph), the beneficiaries have not submitted information or observations concerning the State’s request to lift the provisional measures. Furthermore, the Court notes that, in the instant case, one of the greatest obstacles to the implementation of these measures is that there has not been sufficient, permanent or

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 August 20, 1998, sixth considering paragraph; *Matter of the Communities of the Jiguamiandó and the Curbaradó*, *supra* note 1, sixth considering paragraph, and *Matter of the Kankuamo Indigenous People*, *supra* note 1, sixth considering paragraph.

³ Cf. *Matter of James et al.*, *supra* note 2, sixth considering paragraph; *Matter of the Mendoza Prisons. Provisional measures with regard to Argentina*. Order of the Inter-American Court of Human Rights of November 26, 2010, fifth considering paragraph, and *Case of López Álvarez et al. Provisional measures with regard to Honduras*. Order of the Inter-American Court of Human Rights of January 26, 2009, twelfth considering paragraph.

⁴ Cf. *Matter of 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; *Matter of A.J. et al. Provisional measures with regard to Haiti*. Order of the Inter-American Court of Human Rights of February 22, 2011, eleventh considering paragraph, and *Case of Caballero Delgado and Santana. Provisional measures with regard to Colombia*. Order of the Inter-American Court of Human Rights of February 3, 2010, twelfth considering paragraph.

⁵ 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; *Case of Rosendo Cantú et al. Provisional measures with regard to Mexico*. Order of the Inter-American Court of Human Rights of February 2, 2010, eleventh considering paragraph, and *Case of Caballero Delgado and Santana*, *supra* note 4, twelfth considering paragraph.

⁶ Cf. *Matter of the Kankuamo Indigenous Community*, *supra* note 4, seventh considering paragraph; *Case of Caballero Delgado and Santana. Provisional measures with regard to Colombia*. Order of the Inter-American Court of Human Rights of February 25, 2011, fifteenth considering paragraph, and *Case of the Mapiripán Massacre. Provisional measures with regard to Colombia*. Order of the Inter-American Court of Human Rights of March 1, 2011, twenty-second considering paragraph.

appropriate communication between the beneficiaries or their representatives and the State in order to reach agreement on their implementation and to assess the risk that the beneficiaries currently face. In this regard, the Court has insisted in other cases⁷ on the need for collaboration between the beneficiaries and representatives to ensure adequate implementation of provisional measures.

13. Moreover, concerning the information submitted by the representatives in September 2009 indicating that the beneficiaries were out of the country (*supra* para. 8), the Court emphasizes that the practical effect of the provisional measures depends on the real possibility that they can be implemented.⁸ Thus, since the beneficiaries no longer reside in Mexico and given the lack of information from them for more than 20 months about any possible danger they face, it is not reasonable to maintain the protective measures. In this matter, the scant information provided has created a situation of uncertainty at certain times, which is incompatible with the preventive and protective nature of provisional measures and, consequently, makes supervision of their implementation difficult.⁹

14. Consequently, based on the information provided by the representatives and the State's observation that the conditions of extreme gravity and the urgency of avoiding irreparable harm to the life and physical integrity of the beneficiaries do not exist, the Court finds that it is in order to lift the provisional measures adopted in this matter.

15. Notwithstanding the above, the Court recalls that Article 1(1) of the Convention establishes the general obligations of the States Parties to respect the rights and freedoms enshrined therein and to ensure their free and full exercise to all those subject to their jurisdiction at all times. For their part, provisional measures are of an extraordinary nature and are complementary to this general State obligation. In this regard, the justification for the Court to lift the provisional measures cannot entail the State being relieved of its treaty-based protection obligations. Hence, the Court emphasizes that, irrespective of the existence of specific provisional measures, the State is obliged to guarantee the rights of Mrs. Pérez Torres and her immediate family in the event of their eventual return to Mexico.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

⁷ Cf. *Case of the 19 Tradesmen*. Provisional measures with regard to Colombia. Order of the Inter-American Court of July 8, 2009, fortieth and ninety-sixth considering paragraphs; *Case of the Mapiripán Massacre*, *supra* note 6, twenty-eighth 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 May 15, 2011, fourteenth considering paragraph.

⁸ Cf. *Case of the 19 Tradesmen*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of August 26, 2010, thirty-second considering paragraph, and *Matter of the Peace Community of San José de Apartadó*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of August 30, 2010, thirty-fifth considering paragraph.

⁹ Cf. *Case of the Mapiripán Massacre*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of March 1, 2011.

by virtue of the authority granted to it by Article 63(2) of the American Convention on Human Rights and Article 27 of the Court's Rules of Procedure,

DECIDES:

1. To lift and conclude the provisional measures ordered by the Inter-American Court of Human Rights in favor of Rosa Isela Pérez Torres and her immediate family members.
2. To order the Secretariat to notify the present Order to the Inter-American Commission on Human Rights, the representatives of the beneficiaries, and the State of Mexico.
3. To close this file.

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